UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Nancy L. Lancaster, Editor
Kenneth A. Hansen, Director
Kimberly K. Hood, Executive Director

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Division of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at http://www.rules.utah.gov/publicat/bulletin.htm. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

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. 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)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit http://www.rules.utah.gov/publicat/digest.htm for additional information.

Division of Administrative Rules, Salt Lake City 84114

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

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SPECIAL NOTICES

Commerce
Occupational and Professional Licensing

Proposed Building Codes and Amendments under Utah Uniform Building Standards Act

Part 1
Proposed Building Codes and Amendments under Utah Uniform Building Standard Act

15A-2-103 Specific editions adopted of construction code of a nationally recognized code authority.

(1) Subject to the other provisions of this part, the following construction codes are incorporated by reference, and together with the amendments specified in Chapter 3, Statewide Amendments to International Plumbing Code, and Chapter 4, Local Amendments Incorporated as Part of State Construction Code, are the construction standards to be applied to building construction, alteration, remodeling, and repair, and in the regulation of building construction, alteration, remodeling, and repair in the state:

(a) the 2012 edition of the International Building Code, including Appendix J, issued by the International Code Council;

(b) the 2012 edition of the International Residential Code, issued by the International Code Council;

(c) the 2012 edition of the International Plumbing Code, issued by the International Code Council;

(d) the 2012 edition of the International Mechanical Code, issued by the International Code Council;

(e) the 2012 edition of the International Fuel Gas Code, issued by the International Code Council;

(f) the [~~2011~~] 2014 edition of the National Electrical Code, issued by the National Fire Protection Association;

(g) the 2012 edition of the International Energy Conservation Code, issued by the International Code Council;

(h) subject to Subsection 15A-2-104(2), the HUD Code;

(i) subject to Subsection 15A-2-104(1), Appendix E of the 2012 edition of the International Residential Code, issued by the International Code Council; and

(j) subject to Subsection 15A-2-104(1), the 2005 edition of the NFPA 225 Model Manufactured Home Installation Standard, issued by the National Fire Protection Association.

15A-3-303. Amendments to Chapter 3 of IPC.

(4) In IPC, Section 312.3, the following is added at the end of the paragraph:

"Where water is not available at the construction site or where freezing conditions limit the use of water on the construction site, plastic drainage and vent pipe may be permitted to be tested with air. The following procedures shall be followed:

1. Contractor shall recognize that plastic is extremely brittle at lower temperatures and can explode, causing serious injury or death.

2. Contractor assumes all liability for injury or death to persons or damage to property or for claims for labor and/or material arising from any alleged failure of the system during testing with air or compressed gasses.

3. Proper personal protective equipment, including safety eyewear and protective headgear, should be worn by all individuals in any area where an air or gas test is being conducted.

4. Contractor shall take all precautions necessary to limit the pressure within the plastic piping.

5. No [~~water supply~~] drain and vent system shall be pressurized in excess of 6 psi as measured by accurate gauges graduated to no more than three times the test pressure.

6. The pressure gauge shall be monitored during the test period, which should not exceed 15 minutes.

7. At the conclusion of the test, the system shall be depressurized gradually, all trapped air or gases should be vented, and test balls and plugs should be removed with caution."

15A-3-601. General provision.

The following are adopted as amendments to the NEC to be applicable statewide:

(1) The IRC provisions are adopted as the residential electrical standards applicable to installations applicable under the IRC. All other installations shall com ply with the adopted NEC.

[~~(2) In NEC, Section 310.15(B)(7), the second sentence is deleted and replaced with the following: "For application of this section, the main power feeder shall be the feeder(s) between the main disconnect and the panelboard(s)."~~]

(2) NEC Section 240.87(B) is modified to add the following as an additional approved equivalent means:

6. An instantaneous trip function set at or below the available fault current.

~~15A-4-103. Amendments to IBC applicable to City of Farmington.~~

~~The following amendments are adopted as amendments to the IBC for the City of Farmington:~~
~~(1) A new IBC, Section (F) 903.2.13, is added as follows: "(F) 903.2.13 Group R, Division 3 Occupancies. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13D, when any of the following conditions are present:~~
~~1. The structure is over two stories high, as defined by the building code;~~
~~2. The nearest point of structure is more than 150 feet from the public way;~~
~~3. The total floor area of all stories is over 5,000 square feet (excluding from the~~
~~4. The structure is located on a street constructed after March 1, 2000, that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).~~
~~Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves or in enclosed attic spaces, unless required by the Chief."~~
~~(2) A new IBC, Section 907.9, is added as follows: "907.9 Alarm Circuit Supervision. Alarm circuits in alarm systems provided for commercial uses (defined as other than one- and two-family dwellings and townhouses) shall have Class "A" type of supervision. Specifically, Type "B" or End-of-line resistor and horn supervised systems are not allowed."~~
~~(3) In NFPA Section 13-07, new sections are added as follows: "6.8.6 FDC Security Locks Required. All Fire Department connections installed for fire sprinkler and standpipe systems shall have approved security locks.~~
~~6.10 Fire Pump Disconnect Signs. When installing a fire pump, red plastic laminate signs shall be installed in the electrical service panel, if the pump is wired separately from the main disconnect. These signs shall state: "Fire Pump Disconnect ONLY" and "Main Breaker DOES NOT Shut Off Fire Pump".~~
~~22.1.6 Plan Preparation Identification. All plans for fire sprinkler systems, except for manufacturer's cut sheets of equipment shall include the full name of the person who prepared the drawings. When the drawings are prepared by a registered professional engineer, the engineer's signature shall also be included.~~
~~22.2.2.3 Verification of Water Supply:~~
~~22.2.2.3.1 Fire Flow Tests. Fire flow tests for verification of water supply shall be conducted and witnessed for all applications other than residential unless directed otherwise by the Chief. For residential water supply, verification shall be determined by administrative procedure.~~
~~22.2.2.3.2 Accurate and Verifiable Criteria. The design calculations and criteria shall include an accurate and verifiable water supply.~~
~~24.2.3.7 Testing and Inspection of Systems. Testing and inspection of sprinkler systems shall include, but are not limited to:~~
~~Commercial:~~
~~FLUSH-Witness Underground Supply Flush;~~
~~ROUGH-Inspection-Installation of Riser, System Piping, Head Locations and all Components, Hydrostatic Pressure Test;~~
~~FINAL Inspection-Head Installation and Escutcheons, Inspectors Test Location and Flow, Main Drain Flow, FDC Location and Escutcheon, Alarm Function, Spare Parts, Labeling of Components and Signage, System Completeness, Water Supply Pressure Verification, Evaluation of Any Unusual Parameter."~~

15A-4-107. Amendments to IBC applicable to Sandy City.
The following amendments are adopted as amendments to the IBC for Sandy City:
(1) A new IBC, Section (F)903.2.13, is added as follows: "(F)903.2.13 An automatic sprinkler system shall be installed in accordance with NFPA 13 throughout buildings containing all occupancies where fire flow exceeds 2,000 gallons per minute, based on Table B105.1 of the [~~2009~~] 2012 International Fire Code. Exempt locations as indicated in Section 903.3.1.1.1 are allowed.
Exception: Automatic fire sprinklers are not required in buildings used solely for worship, Group R Division 3, Group U occupancies and buildings complying with the International Residential Code unless otherwise required by the International Fire Code.

Part 2

Summary of Recommended Code and Amendment Changes Under Title 15A
State Construction and Fire Codes Act
(Construction Codes)

This document is a summary of proposed changes recommended by the advisory committees to the Uniform Building Code Commission for changes in the State Construction Codes, and a request by the City of Farmington to delete its local amendments to the State Construction Codes.

A public hearing will be conducted before the Uniform Building Code Commission to consider these changes.

After the public hearing, the Uniform Building Code Commission will make a recommendation to the Legislature's Business and Labor Interim Committee.

These proposed changes are written with strikethrough and underline as if the changes are being made to existing statute. The changes are shown in this format for easier identification of items that are recommended for change.

Overall Summary of Proposed Changes:

The advisory committees to the Uniform Building Code Commission are recommending proposed amendments be adopted as part of the State Construction Code, and Farmington City has requested to delete its local amendments to the State Construction Codes.

There are 5 areas of changes being considered:

1. Update electrical code from the 2011 National Electrical Code (NEC) to the 2014 National Electrical Code.

2. Deletion of a current amendment to the 2011 National Electrical Code and the addition of a new amendment to the 2014 National Electrical Code.

3. Correct the wording in a current amendment for the International Plumbing Code. This does not change the requirements, it is a correction for clarification.

4. Deletion of local amendments applicable to the City of Farmington.

5. Update local amendment for Sandy City to change the reference from the 2009 International Fire Code to the 2012 International Fire Code.

Summary of Individual Amendments:

15A-2-103 Specific editions adopted of construction code of a nationally recognized code authority.

The change in this section is being recommended in order to update the electrical code from the 2011 National Electrical Code to the 2014 National Electrical Code.

15A-2-601. Amendments to the NEC

The current amendment is no longer necessary as it has been incorporated as part of the 2014 code. The new amendment will allow an additional equivalent means to reduce clearing time. There could potentially be a significant cost savings by allowing this additional equivalent means.

15A-3-303. Amendments to Chapter 3 of IPC.

The change in this section is being recommended to make a clarification in the current amendment. This does not increase the requirement, it is mainly for clarification of requirements.

15A-4-103. Amendments to IBC applicable to City of Farmington.

This change is to delete local amendments applicable to the City of Farmington.

15A-4-107. Amendments to IBC applicable to Sandy City.

This change is to update a local amendment for Sandy City to change the reference from the 2009 International Fire Code to the 2012 International Fire Code

End of the Special Notices Section

EXECUTIVE DOCUMENTS

Under authority granted by the Utah Constitution and various federal and state statutes, the Governor periodically issues **Executive Documents**, which can be categorized as either Executive Orders, Proclamations, and Declarations. Executive Orders set policy for the executive branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. Proclamations call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. Declarations designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **Executive Documents** that have legal effect with the Division of Administrative Rules for publication and distribution.

Governor's Executive Order EO/2014/005: Executive Agency Consultation With Federally-Recognized Indian Tribes

EXECUTIVE ORDER

Executive Agency Consultation With Federally-Recognized Indian Tribes

WHEREAS, the State of Utah (the "State") is a sovereign state which acts in the public interest and for the betterment of its citizens and strives to ensure the rights of its citizens to participate in the governmental process;

WHEREAS, the federally-recognized Indian Tribes located wholly or partially in the State (the "Tribes") are sovereign nations with similar rights and duties to act for the benefit of their citizens and to act on behalf of the public welfare of their tribal nations;

WHEREAS, the State is committed to engage in regular and meaningful consultation with the Tribes when the development of State policies may or will have substantial tribal implications,

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and laws of the State of Utah, do hereby order that state agencies as defined herein establish a tribal consultation policy (the "Tribal Policy"). The tribal policy will establish processes for regular and meaningful consultation with the Tribes when there is a proposed state action with tribal implications as defined herein that affects a tribe as a sovereign or governmental entity:

1. Definitions

a. "Agency" means an executive agency or department that makes policy that has, or may have, a substantial direct effect on one or more of the Tribes. This order does not apply to independent entities as defined in Utah Code Annotated Subsection 63E-1-102(4)(a).

b. "Agency Official(s)"" means an individual or individuals designated and authorized to represent an agency for the purpose of implementation of the agency's tribal policy.

c. "Consultation" means the process by which the State and the Tribes may have the opportunity to exchange views and information, in writing or in person, regarding implementation of proposed state action that has, or may have, substantial tribal implications, such as impacts on the following:

i. tribal cultural practices, tribal lands, tribal resources, or access to traditional areas of tribal cultural or religious importance; or

ii. the ability of an Indian Tribe to govern or provide services to its members; or,

iii. an Indian Tribe's formal relationship with the State; or,

iv. the consideration of the State's responsibilities to Indian Tribes.

d. Consultation between the State and the Tribes does not include matters that are:

i. applicable to an individual member of a tribe; or

ii. in litigation or settlement negotiations; or,

iii. matters for which a court order limits the State's discretion to engage in consultation; or,

iv. internal agency administration, operations, processes, and personnel matters, however, the agencies involved will consult with the Tribes when hiring a new Director of Indian Affairs; or,

v. agency action that has general applicability to industrial, commercial, agricultural, or other business activity in the State.

e. "Indian Tribe" means any federally recognized Indian Tribe listed in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. Section 479a and located wholly or partially in the State of Utah;

f. "State Action With Tribal Implications" refers to regulations, rulemaking, and other policy statements or actions that have substantial direct effect on one or more tribes, on the relationship between the State and a tribe, or on the distribution of power and responsibilities between the State and a tribe, the status of a tribe as a sovereign or governmental entity.

g. "Tribal Official" means an elected or appointed tribal leader or individual designated by the tribe and authorized to represent the tribe in government-to-government consultations.

2. Fundamental Principles

In formulating or implementing state action with tribal implications, agencies shall be guided by the following fundamental principles:

a. The State has a government-to-government relationship with the tribal governments as set forth in the Constitution of the United States, the Utah Constitution, treaties, statutes, and court decisions.

b. The State has recognized the right of the Tribes to self-government. The State desires to work with the Tribes on a government-to-government basis.

c. When an agency intends to implement a state action with tribal implications, consultation should occur as part of a meaningful and comprehensive process that promotes effective communication between the tribe and the agency. The agency should make every effort to ensure that consultation with the tribe is conducted as early as possible, is carried out in good faith, and that honesty and integrity are maintained by the agency at all stages of the consultation process.

3. Consultation Policies

Within 180 days of the date of this order, each agency subject to this order shall submit to the Lieutenant Governor a tribal policy. Each tribal policy shall include the following:

a. A process to provide an opportunity for meaningful consultation with the Tribes which involves contact with the Tribal Official at the earliest possible time when developing or implementing state action with tribal implications.

b. A process to provide reasonable notice when engaging in consultation with the Tribal Official.

c. A process to provide active participation by the designated agency official(s).

The director of each agency subject to this order shall designate an agency official or officials with principal responsibility for the agency's implementation of this order. However, nothing in this order is intended to deny or limit the ability of a tribe, a tribal member, or a tribal representative to speak with any governmental official.

If an agency has an established consultation policy and/or process in place, the agency official(s) shall review the policy or process to ensure compliance with this order.

4. Division of Indian Affairs Director

The Director of the Division of Indian Affairs shall:

a. Prepare and submit an annual report to the Governor and Lieutenant Governor summarizing agency compliance with this order, as outlined below.

b. Serve as the Governor’s representative, when requested to do so, in matters pertaining to consultation, and provide technical assistance to agencies in matters pertaining to consultation.

c. Facilitate government-to-government consultation and collaboration between the Tribes and agencies.

d. Maintain contact information for the Tribal Officials designated and authorized by the individual Tribes to represent the Tribes in government-to-government consultations.

e. Assist agencies with training for agency official(s) and employees required in this order.

5. Annual Native American Summit

The Governor's Office will host a Native American Summit (the "Summit") annually to provide a forum for discussion between elected state leaders and members of the Tribes. The Summit is intended to strengthen the government-to-government relationship between the Tribes and the State, promote economic development and education, and assist the State and the Tribes in their efforts to work together to ensure that all residents of the State live in safe and healthy communities.

In preparation for the annual Summit, each agency shall submit a report to the Director of the Division of Indian Affairs outlining all consultation activities from the prior fiscal year. The report shall be submitted one month prior to the commencement of the Summit. The Director of Indian Affairs shall compile all such reports to present to the Governor and Lieutenant Governor, and tribal leaders at the Summit. The report shall include:

a. A description of consultation efforts undertaken by the agency in the fiscal year preceding the Summit, including, but not limited to: the number of consultations conducted; the tribe the agency consulted with, Tribal Official(s), and agency official(s) or personnel who participated in the consultation; and the results of consultation efforts.

b. Contact information for the designated agency official(s).

c. Details regarding on-going consultation and planned efforts for future consultation.

6. Miscellaneous

a. Each agency shall provide reasonable training opportunities for agency officials and employees authorized to implement any state action with tribal implications. Such training shall be designed to promote awareness of the agency’s tribal policy and contribute to the effective execution of the consultation process.

b. This order is not intended to prevent a tribe, the State, or an agency from taking action or adopting policies that the entity believes is in its best interest.

c. This order is not intended to unnecessarily delay an action or the adoption of a policy.

IN WITNESS WHEREOF, I have here unto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the State Capitol Building in Salt Lake City, Utah, on this, the 30th day of July 2014.

(State Seal)

Gary R. Herbert
Governor

Attest:

Spencer J. Cox
Lieutenant Governor

EO/2014/005

Governor's Executive Order EO/2014/006: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

WHEREAS, the danger from wildland fires is extremely high throughout the State of Utah;

WHEREAS, current below-normal precipitation in southern Utah contributed to the early drying of wildland vegetation; and

WHEREAS, some of the areas are extremely remote and inaccessible and the situation has the potential to greatly worsen if left unattended;

WHEREAS, immediate action is required to suppress the fires and mitigate post-burn destruction. This destruction can lead to mudslides and flash floods causing dangerous conditions for life safety, property, natural resources and the environment.;

WHEREAS, these conditions do create a disaster emergency within the intent of the Robert T. Stafford Disaster Relief and Emergency Assistance Act 1988;

NOW THEREFORE, I, Gary R. Herbert, Governor of the State of Utah by virtue of the power vested in my by the constitution and the laws of the State of Utah, do hereby order that;

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of August 10, 2014, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 10th day of August 2014.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

EO/2014/006

End of the Executive Documents Section

NOTICES OF
PROPOSED RULES

A state agency may file a **Proposed Rule** when it determines the need for a substantive change to an existing rule. With a **Notice of Proposed Rule**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between August 02, 2014, 12:00 a.m., and August 15, 2014, 11:59 p.m. are included in this, the September 01, 2014, 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 (example). Deletions made to existing rules are struck out with brackets surrounding them ([~~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 usually printed. If a **Proposed Rule** is too long to print, the Division of Administrative Rules may 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 October 1, 2014. 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 30, 2014, 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.

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, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

Administrative Services, Finance
R25-7-8
Reimbursement for Lodging

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38742
FILED: 08/07/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct a value for in-state lodging at a non-conference hotel.

SUMMARY OF THE RULE OR CHANGE: This filing corrects Subsection R25-7-8(2) to match the rate shown in Table 5.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will potentially be an increase cost to the state as the cost for reimbursement for in-state lodging at a non-conference hotel is increasing.
♦ LOCAL GOVERNMENTS: There will not be costs to local governments because the rule only governs reimbursements by the state to individuals traveling on state business.
♦ SMALL BUSINESSES: Small businesses may see an increase in revenue. However, the Division cannot determine exactly what the increase will be as that depends on the amount of individuals eligible for reimbursement for in-state lodging.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals eligible for reimbursement will see an increase in their reimbursement amount for in-state lodging. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the amendment only changes reimbursement rates for in-state lodging and does not require any new action on the part of persons applying for reimbursements, there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed these changes with the Division of Finance Director and believe these changes are reasonable and warranted. Small business may see an increase in revenue. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FINANCE
ROOM 2110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to [~~$65~~]$70 per night for single occupancy plus tax except as noted in the table below:

. . . . . .

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(iv) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) The tissue copy of the charge receipt is not acceptable.

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, signature of agent, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) $25 per night with no receipts required or

(ii) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - $46 per day for lodging and meals. No receipt is required.

KEY: air travel, per diem allowances, state employees, transportation
Date of Enactment or Last Substantive Amendment: [~~June 23,~~] 2014
Notice of Continuation: April 15, 2013
Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

Administrative Services, Purchasing and General Services
R33-6-103
Pre-Bid Conferences/Site Visits

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38756
FILED: 08/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the amendment is to include specific language regarding the requirements and procedures for pre-bid conferences and site visits so the rule will be easier to read and understand, and so the procurement unit will have a better understanding of what is required for pre-bid conferences and site visits.

SUMMARY OF THE RULE OR CHANGE: The reason for the amendment is to include specific language regarding the requirements and procedures for pre-bid conferences and site visits, including that they may be held to explain the procurement requirements outlined in the rule, how they can be attended and what procedures are required for the procurement unit if they are held.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The state budget will not be affected, because this section of the rule simply provides the requirements and procedures for pre-bid conferences and site visits for procurement units.
♦ LOCAL GOVERNMENTS: Local governments' budgets will not be affected, because this section of the rule simply provides the requirements and procedures for pre-bid conferences and site visits for procurement units.
♦ SMALL BUSINESSES: Small businesses' budgets will not be affected, because this section of the rule simply provides the requirements and procedures for pre-bid conferences and site visits for procurement units.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other person's budget will be affected, because this section of the rule simply provides the requirements and procedures for pre-bid conferences and site visits for procurement units.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any persons, because this section of the rule simply provides the requirements and procedures for pre-bid conferences and site visits for procurement units.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact it is created by the statute. This rule merely implements the statute.

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

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.
R33-6. Bidding.
[~~R33-6-103. Pre-Bid Conferences/Site Visits.~~

~~(1) Pre-bid conferences may be conducted to explain the procurement requirements. If there is to be a pre-bid conference, the time and place of the pre-bid conference/site visit shall be stated in the Invitation for Bids.~~

~~(a) Pre-bid site visits may be mandatory if the Invitation for Bids states that the site visit is mandatory and provides the location, date and time of the site visit. The Invitation for Bids must also state that failure to attend a mandatory site visit shall result in the disqualification of any bidder that does not attend. Procurement units shall maintain the following:~~

~~(i) an attendance log including the name of each attendee, the firm the attendee is representing, and the attendee's contact information; and~~

~~(ii) minutes of the site visits and any documents distributed to the attendees.~~

]R33-6-103. Pre-Bid Conferences and Site Visits.

(1) Mandatory pre-bid conferences and site visits may be held to explain the procurement requirements in accordance with the following:

(a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits must require mandatory attendance by all bidders.

(b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits allowing optional attendance by bidders are not permitted.

(c) A pre-bid conference may be attended via the following:

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(d) Mandatory site visits must be attended in person.

(e) All pre-bid conferences and site visits must be attended by an authorized representative of the person or vendor submitting a bid and as may be further specified in the procurement documents.

(f) The solicitation must state that failure to attend a mandatory pre-bid conference shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory pre-bid conference.

(g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory site visit.

(h) At the discretion of the conducting procurement unit, audio or video recordings of pre-bid conferences and site visits may be used.

(i) Listening to or viewing audio or video recordings of a mandatory pre-bid conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all bidders that do not have an authorize representative in attendance for the entire pre-bid conference or site visit to review any audio or video recording made.

(2)(a) If a pre-bid conference or site visit is held, the conducting procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-bid conference or site visit; and

(iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-bid conference or site visit.

(b) The issuing procurement unit shall publish as an addendum to the solicitation:
(i) the attendance log;
(ii) minutes of the pre-bid conference or site visit;
(iii) copies of any documents distributed to attendees at the pre-bid conference or site visit; and
(iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

KEY: government purchasing, sealed bidding, multiple stage bidding, reverse auction
Date of Enactment or Last Substantive Amendment: [~~July 8, ~~] 2014
Notice of Continuation: July 8, 2014
Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services
R33-7-201
Pre-proposal Conferences/Site Visits

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38759
FILED: 08/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the amendment is to include specific language regarding the requirements and procedures for pre-bid conferences and site visits so the rule will be easier to read and understand, and so that the procurement unit will have a better understanding of what is required for pre-bid conferences and site visits.

SUMMARY OF THE RULE OR CHANGE: The reason for the amendment is to include specific language regarding the requirements and procedures for pre-bid conferences and site visits, including that they may be held to explain the procurement requirements outlined in the rule, how they can be attended and what procedures are required for the procurement unit if they are held.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The state budget will not be affected, because this section of the rule simply provides the requirements and procedures for pre-bid conferences and site visits for procurement units.
♦ LOCAL GOVERNMENTS: Local governments' budgets will not be affected, because this section of the rule simply provides the requirements and procedures for pre-bid conferences and site visits for procurement units.
♦ SMALL BUSINESSES: Small businesses' budgets will not be affected, because this section of the rule simply provides the requirements and procedures for pre-bid conferences and site visits for procurement units.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other person's budget will be affected, because this section of the rule simply provides the requirements and procedures for pre-bid conferences and site visits for procurement units.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any persons, because this section of the rule simply provides the requirements and procedures for pre-bid conferences and site visits for procurement units.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.
R33-7. Request for Proposals.
[~~R33-7-201. Pre-proposal Conferences/Site Visits.~~
~~(1) Pre-proposal conferences/site visits may be conducted to explain the procurement requirements. If there is to be a pre-proposal~~

~~conference or site visit, the time and place of the pre-proposal conference/site visit shall be stated in the RFP.~~

~~(a) Pre-proposal conference/site visits may be mandatory if the RFP states that the pre-proposal conference/site visit is mandatory and provides the location, date and time of the site visit. The RFP must also state that failure to attend a mandatory pre-proposal conference/site visit shall result in the disqualification of any offeror that does not attend. Procurement units shall maintain the following:~~

~~(i) an attendance log including the name of each attendee, the firm the attendee is representing, and the attendee's contact information; and~~

~~(ii) minutes of the pre-proposal conference/site visit and any documents distributed to the attendees.~~

]**R33-7-201. Pre-Proposal Conferences and Site Visits.**

(1) Mandatory pre-proposal conferences and site visits may be held to explain the procurement requirements in accordance with the following:

(a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits must require mandatory attendance by all offerors.

(b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits allowing optional attendance by offerors are not permitted.

(c) A pre-proposal conference may be attended via the following:

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(d) Mandatory site visits must be attended in person.

(e) All pre-proposal conferences and site visits must be attended by an authorized representative of the person or vendor submitting a proposal and as may be further specified in the procurement documents.

(f) The solicitation must state that failure to attend a mandatory pre-proposal conference shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory pre-proposal conference.

(g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory site visit.

(h) At the discretion of the conducting procurement unit, audio or video recordings of pre-proposal conferences and site visits may be used.

(i) Listening to or viewing audio or video recordings of a mandatory pre-proposal conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all offerors that do not have an authorize representative in attendance for the entire pre-proposal conference or site visit to review any audio or video recording made.

(2)(a) If a pre-proposal conference or site visit is held, the conducting procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-proposal conference or site visit; and

(iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-proposal conference or site visit.

(b) The issuing procurement unit shall publish as an addendum to the solicitation:

(i) the attendance log;

(ii) minutes of the pre-proposal conference or site visit;

(iii) copies of any documents distributed to attendees at the pre-proposal conference or site visit; and

(iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

KEY: government purchasing, request for proposals, standard procurement process
Date of Enactment or Last Substantive Amendment: [~~July 8,~~] 2014
Notice of Continuation: July 8, 2014
Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services
R33-7-601
Best and Final Offers

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38757
FILED: 08/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the amendment is to provide additional requirements and procedures for the Best and Final Offers process. This rule must be used in accordance with the requirements set forth in Section 63G-6a-707.5, the Utah Procurement Code.

SUMMARY OF THE RULE OR CHANGE: The amendments to this section provide additional requirements and procedures for the best and final offers process, which is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals, and must be used in accordance with the requirements set forth in Section 63G-6a-707.5.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The state budget will not be affected, because this amendment is simply providing additional requirements and procedures for the best and final offers process, which is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals, and must be used in accordance with the Utah Procurement Code.
♦ LOCAL GOVERNMENTS: Local governments' budgets will not be affected, because this amendment is simply providing additional requirements and procedures for the best and final offers process, which is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals, and must be used in accordance with the Utah Procurement Code.
♦ SMALL BUSINESSES: Small businesses' budgets will not be affected, because this amendment is simply providing additional requirements and procedures for the best and final offers process, which is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals, and must be used in accordance with the Utah Procurement Code.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other person's budget will be affected, because this amendment is simply providing additional requirements and procedures for the best and final offers process, which is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals, and must be used in accordance with the Utah Procurement Code.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons, because this amendment is simply providing additional requirements and procedures for the best and final offers process, which is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals, and must be used in accordance with the Utah Procurement Code.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. Any impact would be created from the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.
R33-7. Request for Proposals.
R33-7-601. Best and Final Offers.

Best and Final Offers shall be conducted in accordance with the requirements set forth in Section 63G-6a-707.5[-], or the Utah Procurement Code. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) The best and final offers (BAFO) process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals.

(a) An evaluation committee may request best and final offers when:

(i) no single proposal addresses all the specifications;

(ii) all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;

(iii) additional information is needed in order for the evaluation committee to make a decision;

(iv) the differences between proposals in one or more categories are too slight to distinguish;

(v) all cost proposals are too high or over the budget;

(vi) multiple contract awards are necessary to achieve regional or statewide coverage for a procurement item under an RFP and there are insufficient cost proposals within the budget to award the number of contracts needed to provide regional or statewide coverage.

(2) Only offerors meeting the minimum qualifications or scores described in the RFP are eligible to respond to best and final offers.

(3) Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the RFP described in the request for best and final offers.

(a) Offerors may not use the best and final offers process to correct deficiencies in their proposals not addressed in the request for best and final offers issued by the procurement unit.

(4) When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemize cost proposals clearly indicating the tasks or scope reductions that can be accomplished to bring costs within the available budget.

(a) The cost information of one offeror may not be disclosed to competing offerors during the best and final offers process and further, such cost information shall not be shared with other offerors until the contract is awarded.

(b) A procurement unit shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.

(5) The best and final offers process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the RFP process.

(6) A procurement unit may not use the best and final offers process to allow offerors a second opportunity to respond to the entire request for proposals.

(7) If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.

(8) A request for best and final offers issued by a procurement unit shall:

(a) comply with all public notice requirements provided in Section 63G-6a-406;

(b) include a deadline for submission that allows offerors a reasonable opportunity for the preparation and submission of their responses;

(c) indicate how proposal modifications in response to a request for best and final offers will be evaluated;

(9) If an offeror does not submit a best and final offer, its immediately previous proposal will be considered its best and final offer;

(10) Unsolicited best and final offers will not be accepted from offerors.

KEY: government purchasing, request for proposals, standard procurement process
Date of Enactment or Last Substantive Amendment: [~~July 8,~~] 2014
Notice of Continuation: July 8, 2014
Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services
R33-24
Unlawful Conduct

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38758
FILED: 08/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the amendments are to add additional sections to further clarify what constitutes unlawful conduct for procurement professionals and what does not, as well as the action a procurement professional shall take if they are participating in social activities that are prohibited under Subsection R33-24-104(1).

SUMMARY OF THE RULE OR CHANGE: The reason for the amendments are to add the following sections to the rule: Section R33-24-105 - Financial Conflict of Interest Prohibited; Section R33-24-106 - Personal Relationship, Favoritism, or Bias Participation Prohibitions; and Section R33-24-107 - Professional Relationships and Social Acquaintances Not Prohibited. The Division is also changing Section R33-24-104 to state that procurement professional shall not participate with vendors or contractors that will (instead of may) interfere with the proper performance of the procurement professional's duties; participate in social activities with vendors or contractors that will (instead of may) lead to unreasonably frequent disqualification of the procurement professional from the procurement process. In addition, the Division is adding that if an executive branch procurement professional participates in a social activity that is prohibited under Subsection R33-24-104(1) or has a close relationship with a vendor or contractor, they shall promptly notify their supervisor and the supervisor shall take the appropriate action which may include removal of the procurement professional from the procurement or contract administration process that is affected.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The state budget will not be affected, because the changes are simply amending the rule to make tighter standards for procurement professionals when they are involved in social activities with vendors or contractors, as well as adding sections to clarify unlawful conduct for procurement professionals.
♦ LOCAL GOVERNMENTS: Local governments' budgets will not be affected, because the changes are simply amending the rule to make tighter standards for procurement professionals when they are involved in social activities with vendors or contractors, as well as adding sections to clarify unlawful conduct for procurement professionals.
♦ SMALL BUSINESSES: These amendments will not affect small businesses, because the changes are simply amending the rule to make tighter standards for procurement professionals when they are involved in social activities with vendors or contractors, as well as adding sections to clarify unlawful conduct for procurement professionals.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other person's budget will be affected, because the changes are simply amending the rule to make tighter standards for procurement professionals when they are involved in social activities with vendors or contractors, as well as adding sections to clarify unlawful conduct for procurement professionals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any persons, because the changes are simply amending the rule to make tighter standards for procurement professionals when they are involved in social activities with vendors or contractors, as well as adding sections to clarify unlawful conduct for procurement professionals.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact it is created by the statute. This rule merely implements the statute.

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

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Division of Purchasing and General Services.
R33-24. Unlawful Conduct.
R33-24-101. Unlawful Conduct.

Unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 2407. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-24-102. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Procurement Professionals.

(1) Each executive branch employee classified as a "Procurement Professional" shall be governed by:

(a) Part 24 of the Utah Procurement Code, "Unlawful Conduct and Penalties[~~"~~]."

(b) Executive Order EO/003/2010 issued by the Governor (http://www.rules.utah.gov/execdocs/2010/ExecDoc149415.htm);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act[~~"~~];"

(d) Section 76-8-103, "Bribery or Offering a Bribe[~~"~~];" and

(e) any other applicable law.

R33-24-103. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Employees.

(1) Each executive branch employee not classified as a "Procurement Professional" shall be governed by:

(a) Executive Order EO/003/2010 issued by the Governor (http://www.rules.utah.gov/execdocs/2010/ExecDoc149415.htm);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act[~~"~~];"

(d) Section 76-8-103, "Bribery or Offering a Bribe[~~"~~];" and

(e) any other applicable law.

R33-24-104. Socialization [~~W~~]with Vendors and Contractors.

(1) A procurement professional shall not:

(a) participate in social activities with vendors or contractors that [~~may~~]will interfere with the proper performance of the procurement professional's duties;

(b) participate in social activities with vendors or contractors that [~~may~~]will lead to unreasonably frequent disqualification of the procurement professional from the procurement process; or

(c) participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the procurement professional's independence, integrity, or impartiality.

(2) If an executive branch procurement professional participates in a social activity prohibited under R33-24-104(1), or has a close personal relationship with a vendor or contractor, the procurement professional shall promptly notify their supervisor and the supervisor shall take the appropriate action, which may include removal of the procurement professional from the procurement or contract administration process that is affected.

R33-24-105. Financial Conflict of Interests Prohibited.

(1) A procurement conflict of interest is a situation in which the potential exists for an executive branch employee's personal financial interests, or for the personal financial interests of a family member, to influence, or have the appearance of influencing, the employee's judgment in the execution of the employee's duties and responsibilities when conducting a procurement or administering a contract.

(2) In order to preserve the integrity of the State's procurement process, an executive branch employee may not take part in any procurement process, contracting or contract administration decision:

(a) relating to the employee or a family member of the employee; or

(b) relating to any entity in which the employee or a family member of the employee is an officer, director or partner, or in which the employee or a family member of the employee owns or controls 10% or more of the stock of such entity or holds or directly or indirectly controls an ownership interest of 10% or more in such entity.

(3) If a procurement process, contracting or contract administration matter arises relating to the employee or a family member of the employee, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the procurement, contracting or administration matter. The employee must also comply with all disclosure requirements in Utah Code Title 67 Chapter 16, Utah Public Offers' and Employees' Ethics Act.

R33-24-106. Personal Relationship, Favoritism, or Bias Participation Prohibitions.

(1) Executive branch employees are prohibited from participating in any and all discussions or decisions relating to the procurement, contracting or administration process if they have any type of personal relationship, favoritism, or bias that would appear to a reasonable person to influence their independence in performing their assigned duties and responsibilities relating to the procurement process, contracting or contract administration or prevent them from fairly and objectively evaluating a proposal in response to a bid, RFP or other solicitation. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

(2) If an executive branch employee has a personal relationship, favoritism, or bias toward any individual, group, organization, or vendor responding to a bid, RFP or other solicitation, the employee must make a written disclosure to the supervisor and the supervisor shall take appropriate action, which may include recusing the employee from any and all discussions or decisions relating to the solicitation, contracting or administration matter in question. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

R33-24-107. Professional Relationships and Social Acquaintances Not Prohibited.

(1) It is not a violation for an executive branch employee who participates in discussions or decisions relating to the procurement, contracting or administration process to have a professional relationship or social acquaintance with a person, contractor or vendor responding to a solicitation, or that is under contract with the State, provided that there is compliance with Rule R33-24-105, Rule R33-24-106, the Utah Public Officers' and Employees' Ethics Act, The Governor's Executive Order (EO 002 2014) "Establishing an Ethics Policy for Executive Branch Agencies and Employees," and other applicable State laws.

KEY: executive branch employees procurement code, procurement professionals, unlawful conduct
Date of Enactment or Last Substantive Amendment: [~~July 8,~~] 2014
Authorizing, and Implemented or Interpreted Law: 63G-6a

Agriculture and Food, Conservation Commission
R64-1
Agriculture Resource and Development Loans (ARDL)

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38747
FILED: 08/07/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment is to incorporate the new changes made to the Utah Code during the 2014 General Legislative Session under S.B. 73, Agriculture Environmental Amendments.

SUMMARY OF THE RULE OR CHANGE: Subsection 4-18-105(1)(e)(vi) adds as function of the Conservation Commission to approve and make loans for agricultural purposes from the Agricultural Resource Development Fund for programs or improvements for agriculture product storage, protections of crops, or animal resource.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-18-105(1)(e)(vi)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no extra costs or saving to the state's budget. All procedures will be the same as prior practices and will not affect personnel or approval times of the loans.
♦ LOCAL GOVERNMENTS: There will only be costs if the local government requires a building permit and inspection during the construction process.
♦ SMALL BUSINESSES: Only if a small architectural business is hired to draw construction plans for the storage facilities. It would create new business opportunities.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Others would not be affected, the Division used technical planners and advisors already in place to monitor the project planning and new projects.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be minimal compliance costs for the affected persons. Loans will be processed with acceptable resource improvement and management plans that each person must provide; the same as with all prior practices. Storage improvements have not been a practice approved prior to this rule change, therefore, these plans must be purchased or engineered with technical assistance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Most farming operations are cyclical in nature and most have high debt levels. Our program was created to help the farming community with financing because of of these reasons. Banking institutions find most farming operations and individuals are leveraged above acceptable lending limits and cannot be helped through their institution.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
CONSERVATION COMMISSION
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: LuAnn Adams, Commissioner

R64. Agriculture and Food, Conservation Commission.
R64-1. Agriculture Resource Development Loans (ARDL).
R64-1-1. Authority and Purpose.

Pursuant to Section 4-18-105, this rule establishes general operating practices by which the Agriculture Resource Development Loan (ARDL) program shall function.

R64-1-2. Definitions.

(1) "Commission"[~~:~~] means the Utah Conservation Commission created by Section 4-18-4, which directs and implements the Agriculture Resource Development Loan program throughout the State of Utah, chaired by the Commissioner of the Utah Department of Agriculture and Food.

(2) "ZEC[~~ Committee~~]"[~~:~~] means a [~~Zone~~]zone [~~Executive~~]executive [~~Committee~~]committee [~~for each of the seven zones in the state~~]representing several conservation districts in a geographic area[~~,~~] consisting of one member from each of the [~~soil~~]conservation districts in that zone to coordinate [~~the~~]ARDL [~~program at the zone level~~]activities.

(3) "C[~~-~~]D[~~-~~] Board" means a [~~Conservation~~] conservation district [~~B~~]board[~~, a~~] consisting of five[~~-member group~~]elected supervisors within each [~~of 39 soil~~]conservation district[~~s~~] [~~in the state~~]created by Section 4-18-105, to coordinate [~~the~~]ARDL [~~program~~]activities at the district level.

(4) "ARDL Program Coordinator or Loan Administrator" means the staff administrator of [~~Agriculture Resource Development Loan~~]the ARDL program employed by the Department of Agriculture and Food.

(5) "Technical [~~assistance~~]Assistance" or "[~~technical~~]Technical [~~assistance~~]Assistance [~~agency~~]Agency" means such individuals or group of individuals, including administrative services, who may be requested by an applicant client to provide specialized input for proposed projects.

(6) "Executive Committee" means a [~~group composed of a chairman, the President of the Utah Association of Conservation Districts (UACD),~~]committee, made up of the commission chair and at least two other members selected from and approved by the commission, who approve[~~and a commission member at large, which review~~] applications for presentation to the [~~Conservation C~~]commission.

(7) "Application" means a project proposal which is prepared by an individual seeking ARDL [~~loan~~]funds through the process established by the commission and in accordance with Section 4-18-105.

(8) "Resource Improvement and Management Plan[~~s~~]" means a plan [~~plans and specifications~~]providing a schedule of operations, implementation and cost estimates, and other pertinent information prepared by a technical assistant, or technical assistance agency, which [~~technical assistants and agencies are pre-~~]has been approved by the commission.

R64-1-3. Administration of Agriculture Resource Development Fund.

(1) The objectives of the ARDL program are to conserve [~~soil and water~~]agricultural resources of the state, increase agriculture yields and efficiency for croplands, orchards, pastures, range and livestock, maintain and improve water quality, conserve and improve wildlife habitat, prevent flooding, conserve or develop on-farm energy resources, [~~and~~]mitigate damages to agriculture as a result of flooding, drought, or other natural disasters, and provide and maintain protection of a crop or animal resource. The commission shall annually allocate funds appropriated for projects that further these objectives.

(2) Applicant clients shall submit finalized project proposals to the [~~ARDL Program Coordinator or L~~]loan [~~Administrator~~]administrator through the conservation districts for review. Applications shall be reviewed for funding by the executive committee if they exceed loan limits established by policy. Applicant clients shall comply with district, zone and commission application procedures, which are available [~~from~~]at the district level.[~~and zone offices.~~] Applicant clients shall be investigated for credit and security as may be required by the commission[~~:~~] including repayment capability, past and current financial holdings, fiscal[~~-~~] obligations, and debt history. When requests are expected to exceed available funds, projects shall be rated and prioritized according to levels of quality of improvement(s) sought. Rating and approval information from ZEC committees and [~~S~~]CD boards shall be duly considered.

(3) [~~Loans~~]Loan contracts will be awarded [~~in accordance with contracts;~~]upon receipt of executed documents, [~~which will~~]generally consisting of promissory notes [~~or~~]and other documents that are agreed to and signed by [~~applicant clients~~]the borrower to perfect [~~such~~]liens on [~~collateral~~]required security.

(4) When proposed projects include technical issues that are sufficiently complex, loan and technical assistance fees may be charged to clients. Some projects may require supervision by commission designated personnel.

(5) Contracts with applicant clients shall be based on [~~security involving~~]repayment ability or defined collateral. Contracts shall include schedules for loan repayment according to the agreed upon interest rates and related fiscal conditions. The [~~ARDL L~~]loan [~~Administrator~~]administrator may acquire appraisals and estimates of collateral values, and is authorized to obtain security or collateral in order to meet the provisions of the contract until agreed upon amounts have been collected.

(6) Projects for which funds are loaned shall be inspected and certified by commission designated personnel for compliance with contractual provisions.

(7) Under direction of the commission the [~~ARDL Program Coordinator or L~~]loan [~~Administrator~~]administrator shall manage the program; interpret guidelines, administer record-keeping operations, research financial [~~loan~~]collateral security information, process and service contracts associated with program functions, recommend loan approvals to the commission, analyze resource improvement and management plans, and administer loan servicing/collection activities.

KEY: loans
Date of Enactment or Last Substantive Amendment: [~~January 16, 1996~~]2014
Notice of Continuation: July 23, 2014
Authorizing, and Implemented or Interpreted Law: 4-18-105

Commerce, Consumer Protection
R152-23
Utah Health Spa Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38748
FILED: 08/08/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to eliminate confusion that applicants have expressed in attempting to understand and use the existing definition of "personal trainer".

SUMMARY OF THE RULE OR CHANGE: The definition of "personal trainer" is eliminated. The substantive elements of the definition are moved into the section that outlines the registration requirements for health spas where personal training is offered or allowed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-2-5 and Section 13-23-4 and Section 63G-3-201

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No enforcement costs are associated with this amendment. The state budget will not be affected.
♦ LOCAL GOVERNMENTS: Local governments are not required to comply with or enforce the health spa registration rules. No fiscal impact to local government is anticipated.
♦ SMALL BUSINESSES: This amendment is for clarification only. It does not impose a new registration or compliance requirement that would result in costs to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment is for clarification only. It does not impose a new registration or compliance requirement that would result in costs to affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment is for clarification only. It does not impose new compliance obligations on affected persons. No compliance costs are anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing moves certain requirements governing registration of a health spa from the definition section into the substantive rule. No fiscal impact to businesses is anticipated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
CONSUMER PROTECTION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Daniel O'Bannon, Director

R152. Commerce, Consumer Protection.
R152-23. Utah Health Spa Services.
R152-23-3. Definitions.

In addition to the definitions set forth in Section 13-23-2, the following definitions shall apply to these Rules.

(1) "Advance Sales" shall mean sales of consumer contracts on any date prior to the date a health spa facility becomes fully operational and available for use.

(2) "Costs" shall mean those costs incurred by the Division in investigating complaints, in collecting and distributing funds, and in otherwise fulfilling its responsibilities under the Health Spa Services Protection Act or these Rules.

(3) "Facility" means the physical building where the health spa services are provided.

(4) "Operate" means to advertise health spa services, to sell memberships, or to perform any other function of business by a health spa that is doing business in Utah.

[~~(5) "Personal Trainer" means an individual who is a health spa under Section 13-23-2 because the individual (1) hires another individual, either as an employee or an independent contractor, to provide instruction to assist patrons to improve their physical condition or appearance through aerobic conditioning, strength training, fitness training or other exercise, and (2) is granted the use of a facility that contains exercise equipment.~~

]

R152-23-4. Registration Requirements.

(1) A health spa may not operate in this state without first having received a registration permit from the Division. Each health spa entity shall obtain a registration permit prior to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide health spa services.

(2) The application shall request the following items:

(a) Name, addresses, email address and telephone numbers of owner(s) of the health spa Facility and the facility address, telephone number, email address, and name of contact person at the facility.

(b) Payment of the non-refundable application fee.

(c) A current pricing structure for health and fitness services.

(d) A copy of the contract that will be utilized by the facility containing the provisions required by law. The required provisions shall be highlighted for easy reference.

(e) The documents necessary to satisfy the surety requirement of Section 13-23-5(2)(a). If the health spa claims that it is exempt from providing the surety, then it must provide the Division with sufficient evidence that each requirement of Section 13-23-6 is satisfied.

(f) The number of consumer contracts that relate to each facility.

(g) The name, address, email address, and telephone number of each [~~Personal Trainer~~]employee, independent contractor, or any other health spa service provider who will be authorized by the registrant to use the health spa's facilities in providing health spa services to consumers during the year.

(h) The company name and contact information for a third party billing and management provider, if used.

(i) Evidence that the health spa facility maintains current liability or professional liability insurance.

(3) A separate registration shall be required for each facility that is maintained and operated by a health spa.

(4) If any information contained in the application becomes incorrect or incomplete, then the health spa shall, within thirty (30) days of the information becoming incorrect or incomplete, correct the application or file the complete information.

(5) All initial applications and renewal applications shall be processed within twenty (20) business days after their receipt by the Division.

KEY: consumer protection, health spas
Date of Enactment or Last Substantive Amendment: [~~November 29, 2012~~]2014
Notice of Continuation: March 22, 2012
Authorizing, and Implemented or Interpreted Law: 63G-3-201; 13-2-5; 13-23-1

Commerce, Consumer Protection
R152-32a-2
Exempt Businesses

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38763
FILED: 08/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify the secondhand products that are not subject to the requirements of Title 13, Chapter 32a.

SUMMARY OF THE RULE OR CHANGE: The rule is updated and clarified to list the secondhand products that, when acquired by a person other than a pawnbroker, are exempt from the requirements of Title 13, Chapter 32a.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-2-5 and Section 13-32a-112.5 and Subsection 13-32a-102(23)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: This amendment is for clarification. The Division has historically had adequate budget to enforce the rule. It is not anticipated that the clarification will increase the Division's enforcement costs. No fiscal impact to the state budget is anticipated.

♦ LOCAL GOVERNMENTS: Local government is not required to comply with or enforce the pawnshop and secondhand merchandise rules. No fiscal impact to local government is anticipated.

♦ SMALL BUSINESSES: Small businesses other than pawnshops, if dealing in secondhand merchandise, must upload to a central database information about all products not exempted from registration by rule. The annual cost for access to the central database is $300. This filing expands and clarifies the list of exempted items, reducing the number of items that small businesses will be required to upload. It is anticipated that small businesses will realize associated savings in terms of staff time and similar overhead. This list will also allow small businesses, at their option, to restrict their trade so as to deal exclusively in exempted items, which would eliminate the $300 annual central database access fee entirely.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Affected persons, if dealing in secondhand merchandise, must upload to a central database information about all products not exempted from registration by rule. The annual cost for access to the central database is $300. This filing expands and clarifies the list of exempted items, reducing the number of items that affected persons will be required to upload. It is anticipated that affected persons will realize associated savings in terms of staff time and similar overhead. This list will also allow affected persons, at their option, to restrict their trade so as to deal exclusively in exempted items, which would eliminate the $300 annual central database access fee entirely.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons who chooses to deal in the non-exempt secondhand products listed in this amendment must register those products in a central database. The annual cost for access to the central database is $300.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this amendment lists the types of secondhand merchandise that must be registered in a central database prior to resale. The cost of using the central database is $300 per year. A business that chooses to deal in products that are not exempt from the database registration requirement will pay that annual fee. Otherwise, no fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Daniel O'Bannon, Director

R152. Commerce, Consumer Protection.
R152-32a. Pawnshop and Secondhand Merchandise Transaction Information Act Rules.
R152-32a-2. Exempt Businesses.
[~~In accordance with Section 13-32a-112.5, the definition of "Secondhand merchandise dealer" does not include:~~

~~(1) Scrap metal processors as defined by Section 76-10-901(10);~~
~~(2) Dealers of used appliances; and~~
~~(3) Dealers of used furniture.~~
] (1) The owner or operator of a business that is not a pawnbroker is exempt from the requirements of Title 13, Chapter 32a if the owner or operator deals exclusively in one or more of the following consumer products:

(a) scrap metal acquired by a scrap metal processor pursuant to Section 76-6-1402(10);
(b) antique items as defined in Section 13-32a-102(2);
(c) used furniture;
(d) used appliances;
(e) used games (i.e., card games, table-top games, and magic tricks), except as specified in this Subsection (3); and
(f) used children's products, except as specified in this Subsection (3).

(2) The owner or operator of a business that is not a pawnbroker shall comply with Title 13, Chapter 32a if the owner or operator buys or sells a used or secondhand item that is other than an exempt item pursuant to this Subsection (1).

(3) Notwithstanding the exemptions listed in this Subsection (1), the following consumer products are not exempt from the registration, uploading, retention, and other requirements of Title 13, Chapter 32a:

(a) sports trading cards;
(b) electronic games, video games, and gaming systems;
(c) electronic and acoustic musical instruments (non-toys);
(d) motorized ride-on scooters/vehicles, whether titled or non-titled;
(e) bicycles/scooters designed for use on a public street;
(f) golfing, snow skiing, snowboarding, or water skiing equipment (non-toys);
(g) rare or collectible toys (i.e., trading cards, original issue versions of classic games, and dolls or decorations that are signed or numbered);
(h) child transport devices, including:
(i) strollers and jogging strollers;
(ii) bicycle trailers;
(iii) car seats; and
(iv) baby backpacks, frontpacks, and similar strap-on carriers; and
(i) any item reasonably similar to a consumer product listed in this Subsection (3).

KEY: pawnshops, consumer protection, second[~~—~~]hand merchandise dealers**
Date of Enactment or Last Substantive Amendment: [~~August 9, 2010~~]2014
Notice of Continuation: August 5, 2013
Authorizing, and Implemented or Interpreted Law: 13-2-5; 13-32a-102(23); 13-32a-112.5

Commerce, Occupational and Professional Licensing
R156-9
Funeral Service Licensing Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38737
FILED: 08/05/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Funeral Service Licensing Board reviewed the rule and determined proposed amendments are needed to change the requirement for the open book laws and rules exam for funeral service intern applicants to the same laws and rules exam required for other funeral service licensing applicants.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-9-102(5), the rule citation referenced is updated to Section R156-9-502. In Section R156-55a-302a, the proposed amendments change the requirement for the open book laws and rules exam for funeral service interns to the same laws and rules exam required for other funeral service licensing applicants.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-9-504 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
♦ LOCAL GOVERNMENTS: The proposed amendments only apply to applicants for licensure as a funeral service intern. As a result, the proposed amendments do not apply to local governments.
♦ SMALL BUSINESSES: The proposed amendments only apply to applicants for licensure as a funeral service intern. These applicants may work in a small business; however, the proposed amendments would not directly affect the business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Funeral service intern applicants will be required to take and pass the laws and rules exam administered by the Division's contract testing agency at a cost of $72 rather than the current open book laws and rules exam which does not have a cost. However, these applicants will not then later be required to take the contract testing agency laws and rules exam when they apply for the funeral service director license. In effect, this rule eliminates the no cost open book laws and rules exam for a funeral service intern who eventually becomes licensed as a funeral service director. The extra open book test was determined to be a duplicative requirement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Funeral service intern applicants will be required to take and pass the laws and rules exam administered by the Division's contract testing agency at a cost of $72 rather than the current open book laws and rules exam which does not have a cost. However, these applicants will not then later be required to take the contract testing agency laws and rules exam when they apply for the funeral service director license. In effect, this rule eliminates the no cost open book laws and rules exam for a funeral service intern who eventually becomes licensed as a funeral service director. The extra open book test was determined to be a duplicative requirement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing imposes an examination requirement on individuals who wish to obtain the funeral service intern license. The cost of the examination is currently $72. It is anticipated that this cost will be borne by individuals seeking licensure, with no resulting costs to businesses.

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 10/01/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/08/2014 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 464 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-9. Funeral Service Licensing Act Rule.
R156-9-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 9, as defined or used in this rule:

(1) "Contract" means a guaranteed preneed funeral arrangement contract.

(2) "Funeral service establishment" is defined in Subsection 58-9-102(18).

(3) "Guaranteed product contract" means a contract wherein goods or services are selected which will be provided at the time of need for the consideration specified in the contract regardless of the market price at the time of need.

(4) "Recipient of goods and services" is synonymous with "beneficiary" as defined in Subsection 58-9-102(2), and is used herein to avoid confusion with various common meanings of the term "beneficiary".

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-9-[~~501~~]502.

R156-9-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(d) and 58-1-301(3), the qualifications for licensure in Subsections 58-9-302(1)(g), 58-9-302(2)(e), 58-9-302(4)(e) and 58-9-306(6) and (7) are defined, clarified, or established as follows:

(1) An applicant for licensure as a funeral service director shall [~~be required to~~]pass the National Board Examinations (science and art sections) of the Conference of Funeral Service Examining Boards. The examination may be taken while the individual is enrolled in an approved funeral service school.

(2) [~~An applicant for licensure as a funeral service intern shall answer correctly all the law and rule questions in the open book examination contained in the application.~~

~~(3)~~]An applicant for licensure as a funeral service director, funeral service intern, preneed sales agent or funeral service director by endorsement shall pass the Utah Funeral Service Law and Rule Examination with a score of at least 75%.

([~~4~~]3) An individual who fails the Utah Funeral Service Law and Rule Examination may retake the failed examination:

(a) no more than three times within a six month period; and

(b) no earlier than three months following any failure thereafter.

KEY: funeral industries, licensing, funeral directors, preneed funeral arrangements
Date of Enactment or Last Substantive Amendment: [~~June 21, 2012~~]2014
Notice of Continuation: September 26, 2011
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-9-504

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.: 38733
FILED: 08/05/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule filing is to update Sections R156-15A-401 and R156-15A-402 by changing from the 2009 edition to the 2012 edition of the International Existing Building Code (IEBC) and by making corresponding technical amendments.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-15A-401(2), the proposed amendment is being made to change the 2009 edition to the 2012 edition of the International Existing Building Code. In Section R156-15A-402, the proposed amendments are technical changes to update section numbering to correspond with the numbering in the 2012 edition of the International Existing Building Code. The underlying requirements in these code sections have not changed.

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)

MATERIALS INCORPORATED BY REFERENCES:
- Updates International Existing Building Code, published by International Code Council, 2012

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $75 to print and distribute the rule once the proposed amendments are made effective. The Division also incurred a cost of $50.95 to purchase the updated 2012 IEBC book. These costs incurred will be absorbed in the Division's current budget.
♦ LOCAL GOVERNMENTS: Local governments may incur a cost of $50.95 to purchase the updated 2012 IEBC book if it is determined local government offices need to maintain a copy of this updated book. The Division anticipates the proposed amendments will not result in any significant financial impact on any party and will not result in cost to local governments other than the cost to purchase an updated 2012 IEBC book. This is because these are not mandatory codes but codes approved for adoption by local compliance agencies. These are codes that a local compliance agency may choose to adopt. If the codes are adopted by a local compliance agency, the adoption would result in significant savings to existing building owners. These codes allow for certain cost saving measures to be implemented when an existing building is being remodeled but it is cost prohibitive to the bring the building into full compliance with existing codes. These cost savings cannot be quantified.
♦ SMALL BUSINESSES: Small businesses may incur a cost of $50.95 to purchase the updated 2012 IEBC book if it is determined a small business office needs to maintain a copy

of this updated book. The Division anticipates the proposed amendments will not result in any significant financial impact on any party and will not result in cost to small businesses other than the cost to purchase an updated 2012 IEBC book. This is because these are not mandatory codes but codes approved for adoption by local compliance agencies. These are codes that a local compliance agency may choose to adopt. If the codes are adopted by a local compliance agency, the adoption would result in significant savings to existing building owners. These codes allow for certain cost saving measures to be implemented when an existing building is being remodeled but it is cost prohibitive to the bring the building into full compliance with existing codes. These cost savings cannot be quantified.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Other persons may incur a cost of $50.95 to purchase the updated 2012 IEBC book if it is determined there is a need to maintain a copy of this updated book. The Division anticipates the proposed amendments will not result in any significant financial impact on any party and will not result in cost to other persons other than the cost to purchase an updated 2012 IEBC book. This is because these are not mandatory codes but codes approved for adoption by local compliance agencies. These are codes that a local compliance agency may choose to adopt. If the codes are adopted by a local compliance agency, the adoption would result in significant savings to existing building owners. These codes allow for certain cost saving measures to be implemented when an existing building is being remodeled but it is cost prohibitive to the bring the building into full compliance with existing codes. These cost savings cannot be quantified.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons may incur a cost of $50.95 to purchase the updated 2012 IEBC book if it is determined there is a need to maintain a copy of this updated book. The Division anticipates the proposed amendments will not result in any significant financial impact on any party and will not result in cost to affected persons other than the cost to purchase an updated 2012 IEBC book. This is because these are not mandatory codes but codes approved for adoption by local compliance agencies. These are codes that a local compliance agency may choose to adopt. If the codes are adopted by a local compliance agency, the adoption would result in significant savings to existing building owners. These codes allow for certain cost saving measures to be implemented when an existing building is being remodeled but it is cost prohibitive to the bring the building into full compliance with existing codes. These cost savings cannot be quantified.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing incorporates, with specified modifications, the current edition of the International Existing Building Code as the industry standard in Utah. In many circumstances, these updated code standards will allow builders to implement cost saving measures when remodeling an existing building. Such savings will vary and cannot be estimated.

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 10/01/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/10/2014 10:30 AM, Sandy City Hall, 10000 S Centennial Parkway Room 341, Sandy, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

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-401. Adoption - Approved Codes.

Approved Codes. In accordance with Subsection 15A-1-204(6)(a), and subject to the limitations contained in Subsection 15A-1-204(6)(b), the following codes or standards are hereby incorporated by reference and approved for use and adoption by a compliance agency as the construction standards which may be applied to existing buildings in the regulation of building alteration, remodeling, repair, removal, seismic evaluation, and rehabilitation in the state:

(1) the 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings (UCADB) promulgated by the International Code Council;

(2) the [~~2009~~]2012 edition of the International Existing Building Code (IEBC), including its appendix chapters, promulgated by the International Code Council;

(3) ASCE 31-03, Seismic Evaluation of Existing Buildings, promulgated by the American Society of Civil Engineers;

(4) ASCE/SEI 41-06, the Seismic Rehabilitation of Existing Buildings, promulgated by the American Society of Civil Engineers, 2007 edition.

R156-15A-402. Statewide Amendments to the IEBC.

The following are adopted as amendments to the IEBC to be applicable statewide:

(1) [~~In Section 101.5 the exception is deleted.~~

~~(2) ~~]In Section 202 the definition for existing buildings is deleted and replaced with the following:

EXISTING BUILDING. A building lawfully erected under a prior adopted code, or one which is deemed a legal non-conforming building by the code official, and one which is not a dangerous building.

(2) In Section 301.1 the exception is deleted.

(3) In Section [~~605.1~~]705.1, Exception number 3, the following is added at the end[~~ of the sentence~~]:

"This exception does not apply if the existing facility is[~~unless~~] undergoing a change of occupancy classification."

(4) Section [~~606.2.1~~]706.2.1 is deleted and replaced with the following:

[~~606.2.1~~]706.2.1 Parapet bracing, wall anchors, and other appendages. Buildings constructed prior to 1975 shall have parapet bracing, wall anchors, and appendages such as cornices, spires, towers, tanks, signs, statuary, etc. evaluated by a licensed engineer when said building is undergoing reroofing, or alteration of or repair to said feature. Such parapet bracing, wall anchors, and appendages shall be evaluated in accordance with the reduced International Building Code level seismic forces as specified in IEBC Section [~~101.5.4.2~~]301.1.4.2 and design procedures of Section [~~101.5.4~~]301.1.4. When found to be deficient because of design or deteriorated condition, the engineer's recommendations to anchor, brace, reinforce, or remove the deficient feature shall be implemented.

EXCEPTIONS:

1. Group R-3 and U occupancies.

2. Unreinforced masonry parapets need not be braced according to the above stated provisions provided that the maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F.

(5) Section [~~907~~]1007.3.1 is deleted and replaced with the following:

[~~907~~]1007.3.1 Compliance with the International Building Code Level Seismic Forces. When a building or portion thereof is subject to a change of occupancy such that a change in the nature of the occupancy results in a higher [~~seismic occupancy~~]risk category based on Table 1604.5 of the International Building Code; or where such change of occupancy results in a reclassification of a building to a higher hazard category as shown in Table [~~912~~]1012.4; or where a change of a Group M occupancy to a Group A, E, F, [~~M~~]I-1, R-1, R-2, or R-4 occupancy with two-thirds or more of the floors involved in Level 3 alteration work; or when such change of occupancy results in a design occupant load increase of 100% or more, the building shall conform to the seismic requirements of the International Building Code for the new [~~seismic use group~~]risk category.

Exceptions 1-4 remain unchanged.

5. Where the design occupant load increase is less than 25 occupants and the occupancy category does not change.

(6) In Section [~~912~~]1012.7.3 exception 2 is deleted.

(7) In Section [~~912~~]1012.8.2 number 7 is added as follows:

7. When a change of occupancy in a building or portion of a building results in a Group R-2 occupancy, not less than 20 percent of the dwelling or sleeping units shall be Type B dwelling or sleeping units. These dwelling or sleeping units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one unit, of the dwelling or sleeping units shall be Type A dwelling units.

KEY: contractors, building codes, building inspection, licensing
Date of Enactment or Last Substantive Amendment: [~~July 22, ~~]2014
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 15A-1-204(6); 15A-1-205

Commerce, Occupational and Professional Licensing
R156-55a
Utah Construction Trades Licensing Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38736
FILED: 08/05/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule filing is to update rules required by statutory changes as made by S.B. 187 from the 2014 General Legislative Session and S.B. 44 from the 2013 General Legislative Session. This includes adding to the fine schedule for new offenses that have been added to the Construction Trades Licensing Act, Title 58, Chapter 55, since this section was last revised and changing code references that were updated in the statute.

SUMMARY OF THE RULE OR CHANGE: In Section R156-55a-306, changes statutory citation reference Subsection 58-55-306(2) to Subsection 58-55-306(5). In Section R156-55a-503, added to the fine schedule tables to add fines for offenses that have been added to the Construction Trades Licensing Act since this section of the rule was last updated. In Section R156-55a-602, deletes reference to statutory citation Subsection 58-55-306(4)(c).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-55-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-55-102(39)(a) and Subsection 58-55-308(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

The Division may also see an increase in fines collected given that additional unprofessional conduct types are being added to the administrative fine schedule. However, the Division is not able to determine how many new fines or an aggregate of new fines that might be collected as a result of these additions.

♦ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed contractors, plumbers, and electricians, and applicants for licensure in those classifications, as well as individuals who may unlawfully engage in the unlicensed practice of those professions. As a result, the proposed amendments do not apply to local governments.

♦ SMALL BUSINESSES: The proposed amendments only apply to licensed contractors, plumbers, and electricians, and applicants for licensure in those classifications, as well as individuals who may unlawfully engage in the unlicensed practice of those professions. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business. Persons assessed a fine by the amount set pursuant to the proposed amendments to this rule will be affected by the amount of the fine assessed against them. The statute set the maximum amount of the fine that may be assessed, but anticipates that the actual amount of the fine will be determined by the Division after review of aggravating and mitigating circumstances and consideration of the amount of fines assessed for similar offenses. This variation from the maximum fines allowed was anticipated by the statute. Therefore, there is no costs or savings resulting from this proposed rule change beyond the impact anticipated by statute. Moreover, the number of citations that may be issued cannot be anticipated. Therefore, the cost/revenue that could result cannot be anticipated.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed contractors, plumbers, and electricians, and applicants for licensure in those classifications, as well as individuals who may unlawfully engage in the unlicensed practice of those professions. Persons assessed a fine by the amount set pursuant to the proposed amendments to this rule will be affected by the amount of the fine assessed against them. The statute set the maximum amount of the fine that may be assessed, but anticipates that the actual amount of the fine will be determined by the Division after review of aggravating and mitigating circumstances and consideration of the amount of fines assessed for similar offenses. This variation from the maximum fines allowed was anticipated by the statute. Therefore, there is no costs or savings resulting from this proposed rule change beyond the impact anticipated by statute. Moreover, the number of citations that may be issued cannot be anticipated. Therefore, the cost/revenue that could result cannot be anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed contractors, plumbers, and electricians, and applicants for licensure in those classifications, as well as individuals who may unlawfully engage in the unlicensed practice of those professions. Persons assessed a fine by the amount set pursuant to the proposed amendments to this rule will be affected by the amount of the fine assessed against them. The statute set the maximum amount of the fine that may be assessed, but anticipates that the actual amount of the fine will be determined by the Division after review of aggravating and mitigating circumstances and consideration of the amount of fines assessed for similar offenses. This variation from the maximum fines allowed was anticipated by the statute. Therefore, there is no costs or savings resulting from this proposed rule change beyond the impact anticipated by statute. Moreover, the number of citations that may be issued cannot be anticipated. Therefore, the cost/revenue that could result cannot be anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing updates citations to statutory provisions that have been recently renumbered. In addition, it outlines the civil penalties that may attach to industry conduct that the Legislature has determined to be inappropriate. No fiscal impact to businesses is anticipated beyond that contemplated by the Legislature in determining to further regulate the conduct of entities engaged in the construction trades.

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 10/01/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 09/24/2014 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.
R156-55a-306. Contractor Financial Responsibility - Division Audit.

In accordance with Subsections 58-55-302(10)(c), 58-55-306([~~2~~]5), 58-55-306(4)(b), and 58-55-102(19), the Division may consider various relevant factors in conducting a financial responsibility audit of an applicant, licensee, or any owner, including:

(1)(a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of each of the above actions;

(b) financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;

(c) an acceptable current credit report that meets the following requirements:

(i) for individuals:

(A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or

(B) a merged credit report of the agencies identified in Subsection (A) prepared by the National Association of Credit Managers (NACM); or

(ii) for entities, a business credit report such as an Experian Business Credit Report or a Dun and Bradstreet Report;

(d) an explanation of the reasons for any financial difficulties and how the financial difficulties were resolved;

(e) any of the factors listed in Subsection R156-1-302 that may relate to failure to maintain financial responsibility;

(f) each of the factors listed in this Subsection regarding the financial history of the owners of the applicant or licensee;

(g) any guaranty agreements provided for the applicant or licensee and any owners; and

(h) any history of prior entities owned or operated by the applicant, the licensee, or any owner that have failed to maintain financial responsibility.

R156-55a-503. Administrative Penalties.

(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

TABLE II

FINE SCHEDULE

FIRST OFFENSE

Violation	All Licenses Except Electrical or Plumbing	Electrical or Plumbing
58-55-308(2)	$ 500.00	N/A
58-55-501(1)	$ 500.00	$ 500.00
58-55-501(2)	$ 500.00	$ 800.00
58-55-501(3)	$ 800.00	$1,000.00
58-55-501(9)	$ 500.00	$ 500.00
58-55-501(10)	$ 800.00	$1,000.00
58-55-501(12)	N/A	$ 500.00
58-55-501(14)	$ 500.00	N/A
58-55-501(19)	$ 500.00	N/A
58-55-501(21)	$ 500.00	$ 500.00
58-55-501(22)	$ 500.00	N/A
58-55-501(23)	$ 500.00	N/A
58-55-501(24)	$ 500.00	N/A
58-55-501(25)	$ 500.00	N/A
58-55-501(26)	$ 500.00	N/A
58-55-501(27)	$ 500.00	N/A
58-55-501(28)	$ 500.00	N/A
58-55-501(29)	$ 500.00	N/A
58-55-504(2)	$ 500.00	N/A

SECOND OFFENSE

58-55-308(2)	$1,000.00	N/A
58-55-501(1)	$1,000.00	$1,500.00
58-55-501(2)	$1,000.00	$1,500.00
58-55-501(3)	$1,600.00	$2,000.00
58-55-501(9)	$1,000.00	$1,000.00
58-55-501(10)	$1,600.00	$2,000.00
58-55-501(12)	N/A	$1,000.00
58-55-501(14)	$1,000.00	N/A
58-55-501(19)	$1,000.00	N/A
58-55-501(21)	$1,000.00	$1,000.00
58-55-501(22)	$1,000.00	N/A
58-55-501(23)	$1,000.00	N/A
58-55-501(24)	$1,000.00	N/A
58-55-501(25)	$1,000.00	N/A
58-55-501(26)	$1,000.00	N/A
58-55-501(27)	$1,000.00	N/A
58-55-501(28)	$1,000.00	N/A
58-55-501(29)	$1,000.00	N/A
58-55-504(2)	$1,000.00	N/A

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence presented.

R156-55a-602. Contractor License Bonds.

Pursuant to the provisions of Subsections 58-55-306(1)(b) [~~, 58-55-306(4)(c)~~] and 58-55-306(5)(b)(iii), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount, form, and coverage as follows:

(1) An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.

(2) The coverage of the license bond shall include losses that may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55 and rules R156-1 and R156-55a including the failure to maintain financial responsibility, the failure of the licensee to pay its obligations, and the failure of the owners or a licensed unincorporated entity to pay income taxes or self employment taxes on the gross distributions from the unincorporated entity to its owners.

(3) The financial history of the applicant, licensee, or any owner, as outlined in Section R156-55a-306, may be reviewed in determining the bond amount required under this section.

(4) If the licensee is submitting a bond under Subsection 58-55-306(5)(b)(iii)(B), the amount of the bond shall be 20% of the annual gross distributions from the unincorporated entity to its owners. As provided in Subsection 58-55-302(10)(c), the Division, in determining if financial responsibility has been demonstrated, may consider the total number of owners, including new owners added as reported under the provisions of Subsection 58-55-302(10)(a)(i), in setting the amount of the bond required under this subsection.

(5) If the licensee is submitting a bond under any subsection other than Subsection 58-55-306(5)(b)(iii)(B), the minimum amount of the bond shall be $50,000 for the E100 or B100 classification of licensure; $25,000 for the R100 classification of licensure; or $15,000 for other classifications. A higher amount may be determined by the Division and the Commission as provided in Subsection R156-55a-602(6).

(6) The amount of the bond specified under Subsection R156-55a-602(5) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is insufficient to reasonably cover risks to the public health, safety and welfare. The financial history of the applicant, licensee or any owner, as outlined in Section R156-55a-306 may be reviewed in determining the bond amount required.

(7) A contractor may provide a license bond issued by a surety acceptable to the Division in an amount less than the bond amount specified in Subsection R156-55a-602(5) if:

(a) the contractor demonstrates by clear and convincing evidence that:

(i) the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is in excess of what is reasonably necessary to cover risks to the public health, safety and welfare;

(ii) the contractor's lack of financial responsibility is due to extraordinary circumstances that the contractor could not control as opposed to general financial challenges that all contractors experience; and

(iii) the contractor's scope of practice will be restricted commensurate with the degree of risk the contract presents to the public health, safety, and welfare; and

(b) the Commission and Division approve the amount.

KEY: contractors, occupational licensing, licensing
Date of Enactment or Last Substantive Amendment: [~~January 21,~~] 2014
Notice of Continuation: October 4, 2011
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101; 58-55-308(1)(a); 58-55-102(39)(a)

Commerce, Occupational and Professional Licensing
R156-55a-302f
Pre-licensure Education - Standards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38760
FILED: 08/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule change is made to add a section to the Construction Trades Licensing Act Rule as a result of changes made by S.B. 186 passed during the 2014 General Legislative Session. S.B. 186 added an additional requirement for contractor licensing of completion of a 20-hour course as established by rule.

SUMMARY OF THE RULE OR CHANGE: Section R156-55a-302f is added and establishes the standards for the 20-hour pre-licensure education requirement. The standards are divided into 12 subsections titled as follows: qualifier education requirement, program pre-approval, eligible providers, content, program schedule, program instruction requirements, certificates of completion, reporting of program completion, program monitoring, documentation retention, disciplinary proceedings and exemptions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-55-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-55-102(39)(a) and Subsection 58-55-308(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
♦ LOCAL GOVERNMENTS: The proposed amendments only apply to individuals who are applying to be a qualifier for new contractor licensing applicants As a result, the proposed amendments do not apply to local governments.
♦ SMALL BUSINESSES: These proposed rule amendments do not add any costs to what was contemplated by the Legislature in adding the new requirement for contractor licensure. Persons applying for the contractor license will be required to take the new education requirement prior to becoming licensed. Potential education providers have not yet determined the cost they will charge for the education program. However, the cost per person could be several hundred dollars. This requirement would affect approximately 1,000 contractor applicants per year.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These proposed rule amendments do not add any costs to what was contemplated by the Legislature in adding the new requirement for contractor licensure. Persons applying for the contractor license will be required to take the new education requirement prior to becoming licensed. Potential education providers have not yet determined the cost they will charge for the education program. However, the cost per person could be several hundred dollars. This requirement would affect approximately 1,000 contractor applicants per year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These proposed rule amendments do not add any costs to what was contemplated by the Legislature in adding the new requirement for contractor licensure. Persons applying for the contractor license will be required to take the new education requirement prior to becoming licensed. Potential education providers have not yet determined the cost they will charge for the education program. However, the cost per person could be several hundred dollars. This requirement would affect approximately 1,000 contractor applicants per year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing responds to legislative action taken in S.B. 186 (2014), which mandates that the Division require a 20-hour course as a prerequisite for licensure in the construction trades. Businesses that wish to provide the course will incur costs to develop curriculum; to obtain approval from the Division; and, if not already operating in Utah, to establish a campus within the state. Any such costs were contemplated by the Legislature in determining to require the course.

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 10/01/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/24/2014 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.
R156-55a-302f. Pre-licensure Education - Standards.

(1) Qualifier Education Requirement. The 20-hour pre-licensure education program required by Subsection 58-55-302(1)(e)(iii) shall be completed by the qualifier for a contractor applicant.

(2) Program Pre-Approval. A pre-licensure education provider shall submit an application for approval as a provider on the form provided by the Division. The applicant shall demonstrate compliance with Section R156-55a-302f.

(3) Eligible Providers. The following may be approved to provide pre-licensure education:

(a) a nationally or regionally recognized accredited college or university having a physical campus located within the State of Utah; or

(b) a non-profit Utah construction trades association involved in the construction trades in the State of Utah representing multiple construction trade classifications whose membership includes at least 250 contractors licensed in Utah.

(4) Content. The 20-hour program shall include the following topics and hours of education relevant to the practice of the construction trades consistent with the laws and rules of this state:

(a) ten hours of financial responsibility instruction that includes the following:

(i) record keeping and financial statements;

(ii) payroll, including:

(A) payroll taxes;

(B) worker compensation insurance requirements;

(C) unemployment insurance requirements;

(D) professional employer organization (employee leasing) alternatives;

(E) prohibitions regarding paying employees on 1099 forms as independent contractors, unless licensed or exempted;

(F) employee benefits; and

(G) Fair Labor Standard Act;

(iii) cash flow;

(iv) insurance requirements including auto, liability, and health; and

(v) independent contractor licensure and exemption requirements;

(b) six hours of construction business practices that includes the following:

(i) estimating and bidding;

(ii) contracts;

(iii) project management;

(iv) subcontractors; and

(v) suppliers;

(c) two hours of regulatory requirements that includes the following:

(i) licensing laws;

(ii) Occupational Safety and Health Administration (OSHA);

(iii) Environmental Protection Agency (EPA); and
(iv) consumer protection laws; and
(d) two hours of mechanic lien fundamentals that include the State Construction Registry.
(5) Program Schedule.
(a) A pre-licensure education provider shall offer programs at least 12 times per year.
(b) The pre-licensure education provider is not obligated to provide a course if the provider determines the enrollment is not sufficient to reach breakeven on cost.
(6) Program Instruction Requirements: The pre-licensure education shall meet the following standards:
(a) Time. Each hour of pre-licensure education credit shall consist of 60 minutes of education in the form of live lectures or training sessions. Time allowed for lunches or breaks may not be counted as part of the education time for which education credit is issued.
(b) Learning Objectives. The learning objectives of the pre-licensure education shall be reasonably and clearly stated.
(c) Teaching Methods. The pre-licensure education shall be presented in a competent and well organized manner consistent with the stated purpose and objective of the program. The student must demonstrate knowledge of the course material and must be given a pass/fail grade.
(d) Faculty. The pre-licensure education shall be prepared and presented by individuals who are qualified by education, training or experience.
(e) Distance Learning. Distance learning, internet courses, and home study courses are not allowed to meet pre-licensure education requirements.
(f) Registration and Attendance. The provider shall have a competent method of registration and verification of attendance of individuals who complete the pre-licensure education.
(g) Education Curriculum and Study/Resource Guide. The provider shall be responsible to provide or develop pre-licensure education curriculum and study/resource guide for the pre-licensure education that must be pre-approved by the Commission and the Division prior to use by the provider.
(7) Certificates of Completion. The pre-licensure education provider shall provide individuals completing the pre-licensure education a certificate that contains the following information:
(a) the date of the pre-licensure education;
(b) the name of the pre-licensure education provider;
(c) the attendee's name;
(d) verification of completion of the 20-hour requirement; and
(e) the signature of the pre-licensure education provider.
(8) Reporting of Program Completion. A pre-licensure education provider shall, within seven calendar days, submit directly to the Division verification of attendance and completion on behalf of persons attending and completing the program. This verification shall be submitted on forms provided by the Division.
(9) Program Monitoring. On a random basis, the Division or Commission may assign monitors at no charge to attend a pre-licensure education course for the purpose of evaluating the education and the instructor(s).
(10) Documentation Retention. Each provider shall for a period of four years maintain adequate documentation as proof of compliance with this section and shall, upon request, make such documentation available for review by the Division or the Commission. Documentation shall include:
(a) the dates of all pre-licensure education courses that have been completed;
(b) registration and attendance logs of individuals who completed the pre-licensure education;
(c) the name of instructors for each education course provided as a part of the program; and
(d) pre-licensure education handouts and materials.
(11) Disciplinary Proceedings. As provided in Section 58-1-401 and Subsection 58-55-302(1)(e)(iii), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any pre-licensure education provider, if the pre-licensure education provider fails to meet any of the requirements of this section or the provider has engaged in other unlawful or unprofessional conduct.
(12) Exemptions. In accordance with Subsection 58-55-302(1)(e)(iii), the following persons are not required to complete the pre-licensure education program requirements:
(a) a person holding a four-year bachelor degree or a two-year associate degree in Construction Management from an accredited program;
(b) a person holding an active and unrestricted Utah professional engineer license who is applying for the E100 contractor license classification; or
(c) a person who is a qualifier on an existing active and unrestricted contractor license who is:
(i) applying to add additional contractor classifications to the license; or
(ii) applying to become a qualifier on a new entity that is applying for initial licensure.

KEY: contractors, occupational licensing, licensing
Date of Enactment or Last Substantive Amendment: [~~January 21, ~~]2014
Notice of Continuation: October 4, 2011
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101; 58-55-308(1)(a); 58-55-102(39)(a)

Commerce, Occupational and Professional Licensing
R156-55c
Plumber Licensing Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38731
FILED: 08/04/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Plumbers Licensing Board reviewed this rule and determined the following changes need to be made. Minor technical numbering changes are made to update the rule. Additionally, the proposed amendments incorporate the applicable administrative penalties for unlawful and unprofessional conduct and provide clarification relating to the supervision and conduct of the licensee.

SUMMARY OF THE RULE OR CHANGE: In Section R156-55c-102, the term "Board" is deleted in this rule as it is defined in Subsection 58-55-102(7). Additionally, the term "Plumber" is deleted as the various licensing classifications of plumber are defined through Section 58-55-102. Section R156-55c-302a is deleted in its entirety as the application for licensure requirements are provided in Section 58-55-302. Section R156-55c-302b is renumbered to Section R156-55c-302a. Section R156-55c-302c is renumbered to Section R156-55c-302b. Also in Subsection R156-55c-302c(4), the term "on or after December 31, 2010" is deleted as this reference is no longer applicable and deletes Subsection R156-55c-302c(4)(b) as this date and information are no longer relevant. Section R156-55c-302d is renumbered to Section R156-55c-302c. Section R156-55c-303b is renumbered to Section R156-55c-304. Section R156-55c-304 is renumbered to Section R156-55c-305. Additionally in the new Section R156-55c-305, new wording adopts and incorporates the requirements for licensure by endorsement as provided in Section 58-1-302 and unnecessary language is deleted. Section R156-55c-401 is added to incorporate, define, and clarify the conduct of the apprentice plumber and supervising plumber as it relates to Subsection 58-55-302(3)(e). Section R156-55c-501 is amended to remove unnecessary language and encapsulate the supervision requirements currently found in Subsection 58-55-302(3)(e). Additionally, this section includes as unprofessional conduct, failing to provide proof of completing continuing education within 30 days of the Division's request. Section R156-55c-502 is added to adopt the applicable administrative penalties as defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule. Additionally, administrative penalties for a violation of Subsection 58-1-501(2)(o) are added. Section R156-55c-601 is deleted in its entirety as the provisions of the section are addressed as unprofessional conduct in Subsection R156-55c-501(2).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-55-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

♦ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed plumbers and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

♦ SMALL BUSINESSES: The proposed amendments only apply to licensed plumbers and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed plumbers and applicants for licensure in those classifications. The Division anticipates that these proposed amendments will not result in additional encumbrances for any party beyond what is currently identified by statute and rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed plumbers and applicants for licensure in those classifications. The Division anticipates that these proposed amendments will not result in any additional encumbrances for any party beyond what is currently identified by statute and rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing removes outdated provisions, makes minor changes in numbering, and clarifies existing provisions regarding unprofessional conduct and the associated penalties. The substantive provisions that are modified by this filing affect individual licensees only. Therefore, no fiscal impact to businesses is anticipated.

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:

♦ Steve Duncombe by phone at 801-530-6235, by FAX at 801-530-6511, or by Internet E-mail at sduncombe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 09/24/2014 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-55c. Plumber Licensing Act Rule.
R156-55c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55 or this rule:

(1) [~~"Board" means the Plumbers Licensing Board.~~

~~(2)~~]"Immediate supervision", as used in Subsections 58-55-102(5) and 58-55-102(23) and this rule, means the apprentice and the supervising plumber are physically present on the same project or job site but are not required to be within sight of one another.

([~~3~~]2) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i) and this rule, means:

(a) repair or replacement of the following residential type appliances:

(i) dishwashers;

(ii) refrigerators;

(iii) freezers;

(iv) ice makers;

(v) stoves;

(vi) ranges;

(vii) clothes washers; and

(viii) clothes dryers; and

(b) repair or replacement of other plumbing fixtures and appliances inside the occupied space of a structure, when the cost of the repair or replacement does not exceed $300 in total value, including all labor and materials, and including all changes or additions to the contracted or agreed upon work.

([~~4~~]3) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i), does not include installation or replacement of a water heater.[

~~(5) "Plumber" means apprentice plumber, journeyman plumber, residential journeyman plumber, master plumber and residential master plumber.~~]

([~~6~~]4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(1)(e), in Subsection R156-55c-501.[

~~**R156-55c-302a. Qualifications for Licensure - Application Requirements.**~~

~~In accordance with Subsections 58-1-203(2) and 58-1-301(3), the application requirements for licensure in Section 58-55-302 are defined, clarified, or established as follows:~~

~~(1) an applicant for licensure shall submit an application for license only after having met all requirements for licensure set forth in Section 58-55-302 and this rule; and~~

~~(2) the application must be accompanied by all documents or other evidence required demonstrating the applicant is qualified for licensure.~~]

R156-55c-302[~~b~~]a. Qualification for Licensure - Training and Instruction Requirement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the training and instruction requirements for licensure in Subsection 58-55-302(3)(c) and (d) are defined, clarified, or established as follows:

(1) An applicant for a journeyman plumber's license shall demonstrate successful completion of the requirements of either paragraph (a) or (b):

(a)(i) 8,000 hours of training and instruction in not less than four years that meets the requirements of Subsections R156-55c-302b(4) and (6).

(ii) the 8,000 hours shall include 576 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302b(5);

(iii) the apprenticeship shall be obtained while licensed as an apprentice plumber;

(iv) the apprenticeship shall include on the job training and instruction in nine of the 11 work process areas listed in Table I; and

(v) the hours obtained in any work process area shall be at least the number of hours listed in Table I.

(b)(i) 16,000 hours of on the job training and instruction in not less than eight years;

(ii) the apprenticeship shall be obtained while licensed as an apprentice plumber;

(iii) the hours shall include on the job training and instruction in nine of the 11 work process areas listed in Table I; and

(iv) the hours obtained in any work process shall be at least the number of hours listed in Table I.

. . . . . .

(2) An applicant for a residential journeyman plumber's license shall demonstrate successful completion of the requirements of paragraph (a) or (b):

(a)(i) 6,000 hours of training and instruction in not less than three years that meets the requirements of Subsections R156-55c-302b(4) and (6).

(ii) the 6,000 hours shall include 432 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302b(5);

(iii) the 6,000 hours shall be obtained while licensed as an apprentice plumber;

(iv) the apprenticeship shall include on the job training and instruction in eight of the ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

(b)(i) 12,000 hours of experience in not less than six years which has been documented using a form provided by the Division;

(ii) the experience shall be obtained while licensed as an apprentice plumber;

(iii) at least 9,000 hours of experience shall be directly involved in the plumbing trade;

(iv) the hours shall be in eight of the ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

. . . . . .

(3) A licensed residential journeyman plumber applying for a journeyman plumber's license shall complete 2,000 hours of on the job training in industrial or commercial plumbing while licensed as an apprentice plumber, which shall include successful

completion of an approved fourth year course of classroom instruction.

(4) On the job training and instruction required in this section shall include measurements of an apprentice's performance in the plumbing trade.

(5) Formal classroom instruction required by this section shall meet the following requirements:

(a) instruction shall be conducted by an entity approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or by another similar out of state body that approves formal plumbing educational programs; and

(b) instruction shall be conducted by competent qualified staff and shall include measures of competency and achievement level of each apprentice.

(6) Apprentice plumbers shall engage in the plumbing trades only in accordance with the following:

(a) except as provided in Subsection 58-55-302(3)(e)(ii) for fourth through tenth year apprentices, while engaging in the plumbing trade, an apprentice plumber shall be under the immediate supervision of a journeyman plumber for commercial or industrial work, and by a residential journeyman or journeyman plumber for residential work;

(b) the apprentice shall engage in the plumbing trade in accordance with the instruction of the supervising plumber; and

(c) the apprentice shall work in a ratio of not to exceed two apprentice plumbers to one supervising plumber.

R156-55c-302[e]b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-55-302(1)(c)(i) are defined, clarified, or established as follows:

(1) The applicant shall obtain a score of 70% on the Utah Plumbers Licensing Examination that shall consist of a written section and practical section.

(2) Admission to the examinations is permitted after:

(a) the applicant has completed all requirements for licensure set forth in this section and in Sections R156-55c-302a and R156-55c-302b; or

(b) the applicant has completed:

(i) the apprentice education program set forth in Subsection R156-55c-302b(1)(a)(ii); and

(ii) not less than 6,000 hours of the experience required under Subsection R156-55c-302b(1)(a)(i).

(3) (a) If an applicant fails one or more sections of the examination, the applicant shall retake any section of the examination failed.

(b) An applicant shall wait at least 25 days for the first two retakes and thereafter shall wait 120 days between retakes.

(4)[~~(a) On or after December 31, 2010, i~~] If an applicant passes any section of the examination but does not pass the entire examination, the passing score on any section of the examination shall be valid for one year from the date the section of the examination was passed. Thereafter, the applicant shall retake any previously passed section of the examination that is no longer valid to support any subsequent application for licensure.[

~~(b) Prior to December 31, 2010, if an applicant passed any section of the examination but did not pass the entire examination, the applicant may use any previously passed section of the examination to pass the entire examination until December 31, 2011. Thereafter, the applicant shall retake the entire examination.~~]

R156-55c-302[d]c. Qualifications for Licensure - Master Supervisory Experience and Education Requirements.

In accordance with Subsections 58-55-302(3)(a)(i)(A) and 58-55-302(3)(b)(i), the minimum supervisory experience qualifications for licensure as a master plumber and residential master plumber are established as follows:

(1) An applicant shall demonstrate successful completion of 4000 hours of supervisory experience that includes each of the following categories and minimum number of hours:

(a) supervising employees: 700 hours;

(b) supervising construction projects: 700 hours;

(c) cost/price management: 300 hours; and

(d) miscellaneous construction experience: 300 hours in any one or more of the following: accounting/financial principles, contract negotiations, conflict resolutions, marketing, human resources and government regulation pertaining to business and the construction trades.

(2) The following, or the substantial equivalent thereof, as determined by the Board in collaboration with the Commission, shall apply to the minimum supervisory experience qualifications established in Subsection (1):

(a) supervisory experience shall be obtained while licensed in the proper license classification as either a journeyman plumber or a residential journeyman plumber;

(b) supervisory experience shall be obtained as an employee of a licensed plumbing contractor, whose employer covers the applicant with workers compensation and unemployment insurances and deducts federal and state taxes from the applicant's compensation;

(c) all supervisory experience shall be under the immediate supervision of the applicant's employer; and

(d) no more than 2000 hours of experience may be earned during any 12-month period.

(3) An associate of applied science or similar or higher educational degree, in accordance with Subsection 58-55-302(3)(a)(i)(B), shall fulfill 2000 hours of the 4000 hour supervisory experience requirement. Such an applicant shall complete the remaining minimum 2000 hour supervisory experience listed above in Subsection R156-55c-302d(1).

(a) The degree shall be accredited by one of the following:

(i) Middle States Association of Colleges and Schools;

(ii) New England Association of Colleges and Schools;

(iii) North Central Association of Colleges and Schools;

(iv) Northwest Commission on Colleges and Universities;

(v) Southern Association of Colleges and Schools; or

(vi) Western Association of Schools and Colleges.

(b) The degree shall be in one of the following courses of study:

(i) accounting;

(ii) apprenticeship;

(iii) business management;

(iv) communications;

(v) computer systems and computer information systems;

(vi) construction management;

(vii) engineering;
(viii) environmental technology;
(ix) finance;
(x) human resources; or
(xi) marketing.

R156-55c-[~~303b~~]304. Continuing Education - Standards.

(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 12 hours of continuing education during each two year license term. A minimum of eight hours shall be core education. The remaining four hours may be professional education.

(2) "Core continuing education" is defined as education covering:

(a) International Building, Mechanical, Plumbing Codes and Utah building code amendments as adopted or proposed for adoption;

(b) the Americans with Disability Act;

(c) medical gas, National Fire Protection Association 13D and 54; and

(d) hydronics and waste water treatment.

(3) "Professional continuing education" is defined as education covering:

(a) energy conservation, management training, new technology, plan reading; and

(b) lien laws and Utah construction registry.

(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:

(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;

(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;

(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and

(d) meetings held in conjunction with the general business of the licensee or employer.

(5) The Division may:

(a) waive the continuing education requirements for a licensee that is an instructor of an approved education apprenticeship program; or

(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.

(6) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes may be used for breaks.

(b) Provider. The course provider shall meet the requirements of this section and shall be one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the plumbing trade.

(c) Content. The content of the course shall be relevant to the practice of the plumbing trade and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course that is provided through internet or home study courses may be recognized for continuing education if the course verifies registration and participation in the course by means of a passing a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division, and shall provide to individuals completing the course a certificate that contains the following information:

(i) the date of the course;
(ii) the name of the course provider;
(iii) the name of the instructor;
(iv) the course title;
(v) the hours of continuing education credit;
(vi) the attendee's name;
(vii) the attendee's license number; and
(viii) the signature of the course provider.

(7) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(8) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (11). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(9) Licensees who lecture in approved continuing education courses shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(10) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(11) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses that meet the standards set forth under this section.

(12) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education programs which have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55c-[~~304~~]305. Licensure by Endorsement.

The Division may issue a license by endorsement in accordance with the provisions of Section 58-1-302.[~~In accordance with the provisions of Section 58-1-302, the Division may issue an individual a license as an apprentice plumber, journeyman plumber, residential journeyman plumber, master plumber or residential master plumber by endorsement, in accordance with the following:~~

~~(1) An applicant for licensure by endorsement as a journeyman plumber, residential journeyman plumber, master plumber or residential master plumber has the burden to demonstrate that the apprenticeship instruction and training, or experience requirements in lieu of an apprenticeship, and the examination requirements of the state or jurisdiction in which the applicant holds licensure are equal to the requirement of this state or were equal to the requirements of this state at the time the applicant received licensure in the other state.~~

~~(2) An applicant for licensure as an apprentice plumber who has completed part of apprenticeship training and instruction in another jurisdiction has the burden to demonstrate that the apprenticeship program in the other state is equivalent to an approved apprenticeship program in this state as a condition of the applicant being given credit for completion of an apprenticeship program in another state.~~]

R156-55c-401. Conduct of Apprentice and Supervising Plumber.

(1) The conduct of licensed apprentice plumbers and their licensed supervisors shall be in accordance with Subsections 58-55-302(3)(e), 58-55-501, 58-55-502 and R156-55c-501.

(2) For the purposes of Subsections 58-55-302(3)(e) and 58-55-501(12), one of the following shall apply:

(a) the supervisor and apprentice employees shall be employees of the same plumbing contractor; or

(b) the plumbing contractor may contract with a licensed professional employer organization to employ such persons.

R156-55c-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

[~~(1) engaging in the plumbing trade as an apprentice plumber on a commercial or industrial project when not under the immediate supervision of a journeyman plumber;~~

~~(2) engaging in the plumbing trade as an apprentice plumber on a residential project when not under the immediate supervision of a residential journeyman or journeyman plumber, except as provided in Subsection 58-55-302(3)(e)(ii);~~

~~(3) engaging in the plumbing trade as an apprentice plumber except in accordance with instructions of the supervising plumber;~~

~~(4) acting as a journeyman plumber or residential journeyman plumber while supervising more than two apprentice plumbers;~~

](1) failing to comply with the supervision requirements established by Subsection 58-55-302(3)(e);

([~~5~~]2) [~~failure~~]failing as a licensed plumber to carry a copy of his current plumber's license on his person or in close proximity to his person when performing plumbing work or to display that license upon request of a representative of the Division or any law enforcement officer;[~~and~~]

([~~6~~]3) [~~failure~~]failing as a plumbing contractor to certify work experience and supervisory hours when requested by a plumber who is or has been an employee of the plumbing contractor; and

(4) failing as a licensee to provide proof of completed continuing education within 30 days of the Division's request.

R156-55c-502. Administrative Penalties.

(1) The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted as the administrative penalties under this rule.

(2) The administrative penalty for a violation of Subsection 58-1-501(2)(o) under this rule shall be in accordance with Section R156-1-502.

[

~~**R156-55c-601. Proof of Licensure.**~~

~~Each apprentice, residential journeyman, journeyman plumber, residential master plumber and master plumber shall:~~

~~(1) carry on his person or in close proximity to his person his current license when he is engaged in the plumbing trade; and~~

~~(2) display his license to a representative of the Division or any law enforcement officer upon request.~~]

KEY: occupational licensing, licensing, plumbers, plumbing
Date of Enactment or Last Substantive Amendment: [~~September 12, 2011~~]2014
Notice of Continuation: October 4, 2011
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101

Education, Administration
R277-113-4
LEA Responsibilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38772
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R277-113-4 is amended in response to S.B. 93, Internal Audit Amendments, from the 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: The amendments to the rule provide procedures for all local education agencies (LEAs) to establish audit or finance committees, and for an LEA with 10,000 or more students to establish its own internal audit program and annual review of programs administered by the LEA.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The additional requirements for all LEAs to establish an audit or finance committee and for an LEA with 10,000 or more students to establish its own internal audit program and annual review likely will not result in a cost or savings to state government because the requirements apply specifically to LEAs.
♦ LOCAL GOVERNMENTS: LEAs with less than 10,000 students will likely have no fiscal impact. Because LEAs with 10,000 students or more are required to have an annual review and internal audit of LEA programs, an LEA will likely have additional costs as a result of employing qualified staff to perform internal reviews and audits, or contracting with an audit service outside of the LEA for services. Costs are speculative but could be as much as $2,900,000 total for all qualifying LEAs.
♦ SMALL BUSINESSES: The additional requirements within this rule likely will not result in a cost or savings to small businesses because the requirements apply specifically to LEAs.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule provide requirements that apply specifically to LEAs which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide requirements for LEAs to establish an audit or finance committee, and for LEAs with 10,000 or more students to establish their own internal audit program and annual review of the LEAs' programs. It is anticipated that LEAs will act consistent with state law and Board rule which will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

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

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R277. Education, Administration.
R277 113. LEA Fiscal Policies and Accountability.
R277-113-4. LEA Responsibilities.

A. LEAs shall develop, have approved by local/charter boards and implement [~~the~~]written fiscal policies as required [~~in~~]by R277-113-5[~~ before September 15, 2013~~]. LEAs shall review[~~These~~] policies [~~shall be in writing~~]annually.

B. LEAs shall also develop a plan for training LEA and public school employees, at least annually, on policies enacted by the LEA specific to job function.

(1) These policies shall be available at each LEA main office, at individual public schools, and on the LEA's website.

(2) The LEA fiscal policies and training may have different components, specificity, and levels of complexity for public elementary and secondary schools.

(3) LEAs may have one[~~ policy~~] or more [~~than one~~]policies to satisfy[~~ing~~] the minimum requirements of this rule.

[~~(4) An LEA policy shall address how often the policy shall be reviewed, including periodic updates or training and resource manuals.~~

] ([~~5~~]4) An LEA policy may reference specific training manuals or other resources that provide detailed descriptions of business practices which are too lengthy or detailed to include in the LEA policy.

C. [~~An~~]Each LEA board shall designate board members to serve on an audit or finance committee, consistent with Section

53A-30-102(1). The LEA audit or finance committee has the following responsibilities:

(1) establish and annually review an internal audit program that provides internal audit services for the programs administered by the LEA, consistent with Section 53A-30-103 (required only if LEAs have 10,000 or more students);

(2) receive a report of the risk assessment process undertaken by the LEA management in [~~developing the system of internal controls~~]conjunction with internal audit, if applicable;

([~~1~~]3) ensur[~~ing~~]e that the LEA management properly develops and adheres to a sound system of documented internal controls consistent with the requirements of R277-113-5;

([~~3~~]4) develop[~~ing~~] a process to review LEA management's financial [~~information~~]reporting practices, financial statements, LEA financial position, and LEA and individual school records on a regular basis;

(5) report the fiscal position of the LEA to the LEA board monthly;

[~~(4) ensuring that management conducts a competitive RFP process to hire external auditors and other professional services and making a recommendation to the LEA board on the results of the RFP process consistent with the State Procurement Code;~~]

(6) determine the appropriate scope of the independent audit, determine the appropriate scope of nonaudit services to be performed by the independent auditor, manage the audit procurement process in compliance with State Procurement Code Section 63G-6a, and make recommendations to the LEA board on the results of the procurement process;

[~~(5) receiving communication from or meeting with the external auditors annually and receiving a direct report of the audit findings, exceptions, and other matters noted by the auditor;~~]

(7) facilitate regular direct communication with independent auditors, receive independent audit report and financial statements, ensure management implements corrective actions, assess performance of the independent auditors, and review disagreements between independent auditors and management;

(8) determine the appropriate scope of contracts with management companies that provide business services and student services, manage the procurement process in compliance with Section 63G-6a, make recommendations to the LEA board on the results of the procurement process, assess the performance of management companies, and ensure management implements sufficient internal controls over the functions of the management company;

(9) prioritize internal audit plan, receive audit reports from internal auditors or contractors providing internal audit services and other regulatory bodies, and provide an independent forum for internal auditors or internal audit contractors or other regulatory bodies to report findings of management abuse or control override;

(10) conduct or advise the LEA board in an annual evaluation of internal audit personnel or contractor;

(11) ensure that issues and exceptions reported by external audits, internal audits, or other regulatory bodies are resolved in a timely manner; and

([~~6~~]12) [~~reporting~~]present the annual audit reports and findings or other matters communicated by the external auditor or other regulatory bodies to the LEA board in a public meeting[~~;~~].

[~~(7) ensuring that matters reported by external audits, internal audits, or other regulatory bodies are resolved in a timely manner.~~]

D. The definition of school sponsored and requirements of R277-113-4[~~F~~]G do not apply to activities, fundraising events, clinics, clubs, camps, or activities organized by a third party which have not been designated by the LEA as school sponsored. All transactions pertaining to nonschool sponsored events shall be conducted at arm's length; revenues and expenditures shall not be commingled with public funds.

E. For nonschool sponsored events, funds may be managed or held by a public school employee, only consistent with R277-107.

F. The definition of school sponsored and requirements of R277-113-4[~~F~~]G do not apply to non-curricular clubs specifically authorized and meeting all criteria of Sections 53A-11-1205 through 1208.

G. LEAs and individual public schools shall comply with the following regarding school and nonschool sponsored activities:

(1) may enter into contractual agreements to allow for fundraising and use of LEA facilities. An agreement shall take into consideration the LEA's fiduciary responsibility for the management and use of public funds. LEAs should consult with the LEA insurer or legal counsel, or both, to ensure risks are adequately considered and managed;

(2) shall annually review fundraising activities that support or subsidize LEA or public school-authorized clubs, activities, sports, classes or programs to determine if the activities are school sponsored consistent within R277-113-1H;

(3) shall ensure that revenues raised from school sponsored activities and funds expended from the proceeds are considered public funds consistent with R277-113-1G;

(4) shall maintain adequate records to ensure that funds collected from or during school sponsored activities are in compliance with LEA cash handling policies as required by R277-113-5;

(5) shall maintain adequate records to show that expenditures made to support activities from LEA or public school funds are in compliance with LEA expenditure of funds policies as required by R277-113-5; and

(6) shall make records of activities available to parents, students, and donors and shall maintain the records in sufficient detail to track individual contributions and expenditures as well as overall financial outcome. Records may be private or protected consistent with Sections 63G-2-302, 303, 305, and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g[~~;~~].

H. Public Education Foundations established by LEAs shall follow the requirements provided in Section 53A-4-205.

KEY: school sponsored activities, public funds, fiscal policies and procedures, audit committee
Date of Enactment or Last Substantive Amendment: [~~November 7, 2013~~]2014
Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1-401(3); 53A-1-402(1)(e)

Education, Administration
R277-400
School Emergency Response Plans

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38773
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-400 is amended in response to S.B. 215, Public School Comprehensive Emergency Response Plan Amendments, and S.B. 58, Carbon Monoxide Detection Amendments, from the 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-400 provide language that: 1) requires a public school's comprehensive emergency response plan to include procedures to provide information to the extent practicable to students who have permission to be off campus during a school violence emergency; 2) requires certain newly constructed buildings or structures used for educational purposes through grade 12 to be equipped with carbon monoxide detection; and 3) modifies the rule title to better reflect the rule content.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments to the rule provide procedures and requirements that specifically apply to local education agencies (LEAs) which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: All LEAs will need to install carbon monoxide detectors in all schools, consistent with state law. Costs are speculative, but could be as much as $2,829,250.
♦ SMALL BUSINESSES: The amendments to the rule provide procedures and requirements that apply specifically to LEAs which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to the rule provide procedures and requirements that apply specifically to LEAs which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is anticipated that all LEAs will install carbon monoxide detectors, consistent with state law, which likely will not result in any compliance costs for affected persons.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
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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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

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

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R277. Education, Administration.
R277-400. School Facility Emergency [~~Response Plans~~]and Safety.
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 an LEA or a school.

D. "Emergency Response Plan" means a plan developed by an LEA 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 LEAs in the event of school emergencies as defined in R277-400-1B. This rule also directs LEAs to develop

prevention, intervention, and response measures and to prepare staff and students to respond promptly and appropriately to school emergencies.

R277-400-3. Establishing LEA Emergency Preparedness and Emergency Response Plans.

A. By July 1 of each year, each LEA shall certify to the Board that the LEA emergency preparedness and emergency response 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 LEA's annual application for state or federal Safe and Drug Free School funds, the LEA shall reference its Emergency Response plan.

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

D. The 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 LEA administrators, teachers, parents, community and municipal governmental officers, and fire and law enforcement personnel. The committee shall include [~~G~~]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. Each LEA shall review the plan(s) at least once every three years.

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

R277-400-4. Notice and Preparation.

A. Each school shall file [~~A~~]a copy of the plan(s) [~~for each school within an LEA shall be filed in~~]with the LEA superintendent[~~'s~~] or charter school director[~~'s office~~].

B. At the beginning of each school year, [~~parents and staff shall receive~~]the LEA or school shall send or provide online a written notice to parents and staff of relevant sections of LEA 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.

D. Each school's emergency response plan shall include procedures to notify students, to the extent practicable, who are off campus at the time of a school violence emergency consistent with Section 53A-3-402(18)(c)(v).

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

A. An LEA's plan shall contain measures which assure that[~~, during an emergency,~~] school children receive reasonably adequate educational services and supervision during school hours during an emergency and for education services in an extended emergency situation.

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

(2) LEAs or schools shall not [~~R~~]release [~~of a~~]children younger than ninth grade age at other than regularly scheduled [~~hours is prohibited~~]release times unless the parents or [~~an~~]other responsible persons ha[~~s~~]ve been notified and ha[~~s~~]ve assumed responsibility for the children. LEAs or schools may release [~~An~~] older children [~~may be released~~]without such notification if a school official determines that the children [~~is~~]are reasonably responsible and notification is not practicable.

[~~(3) LEAs shall, to the extent reasonably possible, provide educational services to school children whose regular school program has been disrupted by an extended emergency.~~

] B. LEA plans, as determined by the LEA board, shall address access to public school buildings by specific groups: students, community members, lessees, invitees, and others.

(1) Access planning may include restricted access for some individuals.

(2) Plans shall address building access during identified time periods.

(3) Plans shall address possession and use of school keys by designated administrators and employees.

C. An LEA's or school's plan shall identify [~~R~~]resources and materials available for emergency training[~~ shall be identified in an LEA or school's plan~~] for LEA employees.

R277-400-6. Emergency Preparedness Training for School Occupants.

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

B. LEAs or schools shall provide [~~S~~]school children [~~shall receive~~]with training appropriate to their ages in rescue techniques, first aid, safety measures appropriate for specific emergencies, and other emergency skills.

C. Emergency drills:

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

(2) LEAs shall alternate one of the following practices or drills with required fire drills:

(a) shelter in place;

(b) earthquake;[~~ or~~]

(c) lock down for violence;

(d) bomb threat;

(e) civil disturbance;

(f) flood;

(g) hazardous materials spill;

(h) utility failure;

(i) wind or other types of severe weather;

(j) shelter and mass care for natural and technological hazards; or

(k) an emergency drill appropriate for the particular school location.

D. Fire drills:

(1) Fire drills shall include the complete evacuation of all persons from the school building or the portion of the building used

for educational purposes. LEAs or schools may make [~~A~~]an exception [~~may be made~~]for the staff member responsible for notifying the local fire emergency contact and handling emergency communications.

(2) All schools shall have one fire drill in the first 10 days of the regular school year.

(3) Elementary schools (grades K-6) shall have at least one fire drill every other month throughout the school year.

(4) Secondary schools (grades 7-12) shall have at least one fire drill every two months throughout the school year.

(5) Secondary schools (grades 7-12) shall have one fire drill in the first 10 days of the calendar year.

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

(7) When a fire alarm system is provided, an LEA shall initiate [~~fire drills shall be initiated~~]by activation of the fire alarm system.

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

R277-400-7. Emergency Response Review and Coordination.

A. Each LEA shall provide an annual training for LEA and school building staff on employees' roles, responsibilities and priorities in the emergency response plan.

B. LEAs shall require schools to conduct at least one annual drill for school emergencies in addition to drills required under R277-400-6[~~B(4)~~]C(2) which shall be held no later than October 1 annually.

C. 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. 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. LEAs 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. 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 including appropriate steps to take if a student sees a firearm or facsimile in school.

C. 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, LEAs [~~are encouraged to~~]should 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 LEA may enter into cooperative agreements with other governmental entities to assure proper coordination and support during emergencies.

B. 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 LEA, city, county, and state.

(1) the Board, through its superintendent, is the chief officer for emergencies involving more than one LEA, or for state or federal assistance;

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

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

(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 parents or legal guardians.

R277-400-10. Fiscal Accountability.

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

R277-400-11. School Carbon Monoxide Detection.

A. New educational facilities shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 9, Sections 908.7.2.1 through 908.7.2.6.

B. Existing facilities shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 11, Section 1103.9.

C. Where required, LEAs shall provide a carbon monoxide detection system where a fuel-burning appliance, a fuel-burning fireplace, or a fuel-burning forced air furnace is present consistent with IFC 908.7.2.1.

D. LEAs shall install each carbon monoxide detection system consistent with NFPA 720 and the manufacturer's instructions, and listed systems as complying with UL 2034 and UL 2075.

E. LEAs shall install each carbon monoxide detection system in the locations specified in NFPA 720.

F. A combination carbon monoxide/smoke detector is an acceptable alternative to a carbon monoxide detection system if the combination carbon monoxide/smoke detector is listed consistent with UL 2075 and UL 268.

G. Each carbon monoxide detection system shall receive primary power from the building wiring if the wiring is served from a commercial source. If primary power is interrupted, a battery shall provide each carbon monoxide detection system with power. Wiring shall be permanent and without a disconnecting switch other than that required for over-current protection.

H. LEAs shall maintain all carbon monoxide detection systems consistent with IFC 908.7.2.5 and NFPA 720.

I. Performance-based alternative design of carbon monoxide detection systems is acceptable consistent with NFPA 720, Section 6.5.4.5.

J. LEAs shall monitor carbon monoxide detection systems remotely consistent with NFPA 720.

K. LEAs shall replace a carbon monoxide detection system that becomes inoperable or begins to produce end-of-life signals.

KEY: emergency preparedness, disasters, safety, safety education
Date of Enactment or Last Substantive Amendment: [~~April 7,~~] 2014
Notice of Continuation: February 13, 2014
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(b)

Education, Administration
R277-402
School Readiness Initiative

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 38774
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-402 is created in response to H.B. 96, Utah School Readiness Initiative, from the 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: Rule R277-402 provides procedures for the Board to solicit proposals to fund grants for qualifying local education agency (LEA) early childhood programs; make recommendations to the School Readiness Board prioritizing the applications for funding, and monitor and evaluate the program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-1b-106(13)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Funds are appropriated by H.B. 96 (2014) for state agencies. It is uncertain if the appropriation will cover all costs of state agencies required to participate in the program.
♦ LOCAL GOVERNMENTS: It is unknown what LEA costs will be for LEAs to develop programs under this rule. It depends on the current LEA programs, size of the programs, private contributions, or resources in the LEA.
♦ SMALL BUSINESSES: The School Readiness Initiative is funded and administered by the state which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Consistent with state law, a sliding fee may be charged to students participating in a high quality preschool program, based on household income. Costs are too speculative to determine at this time. It is possible that LEAs may charge parents for preschool programs. Costs are unknown.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Funds for compliance at the state level were appropriated. It is uncertain whether funds are adequate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

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

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R277. Education, Administration.
R277-402. School Readiness Initiative.
R277-402-1. Definitions.

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

B. "Economically disadvantaged status" means public education students who satisfy criteria of Section 53A-1b-102(2).

C. "Eligible LEA," for purposes of this rule, means an LEA that meets requirements of Section 53A-1b-102(4).

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

E. "School Readiness Board" means the board established under Section 53A-1b-103.

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

R277-402-2. 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-1b-106(13) that requires the Board to make rules to effectively administer and monitor the high quality school readiness grant program, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide for appointments of School Readiness Board members by public education entities, provide timelines for USOE review and Board approval of proposals for the High Quality School Readiness Programs, and provide for program monitoring, evaluation and reporting as required by law.

R277-402-3. Board and Board-related Responsibilities.

A. The Board shall appoint one member to the School Readiness Board.

B. The Chair of the State Charter School Board shall appoint one member of the School Readiness Board.

C. The Board shall solicit proposals from eligible LEAs on the following timeline:

(1) the USOE shall convene a committee (expert committee) composed of members with early childhood experience or expertise;

(2) eligible LEAs shall submit proposals to the USOE by June 1 annually;

(3) the expert committee shall use a USOE-developed rubric to review proposals from eligible LEAs and make recommendations to the Board for funding based on point scores of applications before July 1 annually; and

(4) the Board shall make recommendations to the School Readiness Board before August 1 annually.

D. LEA grant recipients shall provide reports annually to the Board, consistent with Section 53A-1b-106(11).

E. The Board shall share information with the School Readiness Board for the School Readiness Board's report to the Education Interim Committee, consistent with Section 53A-1b-111.

F. The Board may adjust application timelines from year to year as necessary.

R277-402-4. LEA Responsibilities.

A. LEAs shall submit proposals consistent with the USOE application and the timeline in R277-402-3(2).

B. LEAs that receive school readiness grants, shall assign each student that participates in the school readiness iniative a unique student identifier, in consultation with the USOE, before September 20 annually.

C. LEAs that receive school readiness grants shall report annually to the Board and the School Readiness Board.

D. LEA grant recipients shall cooperate with Board and School Readiness Board requests for data to satisfy monitoring and reporting requirements.

KEY: schools, readiness, initiatives, grants
Date of Enactment or Last Substantive Amendment: 2014
Authorizing, Implemented, or Interpreted Law: Art X Sec 3; 53A-1b-106(3); 53A-1-401(3)

Education, Administration
R277-502-5
Professional Education License Areas of Concentration, and Endorsements and Under-Qualified Employees

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38775
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R277-502-5 is amended in response to H.B. 150 Science, Technology, Engineering, and Mathematics Amendments, from the 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: The amendments to Section R277-502-5 provide new language that requires a local education agency (LEA) to recognize a Science, Technology, Engineering, and Mathematics (STEM) endorsement as a component of the LEA's salary scale.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-6-104 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Utah State Board of Education may incur costs estimated at $217,000 associated with a collaborative effort between the STEM Action Center and the Utah State Office of Education to develop a STEM endorsement for elementary and secondary education.

♦ LOCAL GOVERNMENTS: The amendments to this rule provide for an LEA to recognize a STEM endorsement as a component of the LEA's salary schedule which likely will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: The amendments to this rule provide for an LEA to recognize a STEM endorsement as a component of the LEA's salary schedule which likely will not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule provide for an LEA to recognize a STEM endorsement as a component of the LEA's salary schedule which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule provide for an LEA to recognize a STEM endorsement as a component of the LEA's salary schedule which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

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

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R277. Education, Administration.
R277-502. Educator Licensing and Data Retention.
R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

(1) Early Childhood (K-3);
(2) Elementary (1-8);
(3) Elementary (K-6);
(4) Middle (still valid, and issued before 1988, 5-9);
(5) Secondary (6-12);
(6) Administrative/Supervisory (K-12);
(7) Career and Technical Education;
(8) School Counselor;
(9) School Psychologist;
(10) School Social Worker;
(11) Special Education (K-12);
(12) Preschool Special Education (Birth-Age 5);
(13) Communication Disorders;
(14) Speech-Language Pathologist;
(15) Speech-Language Technician.

B. Under-qualified educators:

(1) Educators who are licensed and hold the appropriate license area of concentration but who are working out of their endorsement area(s) shall request and prepare an SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) LEAs may request Letters of Authorization from the Board for educators employed by LEAs if educators have not completed requirements for areas of concentration or endorsements.

(a) An approved Letter of Authorization is valid for one year.

(b) Educators may be approved for no more than three Letters of Authorization throughout their employment in Utah schools. The State Superintendent of Public Instruction or designee may grant [~~E~~]exceptions to the three Letters of Authorization limitation[~~ may be granted by the State Superintendent of Public Instruction or his designee~~] on a case by case basis following specific approval of the request by the LEA governing board. Letters of Authorization approved prior to the 2000-2001 school year shall not be counted in this limit.

(c) [~~Following the expiration of the Letter of Authorization, the educator who is still not completely approved for licensing shall be considered~~]If an education employee's Letter of Authorization expires before the individual is approved for licensing, the employee falls into under-qualified status.

C. License areas of concentration may be endorsed to indicate qualification in a subject or content area.

(1) LEAs shall recognize a STEM endorsement as a component of the LEA's salary scale. The USOE shall determine the mathematics-, engineering-, science-, and technology-related courses and experiences necessary for the endorsement.

(2) An endorsement is not valid for employment purposes without a current license and license area of concentration.

KEY: professional competency, educator licensing
Date of Enactment or Last Substantive Amendment: [~~November 7, 2013~~]2014
Notice of Continuation: August 14, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-104; 53A-1-401(3)

Education, Administration
R277-531
Public Educator Evaluation Requirements (PEER)

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38776
FILED: 08/15/2014

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-531 is amended in response to S.B. 101, Public Education Human Resource Management Amendments, from the 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-531 provide changes to the dates for school districts to fully implement an evaluation system for educators

from the 2014-15 school year to the 2015-16 school year and terminology changes throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-8a-301 and Subsection 53A-1-401(3) and Subsections 53A-1-402(1)(a)(i) and (ii)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Amendments change the date for implementation of an evaluation system for educators from the 2014-15 school year to the 2015-16 school year which likely will not result in a cost or savings to state government.
♦ LOCAL GOVERNMENTS: Amendments to the rule change the date for implementation of an evaluation system for educators from the 2014-15 school year to the 2015-16 school year which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: Amendments to the rule change the date for implementation of an evaluation system for educators from the 2014-15 school year to the 2015-16 school year which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Amendments to the rule change the date for implementation of an evaluation system for educators from the 2014-15 school year to the 2015-16 school year which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide changes to the date for implementation of an evaluation system for educators from the 2014-15 school year to the 2015-16 school year which likely will not result in any compliance costs for affected persons.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

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

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R277. Education, Administration.
R277-531. Public Educator Evaluation Requirements (PEER).
R277-531-1. Definitions.

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

B. "Educator" means an individual licensed under Section 53A-6-104 and who meets the requirements of R277-501.

[~~G~~]C. "[~~LEA~~]Educator Evaluation Program" means a[~~n LEA's~~] school district's process, policies and procedures for evaluating educators' performance according to their various assignments; those policies and procedures shall align with R277-531.

[~~C~~]D. "Formative evaluation" means evaluations that provide educators with [~~feedback~~]information and assessments on how to improve their performance.

[~~D~~]E. "Instructional quality data" means data acquired through observation of educator's instructional practices.

[~~E~~]F. "Joint educator evaluation committee" means the local committee described under Section 53A-8a-403 that develops and assesses a[~~n LEA~~] school district evaluation program.

[~~F. "LEA" means a local education agency directly responsible for the public education of Utah students, including traditional local school boards and school districts, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~
]

[~~H~~]G. "School administrator" means an educator serving in a position that requires a Utah Educator License with an Administrative area of concentration and who supervises Level 2 educators.

[~~I~~]H. "Student growth score" means a measurement of a student's achievement towards educational goals in the course of a school year.

[~~J~~]I. "Summative evaluation" means evaluations that are used to make annual decisions or ratings of educator performance and may inform decisions on salary, confirmed employment, personnel assignments, transfers, or dismissals.

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

[~~L~~]K. "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the Utah State Office of Education by which local education agencies submit plans and budgets for approval of the Utah State Office of Education.

[~~M~~]L. "Utah Effective Teaching Standards" means the teaching standards identified and [~~adopted~~]provided in R277-530.

[~~N~~]M. "Utah Educational Leadership Standards" means the standards for educational leadership identified and adopted in R277-530.

[~~O~~]N. "Valid and reliable measurement tool(s)" means an instrument that has proved consistent over time and uses non-subjective criteria that require minimal interpretation.

R277-531-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Sections 53A-1-402(1)(a)(i) and (ii) which require the Board to establish rules and minimum standards for the qualification and certification of educators and for

required school administrative and supervisory services, Section 53A-8a-301 which directs that the Board adopt rules to guide school district employee evaluations, and Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide a statewide educator evaluation system framework that includes required Board directed expectations and components and additional [~~LEA~~]school district determined components and procedures to ensure the availability of data about educator effectiveness[~~ are available~~]. The process shall focus on the improvement of high quality instruction and improved student achievement. Additionally, the process shall include common data that can be aggregated and disaggregated to inform Board and [~~LEA~~]school district decisions about retention, preparation, recruitment, improved professional development practices and ensure [~~LEAs~~]school districts engage in a consistent process statewide of educator evaluation.

R277-531-3. Public Educator Evaluation Framework.

A. The Board shall provide a framework that includes five general evaluation system areas and additional discretionary components [~~of~~]required in a[~~n LEA's~~] school district's educator evaluation system no later than the 2015-2016 school year.

B. [~~Alignment with Board expectations and standards and required consistency of LEA policies with evaluation process~~]A school district shall align its evaluation policies with Board standards:

(1) [~~An LEA~~]A school district educator evaluation system shall be based on rigorous performance expectations aligned with R277-530.

(2) [~~An LEA~~]A school district evaluation system shall establish and articulate performance expectations individually for all licensed [~~LEA~~]school district educators.

(3) A[~~n LEA~~]A school district evaluation system shall [~~include~~]use valid and reliable measurement tools including, at a minimum:

(a) observations of instructional quality;

(b) evidence of student growth;

(c) parent and student input; and

(d) other indicators as determined by the [~~LEA~~]school district.

(4) [~~An LEA~~]A school district evaluation system shall provide a summative yearly rating of educator performance using uniform statewide terminology and definitions. A[~~n LEA~~] school district evaluation system shall include summative and formative components.

(5) [~~An LEA~~]A school district evaluation system shall direct the revision or alignment of all related [~~LEA~~]school district policies, as necessary, to be consistent with the [~~LEA~~]school district Educator Evaluation System.

[~~C.~~](6) [~~Valid and reliable tools:~~]A school district evaluation system[~~

(1) An LEA evaluation system~~] shall use valid, reliable and research-based measurement tool(s) for all educator evaluations. Such measurements shall:

(a) employ a variety of measurement tools;

(b) adopt differentiated methodologies for measuring student growth for educators in subject areas for which standardized tests are available and in subject areas for which standardized tests are not available;

(c) provide evaluation for non-instructional licensed educators and administrators; and

([~~2~~]d) [~~shall~~]provide[~~ for~~] both formative and summative evaluation data[~~:~~].

[~~(3)~~]C. A school district may consider data gathered from tools[~~ may be considered by an LEA~~] to inform decisions about employment and professional development.

D. A school district shall [~~D~~]discuss[~~ion~~], collaborate[~~ion~~] and protect[~~ion~~] [~~of~~]the confidentiality [~~with~~]of educator[~~s~~] [~~regarding~~]data in the evaluation process:

(1) [~~An LEA~~]a school district evaluation system shall provide for clear and timely notice to educators of the components, timelines and consequences of the evaluation process[~~.~~];

(2) [~~An LEA~~]a school district evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in R277-501 and evaluation conferences[~~.~~]; and

(3) [~~An LEA~~]a school district evaluation system shall protect personal data gathered in the evaluation process.

E. School district plans shall provide [~~S~~]support for instructional improvement[~~:~~].

(1) A[~~n LEA~~] school district evaluation system shall assess professional development needs of educators.

(2) A[~~n LEA~~] school district evaluation system shall identify educators who do not meet expectations for instructional quality and provide support as appropriate at the [~~LEA~~]school district level which may include providing educators with mentors, coaches, specialists in effective instruction and setting timelines and benchmarks to assist educators toward greater improved instructional effectiveness and student achievement.

F. A school district evaluation system shall maintain [~~R~~]records and documentation of required educator evaluation information[~~:~~].

(1) A[~~n LEA~~] school district evaluation system shall [~~include~~]require the evaluation of all licensed educators at least once a year.

(2) A[~~n LEA~~] school district evaluation system shall provide at least an annual rating for each licensed educator, including teachers, school administrators and other non-teaching licensed positions, using Board-directed statewide evaluation terminology and definitions.

(3) A[~~n LEA~~] school district evaluation system shall provide for the evaluation of all provisional educators, as defined by the [~~LEA~~]school district under Section 53A-8a-405, at least twice yearly.

(4) A[~~n LEA~~] school district evaluation system shall include the following specific educator performance criteria:

(a) school district-determined instructional quality measures[~~ to be determined by the LEA~~];

(b) complete integration of student growth score[~~ to be completely phased in by~~]before July 1, [~~2015~~]2016; and

(c) other measures as determined by the [~~LEA~~]school district, including data [~~gathered~~]required from student/parent input.

(5) [~~t~~]The Board shall determine weightings for specific educator performance criteria to be used in the [~~LEA's~~]school district's evaluation system.

(6) A[~~n LEA~~] school district evaluation system shall include a plan for recognizing educators who demonstrate exemplary professional effectiveness, at least in part, by student achievement.

(7) A[~~n LEA~~] school district evaluation system shall identify potential employment consequences, including discipline and termination, if an educator fails to meet performance expectations.

(8) A[~~n LEA~~] school district evaluation system shall include a review or appeals procedure for an educator to challenge the process of a summative evaluation that provides for adequate and timely due process for the educator consistent with Section 53A-8a-406(2).

G. A[~~n LEA~~] school district may include additional components in [~~an~~]its evaluation system.

H. A local board of education shall review and approve [~~an LEA's~~]its school district's proposed evaluation systems in an open meeting prior to the local board's submission to the Board for review and approval.

R277-531-4. Board Support and Monitoring of LEA Evaluation Systems.

A. The Board shall establish a state evaluation advisory committee to provide ongoing review and support for [~~LEAs~~]school districts as they develop and implement evaluation systems consistent with the law and this [~~R~~]rule. The Committee shall:

(1) analyze [~~LEA~~]school district evaluation data for purposes of:

(a) reporting;

(b) assessing instructional improvement; and

(c) assessing student achievement.

(2) review required Board evaluation components regularly and evaluate their usefulness in providing a consistent statewide framework for educator evaluation, instructional improvement and commensurate student achievement; and

(3) review [~~LEA~~]school district educator evaluation plans for alignment with Board requirements.

B. The USOE, under supervision of the Board, shall develop a model educator evaluation system that includes performance expectations consistent with this rule.

C. The USOE shall evaluate and recommend tools and measures for use by [~~LEAs~~]school districts as they develop and initiate their local educator evaluation systems.

D. The USOE shall provide professional development and technical support to [~~LEAs~~]school districts to assist in evaluation procedures and to improve educators' ability to make valid and reliable evaluation judgments.

R277-531-5. Implementation.

A. Each [~~LEA~~]school district shall have an educator evaluation committee in place[~~ by October 2011~~].

B. Each [~~LEA~~]school district shall design the required evaluation program, including pilot programs as desired.

C. Each [~~LEA~~]school district shall continue to report educator effectiveness data to the USOE in the UCA.

D. Each school district shall [~~I~~]implement[~~ation shall be in place for~~] an evaluation system no later than the [~~2013-2014~~]2015-2016 school year.

E. A school district shall implement an employee compensation system no later than the 2016-2017 school year that is aligned with the school district's wage or salary schedule and is consistent with the provisions of Section 53A-8a-601(2).

[~~E~~]F. [~~Board directed~~]Each school district shall implement student growth measures [~~shall be implemented~~]as part of the [~~LEA~~]school district evaluation system [~~by~~]before the [~~2014-2015~~]2015-2016 school year.

KEY: educators, evaluations, requirements
Date of Enactment or Last Substantive Amendment: [~~June 24, 2013~~]2014
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a)(i); 53A-1-401(3)

Education, Administration
R277-532-3
School District Policies

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38777
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R277-532-3 School District Policies is amended in response to S.B. 101, Public Education Human Resource Management Amendments, from the 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: The amendments to Section R277-532-3 provide for school districts to fully implement evaluation policies for non-licensed employees consistent with the law no later than the 2016-17 school year.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-8a-301 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Amendments provide for school districts to fully implement evaluation policies for non-licensed employees consistent with the law no later than the 2016-17 school year which likely will not result in a cost or savings to state government.
♦ LOCAL GOVERNMENTS: Amendments provide for school districts to fully implement evaluation policies for non-licensed employees consistent with the law no later than the 2016-17 school year which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: Amendments provide for school districts to fully implement evaluation policies for non-licensed employees consistent with the law no later than the 2016-17 school year which likely will not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Amendments provide for school districts to fully implement evaluation policies for non-licensed employees consistent with the law no later than the 2016-17 school year which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Amendments provide for school districts to fully implement evaluation policies for non-licensed employees consistent with the law, no later than the 2016-17 school year which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

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

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R277. Education, Administration.
R277-532. Local Board Policies for Evaluation of Non-Licensed Public Education Employees (Classified Employees).
R277-532-3. School District Policies.

A. School districts shall adopt policies for non-licensed public education employee evaluation and dismissal consistent with minimum standards of Sections 53A-8a-301 and 302 and 53A-8a-501 through 506 and due process and the termination of non-licensed public education employees consistent with Section 53a-8a-501 through 504.

B. School district non-licensed public education employee evaluation policies shall include the following components:

(1) the annual evaluation of non-licensed public education employees;

(2) the use of appropriate tools for non-licensed public education employee evaluations;

(3) non-licensed public education employee evaluation criteria tied to specific non-licensed job descriptions or assignments;

(4) the administration of the evaluation by the school principal, an appropriate administrator or the principal's or administrator's designee; and

(5) an appeals process that allows non-licensed public education employees to appeal procedural violations of the evaluation process.

C. School district evaluation policies for non-licensed public education employees may include additional components.

D. School district non-licensed public education employee termination policies shall be developed as directed in Section 53A-8a-501 through 506[~~:~~].

E. School district non-licensed public education employee termination policies shall be consistent with Sections 53A-8a-501 through 504 and may include other components as determined locally.

F. School district policies may exclude temporary or part-time non-licensed public education employees from performance evaluations, as provided in Section 53A-8a-301(2)(a).

G. School districts shall fully implement evaluation policies for non-licensed public education employees [~~consistent with Section 53A-8a-601~~]that include components of Section 53A-8a-601(2) no later than the 2016-2017 school year.

KEY: policies, evaluations, non-licensed[~~:~~] public education employees
Date of Enactment or Last Substantive Amendment: [~~April 8, 2013~~]2014
Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1-401(3); 53A-8a-301

Education, Administration
R277-607
Truancy Prevention

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38778
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-607 is amended to change terminology within the rule to make the rule consistent with other Utah State Board of Education (Board) rules, to provide new language for clarification purposes and remove unnecessary language.

SUMMARY OF THE RULE OR CHANGE: The amendments provide the definition of LEA (consistent with other rules), remove school district and charter school language, and insert LEA within the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 53A-11-101 through 53A-11-106 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments provide changes in terminology, add new language for clarification, and remove unnecessary language which likely will not result in a cost or savings to the state.
♦ LOCAL GOVERNMENTS: The amendments provide changes in terminology, add new language for clarification, and remove unnecessary language which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: The amendments provide changes in terminology, add new language for clarification, and remove unnecessary language which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments provide changes in terminology, add new language for clarification, and remove unnecessary language which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide changes in terminology, add new language for clarification, and remove unnecessary language which likely will not result in any compliance costs for affected persons.

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

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THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

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

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R277. Education, Administration.
R277-607. Truancy Prevention.
R277-607-1. Definitions.

A. "Absence" means a student's non-attendance at school for one school day or part of one school day.

B. "Habitual truant" means a school-age minor who:

(1) is at least 12 years old;

(2) is subject to the requirements of Section 53A-11-101.5; and

(3)(a) is truant at least [~~ten~~]five times during one school year; and

(b) fails to cooperate with efforts on the part of school authorities to resolve the minor's attendance problem as required under Section 53A-11-103.

C. "Habitual truant citation" is a citation issued only consistent with Section 53A-11-101.7.

D. "IEP team" means an local education agency representative, a parent, a regular and special education educator, and person qualified to interpret evaluation results, in accordance with the Individuals with Disabilities Education Act (IDEA).

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

[~~E~~]F. "Truant" means absent without a valid excuse.

[~~F~~]G. "Unexcused absence" means a student's absence from school for reasons other than those authorized under the [~~school or district~~]LEA policy.

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

[~~H~~]I. "Valid excuse" means an excuse for an absence from school consistent with Section 53A-11-101(9)[~~, and may include:~~

~~(1) illness;~~
~~(2) family death;~~
~~(3) approved school activity;~~
~~(4) excuse consistent with student's IEP, Section 504 accommodation plan, or a school/school district valid excuse definition~~].

R277-607-2. 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 permits the Board to adopt rules in accordance with its responsibilities, and Sections 53A-11-101 through 53A-11-106 which direct educational entities and parents working on behalf of children to [~~encourage compliance with the compulsory education law, school attendance for all students, and cooperation in these important efforts~~]make efforts to resolve school attendance problems of school-age minors who are or should be enrolled in LEAs.

B. The purpose of this rule is to direct [~~schools/school districts and charter schools~~]LEAs to establish procedures for:

(1) informing parents about compulsory education laws;

(2) encouraging and monitoring school attendance consistent with the law; and

(3) providing firm consequences for noncompliance.

C. This rule encourages meaningful incentives for parental responsibility and directs [~~school districts and charter schools~~]LEAs to establish ongoing truancy prevention procedures in schools especially for students in grades 1-8.

R277-607-3. General Provisions.

A. Each [~~local school board and charter school~~]LEA board shall develop a truancy policy that encourages regular, punctual attendance of students, consistent with this rule and 53A-11-101 through 53A-11-105, and shall review the policy annually.

B. [~~Local school boards and charter school~~]LEA boards shall annually review attendance data and consider revisions to policies to encourage student attendance.

C. [~~The local school board and charter school board~~]LEAs shall make truancy polic[~~y~~]ies [~~shall be~~]available for review by parents or interested parties.

D. LEAs may issue [~~H~~]habitual truant citations [~~may be issued~~]to students consistent with Section 53A-11-101.7.

R277-607-4. [~~School/School District and Charter School~~]LEA Responsibilities.

A. [~~School districts and charter schools~~]LEAs shall:

(1) establish definitions not provided in law or this rule necessary to implement a compulsory attendance policy;

(2) include definitions of approved school activity under Section 53A-11-101(9)(c) and excused absence to be provided locally under Section 53A-11-101(9)(e);

(3) include criteria and procedures for preapproval of extended absences consistent with Section 53A-11-101.3; and

(4) establish programs and meaningful incentives which promote regular, punctual student attendance.

B. [~~School districts and charter schools~~]LEAs shall include in their policies provisions for:

(1) notice to parents of the policy;

(2) notice to parents as discipline or consequences progress; and

(3) the opportunity to appeal disciplinary measures.

C. [~~School districts and charter schools~~]LEAs shall establish and publish procedures [~~by which~~]for use by school-age minors or their parents [~~may~~]to contest notices of truancy.

[~~**R277-607-5. Parent Responsibilities.**~~

~~Parents of school-age minors shall cooperate with school boards and charter school boards to secure regular attendance at school by school-age minors for whom they are responsible.~~

]**KEY: compulsory education, truancy**
Date of Enactment or Last Substantive Amendment: [~~October 10, 2007~~]2014
Notice of Continuation: [~~October 23, 2009~~]2014
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-11-101 through 53A-11-105

Education, Administration
R277-619
Student Leadership Skills Development

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38779
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-619 is amended in response to S.B. 131, Student Leadership Skills Development, from the 2014 General Legislative Session. The bill continued an appropriation to support a Student Leadership Skills Development Pilot Program.

SUMMARY OF THE RULE OR CHANGE: The amendments provide the amount of funds that first and second year participant schools may receive for participation in the Student Leadership Skills Development Program and remove unnecessary language.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-17a-169(4)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The amendments provide the amount of funds that first and second year schools may receive for participation in the Student Leadership Skills Development Program which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: The amendments provide the amount of funds that first and second year schools may receive for participation in the Student Leadership Skills Development Program. Funding is provided for participation in this Program, but matching funds are required of first year schools. Schools will likely use existing budgets to secure the matching funds for participation in the Program.

♦ SMALL BUSINESSES: The amendments provide the amount of funds that first and second year schools may receive for participation in the Student Leadership Skills Development Program which likely will not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments provide the amount of funds that first and second year schools may receive for participation in the Student Leadership Skills Development Program which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide the amount of funds that first and second year schools may receive for participation in the Student Leadership Skills Development Program which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

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

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R277. Education, Administration.
R277-619. Student Leadership Skills Development.
R277-619-1. Definitions.

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

B. "Matching funds" means an amount of funds or services that shall be provided by an applicant in the Board application to meet the match requirement of Section 53A-17a-169(5)(a) for first year applicants.

C. "Student leadership skills development" means a program to develop students' behaviors and skills vital for learning and career success and that will enhance a school's learning environment.

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

R277-619-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-17a-169(4) which directs the Board to make rules for elementary school participation in this pilot grant program, and by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide criteria, procedures and timelines for the Board to designate schools and grant awards to facilitate elementary school participation in the pilot Student Leadership Skills Development program.

R277-619-3. School Selection Criteria.

A. Elementary Schools that include any combination of grades K-6 shall be eligible for the program.

B. An applicant school shall provide a completed application for its pilot program that shall:

(1) indicate how the program will develop communication skills, teamwork skills; interpersonal skills; initiative and self-motivation; goal setting skills; problem solving skills; and creativity;

(2) estimate the number of students that will be served by the program;

(3) agree that the school will provide all data and information required by the USOE for evaluation and reporting purposes, as requested by the USOE; and

(4) provide additional information requested by the USOE on the application including selection criteria and assurances provided in Section 53A-17a-169(5).

R277-619-4. Required Matching Funds.

[~~A.~~]The application shall explain how the first year school will provide matching funds to the amount requested by the applicant as required under Section 53A-17a-169(5)(a).

[~~B. The applicant school shall assure the USOE that it shall meet the requirement for matching funds for the two-year duration of the pilot program.~~

~~C. The USOE application shall explain or require the nature of the match such as in kind, dollar for dollar, or other creative match options.~~

]

R277-619-5. School Selection and Criteria.

A. The USOE shall provide an application for the Student Leadership Skills Development pilot program [~~by May 15, 2013~~]before June 15 annually.

B. LEAs shall return [~~C~~]completed applications[~~shall be returned~~] to the USOE before [~~June 17, 2013~~]August 15 annually.

C. The USOE shall screen all applications for compliance with all state laws, R277-619 and application requirements.

D. The USOE may seek the participation and advice of an independent evaluating committee in recommending applications for funding. The Board shall make final school selections consistent with the criteria of Section 53A-17a-169 and R277-619.

E. [~~The USOE expects to recommend approximately 25 schools for Board selection for funding, allowing $10,000 per school plus matching funds.~~]The Board shall determine the [~~F~~]final number of schools and amounts per school[~~;~~] not to exceed $10,000 per school[~~;~~]for first year applicants and $20,000 per school for second year applicants. [~~shall be determined by~~]based on the number and quality of applications.

[~~E~~]F. The Board shall select and notify [~~F~~]funded [~~applications~~]applicants [~~shall be selected and notified by July 1, 2013~~]before September 1 annually.

G. The USOE may adjust application timelines from year to year as necessary.

[~~F~~]H. The Board shall evaluate the program and report on findings consistent with 53A-17a-169(7)(a).

KEY: students, leadership skills
Date of Enactment or Last Substantive Amendment: [~~August 7, 2013~~]2014
Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-17a-169(4); 53A-1-401(3)

Education, Administration
R277-620
Suicide Prevention Programs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38780
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-620 Suicide Prevention Programs is amended in response to H.B. 329, Programs for Youth Protection, from the 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-620 provide language to define the number of parent seminars that must be conducted by local education agencies (LEAs), and to define LEA prevention programs to include programs that are evidence-based or emerging best practices.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments provide language to define the number of parent seminars per number of students in the LEA and define LEA prevention programs which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: There likely will not be a cost or savings to local government. The Legislature appropriated $159,000 to the Utah State Board of Education to distribute to schools to implement evidence-based practices and programs, or emerging best practices and programs.
♦ SMALL BUSINESSES: The amendments provide language to define the number of parent seminars and define LEA prevention programs which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments provide language to define the number of parent seminars and define LEA prevention programs which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide language to define the number of parent seminars and define LEA prevention programs which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

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

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R277. Education, Administration.
R277-620. Suicide Prevention Programs.
R277-620-1. Definitions.

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

B. "Intervention" means an effort to prevent a student from attempting suicide.

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.

D. "Parent notification" means a notice provided by a public school to a students' parent(s) consistent with Section 53A-11a-203(2) and 53A-11a-301(3)(e).

E. "Postvention" means mental health intervention after a suicide attempt or death to prevent or contain contagion.

F. "Program for secondary grades" means a youth suicide prevention program for students in grades 7 through 12, including grade 6 if middle or junior high school includes grade 6.

G. "State suicide prevention coordinator" means the person designated by the Department of Health - State Division of Substance Abuse and Mental Health in Section 62A-15-1101.

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

I. "USOE suicide prevention coordinator" means person designated by the Board to oversee the youth suicide prevention programs of LEAs and who is responsible to coordinate prevention programs, services, and efforts with the state suicide prevention coordinator.

J. "Youth protection and mental health seminar" means a[~~n evening~~] seminar offered [~~by an LEA~~]for each 11,000 students enrolled in a school district to parents of students consistent with Section 53A-15-1301.

R277-620-2. 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 purposes of this rule are:

(1) to provide for collaboration with the Department of Health and Department of Human Services to establish, oversee, and provide model policies, programs for LEAs and training for parents about youth suicide prevention programs;

(2) to require LEAs to have and update youth protection policies; and

(3) to direct LEAs to send notice to parents and protect the confidentiality of the required parent notification record regarding bullying and suicide incidents.

R277-620-3. Board, USOE and LEA Responsibilities.

A. Board and USOE responsibilities:

(1) The USOE suicide prevention coordinator shall oversee LEA youth suicide prevention programs.

(2) The USOE, in collaboration with the Department of Health - State Division of Substance Abuse and Mental Health and the state suicide prevention coordinator, shall establish model youth suicide prevention programs for LEAs that include training and resources addressing prevention of youth suicides, youth suicide intervention, and postvention for family, students and faculty.

(3) Based on legislative appropriation, the Board shall distribute funds to LEAs so that LEAs can select and implement [~~LEA programs~~]evidenced-based practices and programs, or emerging best practices and programs, to support suicide prevention efforts in the school district or charter school.

(4) The Board shall report jointly with the state suicide prevention coordinator to the Legislature's Education Interim Committee in [~~November 2013 and~~]2014 on:

(a) the progress of LEA programs; and

(b) the board's coordination efforts with the Department of Health - State Division of Substance Abuse and Mental Health and the state suicide prevention coordinator.

B. LEA responsibilities:

(1) LEAs shall implement youth suicide prevention programs for students in secondary grades, including grades 7 through 12 and grade 6, if grade 6 is part of a secondary grade model.

(2) The programs shall include components provided in Section 53A-15-1301(2).

(3) LEAs shall update bullying, cyber-bullying, harassment, hazing, and retaliation policy(ies) consistent with Section 53A-11a-301 and R277-613, including the required parent notification outlined in Sections 53A-11a-203(2) and 53A-11a-301(3)(e) and R277-613-4C and D.

(4) LEAs shall provide necessary reporting information consistent with Section 53A-15-1301(3) and (5) for the Board's report on the coordination of suicide prevention programs and seminar program implementation to the Legislature's Education Interim Committee.

KEY: public schools, suicide prevention programs, parent notifications, seminars
Date of Enactment or Last Substantive Amendment: [~~October 8, 2013~~]2014
Authorizing, and Implementing or Interpreted Law: Art X Sec 3: 53A-1-401(3)

Education, Administration
R277-704
Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 38781
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-704 is amended in response to S.B. 40, Financial and Economic Literacy Amendments, from the 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: Amendments to Rule R277-704 provide for implementation of an endorsement to teach financial literacy, specify the content of course work for the endorsement, and provide for implementation of a statewide, online end of course assessment for a financial literacy course.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-13-110 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Utah State Board of Education (Board) is required to develop and maintain additional curriculum in line with revised standards and objectives; provide related professional development to K-12 teachers; develop and maintain an end-of-level online exam for secondary students; and analyze and report achievement results; and develop and administer a General Financial Literacy Teacher licensing endorsement. The Legislature appropriated $300,000 ongoing and $150,000 one-time funding to the Board to support requirements of the legislation. It is anticipated that if costs are beyond the funding appropriated by the Legislature, existing Board staff will satisfy the requirements of this legislation within existing budgets.

♦ LOCAL GOVERNMENTS: LEAs are required to offer an online assessment developed by USOE and administered in conjunction with financial and economic literacy courses taught as part of secondary curriculum. It is anticipated that existing LEA staff will administer the assessment within existing budgets which likely will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: The requirements of the amended rule affect the state and LEAs. There will likely not be any costs or savings to small businesses resulting from the amendments.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The requirements of the amended rule affect the state and LEAs. There will likely not be any costs or savings to persons other than small businesses, businesses, or local government entities resulting from the amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is anticipated that the state and LEAs will satisfy the requirements of this legislation, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

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

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R277. Education, Administration.
R277-704. Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports.
R277-704-1. Definitions.

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

B. "End of course assessment" means an online end of course assessment for use by school districts and charter schools for students who take the general financial literacy course.

C. "Endorsement" means the document required through the USOE licensing process for teachers who teach general financial literacy.

[~~B~~]D. "Financial and economic literacy project" means a program or series of activities developed locally to encourage the understanding of financial and economic literacy among students and their families and to assist public school educators in making financial and economic literacy an integrated and permanent part of the public school curriculum.

[~~C~~]E. "Financial and economic literacy student passport" means a collection of approved activities, assessments, or achievements completed during a given time period which indicate advancement in financial and economic understanding.

F. "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.

[~~D~~]G. "Professional development" for public school educators means the act of engaging in professional learning in order to improve student learning.

[~~E~~]H. "SEOP/plan for college and career readiness" means a plan for students in grades 7-12 that includes:

(1) all Board and LEA board graduation requirements;

(2) the individual student's specific course plan that will meet graduation requirements and provides a supportive sequence of courses consistent with identified post-secondary training goals;

(3) evidence of parent, student, and school representative involvement annually; and

(4) attainment of approved workplace skill competencies.

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

R277-704-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53A-13-110 which directs the Board to work with financial and economic experts and private and non-profit entities to develop and integrate financial and economic literacy and skills into the public school curriculum at all appropriate levels and to develop a financial and economic literacy student passport which is optional for students and tracks student mastery of financial and economic literacy concepts, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is:

(1) to provide funds appropriated by the Legislature to develop and integrate financial and economic literacy concepts effectively into the core curriculum in various programs and at various grade levels;

(2) to begin the development of a financial and economic literacy student passport;

(3) to provide for educator professional development using business and community expertise, allowing for maximum creativity and flexibility;

(4) to provide curriculum resources and assessments for financial and economic literacy;

(5) to provide passport criteria and tracking capabilities for the financial and economic literacy passport for students grades K-12;[~~and~~]

(6) to provide simple and consistent messaging to students that becomes part of the core curriculum that reinforces the importance of financial and economic literacy for students and parents; and

(7) to help[~~s~~] students and[~~their~~] parents to locate and use school and community resources to improve financial and economic literacy among students and families.

R277-704-3. Financial and Economic Literacy Student Passport.

A. The Board and the USOE shall develop and promote a financial and economic literacy student passport model, which would include tracking of student progress toward a passport.

B. Early efforts will focus on students in grades nine through 12.

C. Development efforts will include parent and community participation.

D. A major goal of the development and promotion of a financial and economic literacy student passport will be to inform and educate students and their parents throughout the public school experience of the importance of financial and economic literacy and its applicability to all areas of the public school curriculum.

E. Public schools shall provide parents/guardians and students with the following:

(1) during kindergarten enrollment, a financial and economic literacy passport and information about post-secondary education savings options; and

(2) information and encouragement toward the financial and economic literacy student passport opportunity upon development as part of the SEOP/plan for college and career readiness process.

R277-704-4. General Financial Literacy End of Course Assessment.

A. The USOE shall provide to LEAs an online end of course assessment for general financial literacy which shall:

(1) be administered to every student who takes the general financial literacy course;

(2) be aligned with general financial literacy revised core standards and objectives; and

(3) be measured and analyzed at the school, district and state-wide levels.

R277-704-5. General Financial Literacy Teacher Endorsement.

A. Any Board licensed educator who teaches general financial literacy shall have completed course work in:

(1) financial planning;

(2) credit and investing;

(3) consumer economics;

(4) personal budgeting; and

(5) family economics.

B. Educator course work can be part of or in addition to course work and programs of study required for licensure by the Board consistent with R277-502.

R277-704-[4]6. Financial and Economic Literacy Professional Development Opportunities.

A. The USOE shall provide professional development for all areas of financial and economic literacy utilizing the expertise of community and business groups.

B. Professional development activities shall:

(1) inform public school educators about financial and economic literacy[,];

(2) encourage greater understanding of personal financial and economic responsibility[,];

(3) provide information and resources for teaching about financial and economic literacy without promoting specific products or businesses[,]; and

(4) work with the USOE to develop messaging or advertising to promote financial and economic literacy.

KEY: financial, economics, literacy
Date of Enactment or Last Substantive Amendment: [~~January 8,~~]2014
Notice of Continuation: November 8, 2013
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-13-110; 53A-1-401(3)

Education, Administration
R277-706
Public Education Regional Service Centers

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38782
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-706 is amended in response to H.B. 92, Utah Education and Telehealth Network Amendments, from the 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: The amendment to Rule R277-706 changes the title of the Utah Education Network to the Utah Education and Telehealth Network and clarifies the requirement for a regional service center to submit an annual performance report.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-3-429(6)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendment provides a name change and clarifying language which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: The amendment provides a name change and clarifying language which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: The amendment provides a name change and clarifying language which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendment provides a name change for the rule and clarifying language which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendment provides a name change and clarifying language which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

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

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R277. Education, Administration.
R277-706. Public Education Regional Service Centers.
R277-706-1. Definitions.

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

B. "Eligible regional service center" means a regional service center formed by two or more school districts by means of an interlocal entity in accordance with Title 11, Chapter 13, Interlocal Cooperation Act.

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

R277-706-2. 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-3-429(6) that directs the Board to make rules regarding eligible regional services center, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and procedures for school districts to form interlocal agreements and to provide for distribution of legislative funds to eligible regional service centers by the Board.

R277-706.3. Eligible Regional Service Centers.

A. Two or more school districts may enter into an interlocal agreement and form an interlocal entity.

B. An eligible regional service center may receive funds if the Legislature appropriates money.

C. An interlocal agreement[~~ entered into~~] shall confirm and ratify the regional service center as of the effective date of the interlocal agreement.

R277-706-4. Distribution of Funds.

A. The USOE shall distribute funds, if provided by the Legislature, in equal amounts to eligible regional service centers based on:

(1) requests from eligible regional service centers; and

(2) satisfaction and submission of all information and requirements set by the Board.

B. The USOE shall provide notice that completed applications for regional service center funds are due to the USOE consistent with timelines provided by the USOE.

C. The Board may review and consider a different distribution plan for future years.

D. Legislative funding, if provided, shall be distributed to eligible regional service centers after July 1 [~~of each year~~]annually.

R277-706-5. Eligible Regional Service Center Responsibilities.

A. Eligible regional service centers shall submit an annual application for available funds to the Board consistent with USOE timelines.

B. A regional service center application for funds shall include:

(1) a copy of completed interlocal agreement(s);

(2) a proposed budget and request for funds from the Board;

(3) a current external audit of current regional service center assets and liabilities in the initial application for funds and with each annual application;

(4) assurance signed by all parties to the interlocal agreement that the USOE shall have access to all regional service center records upon request;

(5) an annual financial report from the previous fiscal year; and

(6) a plan for the use and distribution of regional service center funds for the applicable fiscal year with specific attention to delivery of Utah Education Network and Telehealth services and the delivery of education-related services[~~; and~~].

[~~(7)~~]C. A regional service center shall provide an annual performance report beginning with fiscal year 2012 including information about:

(1) the regional service center delivery of Utah Education and Telehealth Network services;

(2) the type, amount, and effectiveness of delivery of public and higher education related services; and

(3) the coordination of public and higher education related services.

KEY: eligible regional service centers
Date of Enactment or Last Substantive Amendment: [~~July 11, 2011~~]2014
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-3-429(6); 53A-1-401(3)

Environmental Quality, Administration
R305-7-607
Matters Governed by the Radiation Control Act, Title 19, Chapter 3, but not Including Section 19-3-109

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38753
FILED: 08/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A companion change to Rule R313-17-4 (DAR No. 38770) proposes to add a new administrative hearing procedure that applies to specified radiation control license actions. The new hearing procedure is being added to ensure that the Division of Radiation Control (DRC) is in compliance with the requirements of 42 USC 2021(o)(3)(A)(ii), a requirement that must be met in order for the State of Utah to remain an NRC Agreement State authorized to license uranium mills and disposal of byproduct materials. This companion rule gives interested persons a remedy if the administrative law judge (ALJ) finds those hearing procedures have not been provided or are inadequate. Note that the Department, rather than the Radiation Control Board, has rulemaking authority for rules governing challenges to a director's decision under Subsection 19-1-301.5(6)(d).

SUMMARY OF THE RULE OR CHANGE: This companion rule gives interested persons a remedy if the ALJ finds those hearing procedures have not been provided or are inadequate. It instructs the administrative law judge to allow questions and require answers and it specifies standards for the types of questions that will be subject to the procedure.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 USC 2021(o)(3)(A)(ii) and Subsection 19-1-301.5(6)(d)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This is a remedy that will be used only if DRC fails to provide an appropriate question and answer session. DRC is committed to providing appropriate question and answer sessions, so this situation is expected to be rare and the resulting cost minimal.
♦ LOCAL GOVERNMENTS: Local government is not expected to be affected unless they are an interested person who wants to pose questions to the division and/or the licensee.
♦ SMALL BUSINESSES: Small businesses may wish to pose questions; however, this is a remedy that will be used only if DRC fails to provide an appropriate question and answer session. DRC is committed to providing appropriate question and answer sessions, so this situation is expected to be rare and the resulting cost minimal.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Large businesses may wish to pose questions and affected licensees are large businesses and may be required to participate in this proceeding. However this is a remedy that will be used only if DRC fails to provide an appropriate question and answer session. DRC is committed to providing appropriate question and answer sessions, so this situation is expected to be rare and the resulting cost minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected licensees may be required to participate in this proceeding. However, this is a remedy that will be used only if DRC fails to provide an appropriate question and answer session. DRC is committed to providing appropriate question and answer sessions, so this situation is expected to be rare and the resulting cost minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Affected licensees may be required to participate in this proceeding. However, this is a remedy that will be used only if DRC fails to provide an appropriate question and answer session. DRC is committed to providing appropriate question and answer sessions, so this situation is expected to be rare and the resulting cost minimal.

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:
♦ Laura Lockhart by phone at 801-536-0283, 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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/15/2014

AUTHORIZED BY: Amanda Smith, Executive Director

R305. Environmental Quality, Administration.
R305-7. Administrative Procedures.
R305-7-607. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, but not Including Section 19-3-109.

(1) Paragraph (2) of this[~~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.

(3) This paragraph (3) applies to proceedings under R313-17-4(6).

(a) A hearing shall be conducted by the ALJ for the limited purposes of:

(i) allowing the petitioner to ask questions; and

(ii) allowing follow-up questions of the witnesses or other witnesses, including those representing the petitioner, by any party.

(b) Questioning under this paragraph shall be consistent with the standards specified R313-17-4(f) and (h).

(c) The ALJ shall determine whether the petitioner's questions shall be answered by the division staff, by the applicant, or by both.

(d) The procedures in R305-7, Part 3 shall govern the hearing as appropriate for the limited scope of the hearing.

(e) The transcript of the hearing will be part of the record on appeal, as authorized in 19-1-301.5(8)(c)(vi).

KEY: administrative procedures, adjudicative procedures, hearings
Date of Enactment or Last Substantive Amendment: [~~January 31, 2013~~]2014
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, Drinking Water
R309-400
Water System Rating Criteria

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38727
FILED: 08/04/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update rule references and to add new measurements for violation of rule changes in Rules R309-100 through R309-800.

SUMMARY OF THE RULE OR CHANGE: The changes are: adding new requirements from the groundwater rule; updating rule references and adding missing references; and correcting formatting, grammar, and miscellaneous changes to make the rule language more easily understood.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This rule serves as a measurement tool to prioritize the Division's enforcement and technical assistance resources. This rule does not add any additional requirements, it just places a point total for not complying with existing requirements in existing rules. For systems whose points exceed the prescribed thresholds there is the consequence of being rated "not approved". There should not be any additional cost to systems or the state with regard to the proposed rule changes.
♦ LOCAL GOVERNMENTS: This rule serves as a measurement tool to prioritize the Division's enforcement and technical assistance resources. This rule does not add any additional requirements, it just places a point total for not complying with existing requirements in existing rules. For systems whose points exceed the prescribed thresholds there is the consequence of being rated "not approved". There should not be any additional cost to systems or the state with regard to the proposed rule changes.
♦ SMALL BUSINESSES: This rule serves as a measurement tool to prioritize the Division's enforcement and technical assistance resources. This rule does not add any additional requirements, it just places a point total for not complying with existing requirements in existing rules. For systems whose points exceed the prescribed thresholds there is the consequence of being rated "not approved". There should not be any additional cost to systems or the state with regard to the proposed rule changes.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule serves as a measurement tool to prioritize the Division's enforcement and technical assistance resources. This rule does not add any additional requirements, it just places a point total for not complying with existing requirements in existing rules. For systems whose points exceed the prescribed thresholds there is the consequence of being rated "not approved". There should not be any additional cost to systems or the state with regard to the proposed rule changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule serves as a measurement tool to prioritize the Division's enforcement and technical assistance resources. This rule does not add any additional requirements, it just places a point total for not complying with existing requirements in existing rules. For systems whose points exceed the prescribed thresholds there is the consequence of being rated "not approved". There should not be any additional cost to systems or the state with regard to the proposed rule changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees with the cost statements made in the above sections.

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:
♦ Jennifer Yee by phone at 801-536-4216, by FAX at 801-536-4211, or by Internet E-mail at jyee@utah.gov
♦ Patti Fauver by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at pfauver@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 11/10/2014

AUTHORIZED BY: Amanda Smith, Executive Director

R309. Environmental Quality, Drinking Water.
R309-400. Water System Rating Criteria.
R309-400-1. Authority.

Under authority of Utah Code Annotated, Section 19-4-104, the Drinking Water Board adopts this rule in order to evaluate a public water system's standard of operation and service delivered in compliance with R309-100 through R309-705 hereinafter referred to as Rules.

R309-400-2. Extent of Coverage.

[~~These rules~~]This rule shall apply to all public water systems as defined in R309-100.

R309-400-3. Definitions.

[~~Approved - means that the public water system is operating in substantial compliance with all the Rules as measured by this rule.~~

~~Community Water System - means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.~~

~~Contaminant - means any physical, chemical, biological, or radiological substance or matter in water.~~

~~Corrective Action - means a provisional rating for a public water system not in compliance with the Rules, but making all the necessary changes outlined by the Director to bring them into compliance.~~

~~Director - means the Director of the Division of Drinking Water.~~

~~Major Bacteriological Routine Monitoring Violation - means that no routine bacteriological sample was taken as required by R309-210-5(1).~~

~~Major Bacteriological Repeat Monitoring Violation - means that no repeat bacteriological sample was taken as required by R309-210-5(2)(a).~~

~~Major Chemical Monitoring Violation - means that no initial background chemical sample was taken as required in R309-515-4(5).~~

~~Maximum Contaminant Level (MCL) - The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. Individual maximum contaminant levels (MCLs) are listed in R309-200.~~

~~Minor Bacteriological Routine Monitoring Violation - means that not all of the routine bacteriological samples were taken as required by R309-210-5(1).~~

~~Minor Bacteriological Repeat Monitoring Violation - means that not all of the repeat bacteriological samples were taken as required by R309-210-5(2)(a).~~

~~Minor Chemical Monitoring Violation - means that the required chemical sample(s) was not taken in accordance with R309-205, 210 or 215.~~

~~Non-Community Water System - means a public water system that is not a community water system or a non-transient non-community water system.~~

~~Non-Transient, Non-Community Water System - means a public water system that is not a community water system and that regularly serves at least 25 of the same persons for more than six months per year. Examples are separate systems serving workers and schools.~~

~~Not Approved - means the water system does not fully comply with the Rules as measured by this rule.~~

~~Public Water System - means a system, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least fifteen service connections, or regularly serves an average of at least twenty-five individuals for at least sixty days out of the year. Such term includes collection, treatment, storage and distribution facilities under control of the operator and used primarily in connection with the system. Additionally, the term includes collection, pretreatment or storage facilities used primarily in connection with system but not under such control.~~

~~Routine Chemical Monitoring Violation - means no routine chemical sample(s) was taken as required in R309-205, 210 or 215.~~

~~Sanitary Seal - A cap that prevents contaminants from entering a well through the top of the casing.~~

~~Shall - means that a particular action is obliged and has to be accomplished.~~

]Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

Corrective Action Plan - an agreement between the Division of Drinking Water and a public drinking water system establishing conditions and timelines for addressing significant deficiencies or E. coli contamination of a drinking water source.

Treatment Technique - A required process intended to reduce the level of a contaminant in drinking water.

Treatment Technique Violation - failure to correct significant deficiencies, address E. coil positive source contamination or adhere to specific terms of a Corrective Action Plan.

R309-400-4. Water System Ratings.

(1) The Director shall assign a rating to each public water system in order to provide a concise indication of its condition and performance. This rating shall be assigned based on the evaluation of the operation and performance of the water system in accordance with the requirements of the Rules. Points shall be assessed to [~~Not Approved and Corrective Action rated~~]water systems for each violation of these requirements (R309-100 through R309-705) as

the requirements apply to each individual water system. The number of points that shall be assessed [~~are~~]is outlined in the following sections of this rule. The number of points represents the threat to the quality of the water and thereby public health.

(2) Points are assessed in the following categories: Quality, Monitoring and Public Notification; Physical Deficiencies; Operator Certification; Cross Connection Control; Drinking Water Source Protection; Administrative Issues; and, Reporting and Record Maintenance.

(3) Based upon the accumulation of points, the public water system shall be assigned one of the following ratings[~~:~~]:

(a) Approved - In order to qualify for an Approved rating, the public water system must maintain a point total less than the following:

(i) Community water system - 150 points;

(ii) Non-Transient Non-Community water system - 120 points; and

(iii) Non-Community water system - 100 points.

(b) Not Approved - In order for a public water system to receive a Not Approved rating the accumulation of points for the water system must exceed the totals listed above.

(c) Corrective Action - In order to qualify for a Corrective Action rating the public water system must submit the following:

(i) A written agreement to the Director stating a willingness to comply with the requirements set forth in the Rules; and,

(ii) A compliance schedule and time table agreed upon by the Director outlining the necessary construction or changes to correct any physical deficiencies or monitoring failures; and,

(iii) Proof of the financial ability of the water system or that the financial arrangements are in place to correct the water system deficiencies.

(iv) The Corrective Action rating shall continue until the total project is completed or until a suitable construction inspection or sanitary survey is conducted to determine the effectiveness of the improvements or the accumulation of points drops below the threshold for a not approved rating whichever is later.

(4) The water system point accumulation shall be adjusted on a quarterly basis or as current information is available to the Director. The appropriate water system rating shall then be adjusted to reflect the current point total.

(5) The Director may at any time rate a water system [~~not approved~~]Not Approved, if an immediate threat to public health exists. This rating shall remain in place until such time as the threat is alleviated and the cause is corrected.

(6) Any water system may appeal its assigned rating or assessed points as provided in R305-7.

R309-400-5. Quality, Monitoring and Public Notification Violations.

(1) [~~Bacteriologie~~]Total Coliform Rule: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-200-5(6); or the monitoring requirements in R309-210-5; and the associated public notification requirements in R309-220. The bacteriological [~~assessments~~]points assessed shall be updated on a monthly basis with the total number of points reflecting the most recent twelve month period or the most recent 4 quarters for those water systems that collect bacteriological samples quarterly, unless otherwise noted.

(a) For each major bacteriological routine monitoring violation, 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(b) For each minor bacteriological routine monitoring violation, 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(c) For each major bacteriological repeat monitoring violation, 40 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(d) For each minor bacteriological repeat monitoring violation, 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(e) For each additional monitoring violation (R309-210-5(2)(e)), 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(f) For each non-acute bacteriological MCL violation (R309-200-5(6)(a)), 40 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(g) For each acute bacteriological MCL violation (R309-200-5(6)(b)), 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(2) Ground Water Rule: All points assessed to public water systems via this subsection are based on violations of the standards in R309-215-16. Points assessed for any significant deficiency shall be deleted as the deficiencies are corrected and are reported to the Director. The bacteriological points assessed shall be updated on a monthly basis with the total number of points reflecting the most recent 12-month period or the most recent four quarters for those water systems that collect bacteriological samples quarterly, unless otherwise noted.

(a) For failure to collect triggered source samples in violation of R309-215-16(2)(a)(i)(A) and (a)(i)(B), 40 points shall be assessed. For each failure to perform the associated public notification, 2 points shall be assessed.

(b) For failure to collect assessment source samples in violation of R309-215-16(2)(b)(i), 5 points shall be assessed. For each failure to perform the associated public notification, 2 points shall be assessed.

(c) For failure to correct a significant deficiency in violation of R309-215-16(4)(a)(i) and (ii), R309-215-16(4)(c) or R309-215-16(4)(d), 35 points shall be assessed. For each failure to perform the associated public notification, 2 points shall be assessed.

(d) For an Escherichia coli. in violation of R309-215-16(4)(b)(i) and (ii), 40 points shall be assessed. For each failure to perform the associated public notification, 2 points shall be assessed.

([~~2~~]3) Chemical: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-200-5; or the monitoring requirements in R309-205, 210 and 215; and the associated public notification requirements in R309-220. The chemical assessments shall be updated on a quarterly basis with the total number of points reflecting the most recent compliance period unless otherwise specified. Points for any chemical MCL violation shall remain on

record until the quality issue is resolved. Points for any monitoring violation shall be deleted as the required chemical samples are taken and the analytical results are reported to the Director.

(a) Inorganic and Metal Contaminants:

(i) For each major chemical monitoring violation for inorganic and metal contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for inorganic and metal contaminants, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for inorganic and metal contaminants, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(b) Sulfate (for non-community water systems only):

(i) For each major chemical monitoring violation for sulfate, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for sulfate, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for sulfate, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(c) Radiologic Contaminants:

(i) For each major chemical monitoring violation for radiological contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for radiological contaminants, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for radiological contaminants, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(d) Asbestos Contaminants:

(i) For each major chemical monitoring violation for source water or distribution system asbestos, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for source water or distribution system asbestos, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for source water or distribution system asbestos, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(e) Nitrate:

(i) For each routine chemical monitoring violation for nitrate, [~~35~~]50 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(ii) For each MCL exceedance of nitrate, [~~50~~]60 points shall be assessed. For each failure to perform the associated public notification, 10 points shall be assessed.

(f) Nitrite:

(i) For each routine chemical monitoring violation for nitrite, 35 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(ii) For each MCL exceedance of nitrite, 50 points shall be assessed. For each failure to perform the associated public notification, 10 points shall be assessed.

(g) Volatile Organic Chemicals:

(i) For each major chemical monitoring violation for volatile organic chemical contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for volatile organic chemical contaminants, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for volatile organic chemical contaminants, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(h) Pesticides/PCBs/SOCs

(i) For each major chemical monitoring violation for pesticide/PCB/SOC contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for pesticide/PCB/SOC contaminants, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for pesticide/PCB/SOC contaminants, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(i) Disinfection Byproducts:

(i) Total Trihalomethanes:

(A) For each routine chemical monitoring violation for total trihalomethanes, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for total trihalomethanes, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(ii) Haloacetic Acids (HAA5):

(A) For each routine chemical monitoring violation for HAA5, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for HAA5, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(iii) Bromate:

(A) For each routine chemical monitoring violation for bromate, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for bromate, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(iv) Chlorite:

(A) For each routine chemical monitoring violation for chlorite, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for chlorite, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(j) Disinfectant Residuals:

(i) Chlorine:

(A) For each routine chemical monitoring violation for chlorine, 10 points shall be assessed. R309-210-8(3)(a). For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for chlorine, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(C) For a disinfected system that does not maintain a trace residual at all points of the distribution system, 2 points shall be assessed. R309-105-10(1) & R309-200-5(7).

(D) For a disinfected system that lacks an adequate number of disinfection residual sample sites, 2 points shall be assessed. R309-210-8(3)(a)(i)(z15).

(ii) Chloramines:

(A) For each routine chemical monitoring violation for chloramines, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for chloramines, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(iii) Chlorine Dioxide:

(A) For each routine monitoring violation for chlorine dioxide, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each non-acute chlorine dioxide MCL violation, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(C) For each acute chlorine dioxide MCL violation, 50 points shall be assessed. For each failure to perform the associated public notification, 10 points shall be assessed.

(iv) Ground Water Rule, where a water system has received a 4-Log exemption from triggered source water monitoring:

(A) For a ground water treatment facility serving greater than 3300 population lacking equipment to measure chlorine residuals continuously entering the distribution system, 20 points shall be assessed. R309-215-10(1).

(B) For a ground water system serving greater than 3300 people failing to continuously monitor the residual disinfectant concentrations, 10 points shall be assessed. R309-215-16(3)(b)(iii)(A)(I).

(C) For a ground water system serving less than 3300 people failing to collect a daily grab sample during peak demand to monitor the residual disinfectant concentrations, 10 points shall be assessed. R309-215-16(3)(b)(iii)(A)(II).

(D) For a ground water system that during the past year, the disinfection process was not operated uninterrupted while water was being produced, points will be assessed based on monthly and quarterly treatment reports. R309-200-5(7).

(E) For a ground water system that is required to provide continuous disinfection but fails to do so, 10 points shall be assessed for each month the failure continues. R309-520-6(1).

(k) Lead and Copper:

(i) For each major chemical monitoring violation for lead and copper contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for lead and copper contaminants, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) A system [~~which~~]that fails to install, by the designated deadline, optimal corrosion control if the lead or copper action level has been exceeded shall be assessed 35 points. For each failure to perform the associated public notification, 10 point shall be assessed.

(iv) A system [~~which~~]that fails to install source water treatment if the source waters exceed the lead or copper action level shall be assessed 35 points. For each failure to perform the associated public notification, 10 points shall be assessed.

(v) A system [~~which~~]that fails to complete public notification/education if the lead/copper action levels have been exceeded shall be assessed 10 points for each calendar quarter that the system fails to provide public notification/education.

(vi) A system [~~which~~]that still exceeds the lead action level and is not on schedule for lead line replacement shall be assessed 5 points annually. For each failure to perform the associated public notification, 2 point shall be assessed.

(vii) A system that fails to notify its customers of their lead and copper sample results, 5 points shall be assessed.

(viii) A system that fails to send the lead and copper certification notice to the Division, 5 points shall be assessed.

(l) Groundwater Turbidity:

(i) For each monitoring violation for turbidity, 35 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(ii) For each confirmed MCL exceedance of turbidity, 50 points shall be assessed. For each failure to perform the associated public notification, 10 points shall be assessed.

(m) Surface Water Treatment:

(i) For water systems having sources, which are classified as under direct influence from surface water and which fail to abandon, retrofit or provide conventional complete treatment or [~~it's~~]its equivalent within 18 months of notification shall be assessed 150 points. For the associated failure to perform public notification 10 points shall be assessed. The points shall be assessed as the failure occurs and shall remain on record until adequate treatment is provided or the source is physically disconnected.

(ii) Quality and Monitoring: The surface water treatment assessments shall be updated on a monthly basis with the total number of points reflecting the most recent [~~twelve~~]12-month period.

(A) Turbidity:

(I) For each turbidity exceedance [~~which~~]that requires tier 1 notification under R309-220-5(1)(e) or (f), 50 points shall be assessed. For the associated failure to perform public notification, 10 points shall be assessed.

(II) For each turbidity exceedance [~~which~~]that requires tier 2 notification under R309-220-5(1)(e) or (f), 35 points shall be assessed. For the associated failure to perform public notification, 10 points shall be assessed.

(III) For each month where the percentage of turbidity interpretations meeting the treatment plant limit is less than 95 percent, 25 points shall be assessed. For the associated failure to perform public notification, 10 points shall be assessed.

(IV) For any period of time [~~which~~]that exceeds 4 hours where the system fails to continuously measure (or perform grab samples) the combined filter effluent turbidity, 50 points shall be assessed. For the associated failure to perform public notification, 10 points shall be assessed.

(V) For a water system [~~which~~]whose failure to repair continuous turbidity monitoring equipment within 5 working days, 50 points shall be assessed.

(B) Disinfection:

(I) For each instance where the disinfectant level in water entering the distribution system is less than 0.2 milligrams per liter for more than 4 hours, 25 points shall be assessed. For the associated failure to perform public notification, 5 points shall be assessed.

(II) For each instance where there is insufficient disinfectant contact time, 35 points shall be assessed. For the associated failure to perform public notification, 5 points shall be assessed.

(iii) Treatment Process Control:

(A) For each instance a treatment facility exceeds the assigned filter rates, 30 points shall be assessed.

(B) For each month a water system fails to verify calibration of the plant turbidimeters, 5 points shall be assessed.

(C) For each month a water system fails to submit a water treatment plant report, 50 points shall be assessed.

R309-400-6. Physical Facilities.

All points assessed to public water systems via this subsection are based upon violation of R309-500 through R309-705 unless otherwise noted. These points shall be assessed and updated upon notification of the [~~Executive Secretary~~]Director and shall remain until the violation or deficiency no longer exists.

(1) New Source Approval:

(a) Use of an unapproved source shall be assessed [~~150~~]200 points.

(2) Surface Water Diversion Structures and Impoundments:

(a) For each surface water intake structure that does not allow for withdrawal of water from more than one level if quality significantly varies with depth, 2 points shall be assessed. R309-515-5(5)(a).

[~~(b) Where no facilities exist for release (wasting) of less desirable water held in storage 2 points shall be assessed.~~

~~(c) Where the diversion facilities do not minimize frazil ice formation by holding intake velocities to less than 0.5 feet per second 2 points shall be assessed.~~

~~(d) Where diversion facilities are not adequately protected from damage by ice buildup 2 points shall be assessed.~~

] ([~~e~~]b) Where diversion facilities are not capable of keeping large quantities of fish or debris from entering the intake, 2 points shall be assessed. R309-515-5(5)(e).

([~~f~~]c) Where impoundment reservoirs have not had brush and trees removed to the high water level, 2 points shall be assessed. R309-515-5(6)(a).

([~~g~~]d) Where reservoir watershed management has not provided adequate precautions to limit nutrient loading, 10 points shall be assessed. R309-515-5(6)(d).

(3) Well Sources

(a) For each well [~~which~~]that is not equipped with a sanitary seal, or has any unsealed opening into the well casing, 50 points shall be assessed. R309-515-6(6)(i).

(b) For each well [~~which~~]that does not utilize food grade mineral oil for pump lubrication, 25 points shall be assessed. R309-515-8(2).

(c) For each well casing [~~which~~]that does not terminate at least 12 inches above the [~~pump~~]well house floor, 18 inches above the final ground surface, [~~and/or five feet above the highest flood elevation and is~~]or shows evidence of being subject to flooding, 20 points shall be assessed. R309-515-6(6)(b)(vi) and R309-515-6(13)(a) and (d).

(d) For each well fitted with a pitless adaptor that does not maintain a water tight seal throughout, 50 points shall be assessed[~~-50 points~~]. R309-515-6(12)(c)(x).

(e) For each wellhead that is not properly secured to protect the quality of the well water, 20 points shall be assessed. R309-515-6(13)(f).

(f) For each well that is equipped with a pump to waste line that does not discharge [~~though an approved air gap~~]with a minimum of 12-inch clearance to the flood rim, 20 points shall be assessed[~~-20 points~~]. R309-515-6(12)(d)(ix).

(g) For each well that is equipped with a pump to waste line [~~that is not properly screened~~]without a downturned discharge end covered with a No. 4 mesh screen, 5 points shall be assessed[~~-5 points~~]. R309-515-6(12)(d)(ix).

(h) For each well that is equipped with a pump to waste line that discharges to a receptacle without local authorization, 2 points shall be assessed[~~-2 points~~].

(i) For each well that does not have a means to [~~measure drawdown-1 point~~]permit periodic measurement of water levels, 2 points shall be assessed. R309-515-6(12)(e)(i) and (ii).

(j) For each well casing vent [~~which~~]that is not [~~properly~~]covered with a No. 14 or finer mesh screen, 2 points shall be assessed. R309-515-6(12)(d)(iii) and R309-550-6(6)(b).

(k) For each well casing vent [~~which~~]that is not [~~properly turned down~~]downturned, 2 points shall be assessed. R309-515-6(12)(d)(iii) and R309-550-6(6)(b). Also Division of Water Rights Rule R655-4-11.7.11.

(l) For each well casing vent [~~which~~]that does not [~~discharge through a proper air gap~~]have adequate clearance to prevent the contaminants from entering the well, 2 points shall be assessed. R309-515-6(12)(d)(iii) and R309-550-6(6)(b).

(m) For each well (excluding the naturally flowing wells) [~~which~~]that has discharge piping that is not [~~properly~~]equipped with 1) a smooth nosed sampling tap 2) check valve 3) pressure gauge 4) means of measuring flow, and 5) shut-off valve, 1 point shall be assessed for each component not present. R309-515-6(12)(d)(iv).

(n) For each well [~~where there is no~~]that pumps directly into a distribution system and does not have a means to release trapped air from the discharge piping (for example, release air

through an air release vacuum relief valve, through a pump to waste line or pumps directly to a tank), [~~6~~]5 points shall be assessed. R309-515-6(12)(d)(v).

(o) For each well house [~~which does not have a drain-to-daylight installed~~]that is not at least 6 inches above the final ground level, is not sloped to drain, or shows evidence of being subject to flooding, 5 points shall be assessed. R309-515-6(13)(b).

(p) For each well [~~which~~]that has a cross connection present in the discharge piping, [~~5~~]20 points shall be assessed. R309-105-12(1) and R309-515-6(12)(d)(iii).

(q) For each well [~~which has discharge piping equipped~~] with an air vacuum relief valve [~~which~~]on the well discharge piping that is not screened, 2 points shall be assessed. R309-515-6(12)(d)(v).

(r) For each well [~~which has discharge piping equipped~~] with an air vacuum relief valve [~~which~~]on the well discharge piping that is not [~~properly turned down~~]downturned, 2 points shall be assessed. R309-515-6(12)(d)(v).

(s) For each well [~~which has discharge piping equipped~~] with an air vacuum relief valve [~~which~~]on the well discharging piping that does not [~~discharge through an approved air gap~~]have a 6-inch clearance to prevent contaminants from entering the piping, 2 points shall be assessed. R309-515-6(12)(d)(v).

(t) For each well [~~which~~]that has rotating and electrical equipment that is not provided with protective guards, 2 points shall be assessed.

(4) Spring Sources:

(a) For each spring source [~~which~~]that allows surface water to stand or pond upon the spring collection area (within 50 feet from collection devices), 10 or 20 points shall be assessed. The number of points shall be based upon the size and extent of the ponding; the possible source (rainfall or incomplete collection); or the presence of moss or other indicators of long term presence of standing water. R309-515-7 (7)(i).

(b) For each spring area [~~which~~]that does not have a minimum of ten feet of relative impervious soil or an acceptable alternate design with liner, or the spring collection area shows evidence of damaged liner or impervious soil cover, 10 points shall be assessed. R309-515-7(7)(a) and (b).

(c) For each spring area that has [~~deep rooted~~]deep-rooted vegetation within the fenced collection area, 10 points shall be assessed. R309-515-7(7)(f).

(d) For each spring area that has deep rooted vegetation interfering with the spring collection, 10 points shall be assessed. R309-515-7(7)(f).

(e) For each spring with a spring collection/junction box [~~which~~]that does not have a proper shoebox lid, 5 points shall be assessed[~~ 5 points~~]. R309-515-7(7)(d) and R309-545-14(2).

(f) For each spring with a spring collection/junction box [~~which~~]that does not have a proper gasket on the lid, 5 points shall be assessed[~~ 5 points~~]. R309-515-7(7)(d) and R309-545-14(2).

(g) For each spring with a spring collection/junction box [~~which~~]that lacks an adequate air vent, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-15.

(h) For each spring with a spring collection/junction box with a vent that is not [~~properly~~]screened with No. 14 mesh screen, 2 points shall be assessed[~~ 2 points~~]. R309-515-7(7)(d) and R309-545-15.

(i) For each spring with a spring collection/junction box with a vent that is not [~~properly down turned~~]down-turned or inverted, 2 points shall be assessed[~~ 2 points~~]. R309-515-7(7)(d) and R309-545-15(1).

(j) For each spring with a spring collection/junction box with a vent that [~~is not properly air gapped~~]does not have sufficient clearance to prevent ice blockage, or is not at least 24 inches above the earthen cover, 2 points shall be assessed[~~ 2 points~~]. R309-515-7(7)(d) and R309-545-15(2).

(k) For each spring with a spring collection/junction box that lacks a raised access entry, at least 4 inches above the spring box or 18 inches above the earthen cover, 5 points shall be assessed[~~ 5 points~~]. R309-515-7(7)(d) and R309-545-14(1).

(l) For each spring with a spring collection/junction box [~~which~~]that is not secured against unauthorized access, 20 points shall be assessed[~~ 20 points~~]. R309-515-7(7)(d) and R309-545-14(3).

(m) For each spring collection area without a proper fence, [~~(unless the spring is located in a remote area where no grazing or public access is possible as specified in R309-515-7(7)(c) ~~]10 points shall be assessed. R309-515-7(7)(e).

(n) For each spring collection area that does not have a diversion channel, or berm capable of diverting surface water away from the collection area, 5 points shall be assessed. R309-515-7(7)(g).

(o) For each spring system [~~which~~]that does not have a permanent flow measuring device, 5 points shall be assessed. R309-515-7(7)(h).

(p) For each spring area with an overflow[~~/drain~~]or a combined overflow/drain discharge that is not [~~properly~~]screened with a No. 4 mesh screen, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-13.

(q) For each spring collection/junction box overflow that does not have [~~adequate~~]a freefall of [~~(~~]12 to 24 inches[~~)~~] between the [~~drain invert~~]bottom of the discharge pipe and the surrounding ground, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-13.

(r) For each spring collection/junction box that has any unsealed opening(s) resulting in public health risk, 50 points shall be assessed. R309-515-7(7)(d) and R309-545-9(1).

(5) Pump Stations.

[~~(a) For a pumping facility which does not have a positive-acting check valve between the pump and the isolation valve 1 point shall be assessed. R309-540-5(6)(a).~~

] ([~~b~~]a) For a pumping facility [~~which~~]that does not have a standard pressure gauge on the discharge line, 1 point shall be assessed. R309-540-5(6)(c[-])(i).

[~~(c) For a pumping facility which does not have a flow measuring device on the discharge piping 1 point shall be assessed. R309-540-5(6)(c)(iii).~~

~~(d) For a pumping facility which does not have isolation valve(s) on the discharge piping 1 point shall be assessed. R309-540-5(6)(a).~~

~~(e) For a pumping facility which does not have isolation valve(s) on the suction side of each pump 1 point shall be assessed. R309-540-5(6)(a).~~

] ([~~f~~]b) For a pumping facility building without adequate drainage or showing evidence of flooding, 5 points shall be assessed. R309-540-5(2)(a)[-](v) and (vi).

([~~g~~]c) For a pumping facility where the discharge line from the air release valve is not [~~properly~~]screened with number 14 non-corrodible mesh screen, 2 points shall be assessed. R309-540-5(6)(b)(ii) and R309-550-6(6)([~~a~~]b).

(d) For an air release valve located within a building, if the discharge line terminates less than six inches above the floor, 2 points shall be assessed. R309-515-6(12)(d)(v) and R309-540-5(6)(b)(ii).

([~~h~~]e) [~~For a pumping facility where the discharge line from the air release valve is not properly air gapped 2 points shall be assessed.~~]For an air release valve located in a chamber, if the air release valve discharge piping terminates less than 12 inches above grade, or less than one foot above the top of the pipe where the chamber is not subject to flooding, 10 points shall be assessed. R309-540-5(6)(b)(ii) and R309-550-6(6)([~~a~~]b).

([~~i~~]f) For a pumping facility where the discharge line from the air release valve is not [~~properly~~]down-turned, 2 points shall be assessed. R309-540-5(6)(b)(ii) and R309-550-6(6)([~~a~~]b).

[~~(j) For a pumping facility where the building and equipment is not protected from flooding 5 points shall be assessed. R309-540-5(2)(a)(ii), (iii) and (iv).~~

] ([~~k~~]g) For a pumping facility where there is inadequate heating, lighting or ventilation, 5 points shall be assessed. R309-540-5(2)(e), (f) and (g).

([~~l~~]h) For a pumping facility where there are cross connections present, [~~5~~]20 points shall be assessed. [~~R309-540-5(2)(h)~~]R309-105-12(1).

([~~m~~]i) For [~~a~~]an inline booster pumping facility designed to provide pressure directly to the distribution system, which does not have at least two [~~equal and functioning~~]pumping units such that with any one pump out of service the remaining pump or pumps are capable of meeting the peak day demand of the specific portion of the system served, 20 points shall be assessed. R309-540-5(4)(b).

[~~(n) For a pumping facility which cannot meet the demand when the largest pumping unit is out of service 20 points shall be assessed. R309-540-5(4)(b).~~

~~(o) For a pumping facility which utilizes oil lubrication not suitable for human consumption 25 points shall be assessed. R309-105-10(7).~~

] ([~~p~~]j) For a pumping facility which does not have protective guards on rotating and electrical equipment, 2 points shall be assessed. [~~R309-545-19(1)~~]R309-525-21.

[~~(q) For a pumping facility which does not have an air release valve or other means to release trapped air located on the pump discharge piping 6 points shall be assessed. R309-515-6(12)(e)(v).~~

] ([~~r~~]k) For a pumping facility which is not secured against unauthorized access shall be assessed, [~~20~~]5 points. R309-540-5(1)(a)(v).

(6) Hydropneumatic pressure tanks.

[~~(a) For a pressure tank without at least two pumping units 20 points shall be assessed. R309-540-6(5).~~

~~(b) For a pressure tank without a bypass piping to permit operation of the system while it is being repaired or painted 2 points shall be assessed. R309-540-6(4).~~

~~(c) For a pressure tank which lacks a 24 inch access manhole where applicable 1 point shall be assessed. R309-540-6(6).~~

~~(d) For a pressure tank which lacks a drain 1 point shall be assessed. R309-540-6(6).~~

~~(e) For a pressure tank which lacks a pressure gauge 1 point shall be assessed. R309-540-6(6).~~

~~(f) For a pressure tank which lacks a water sight glass where applicable 1 point shall be assessed. R309-540-6(6).~~

~~(g) For a pressure tank which lacks automatic or manual air blow-off 1 point shall be assessed. R309-540-6(6).~~

~~(h) For a pressure tank which lacks a means to add air 1 point shall be assessed. R309-540-6(6).~~

~~(i) For a pressure tank which lacks pressure operated start-stop controls for the pump(s) 1 point shall be assessed. R309-540-6(6).~~

] (a) For diaphragm or air tanks located below ground without adequate provisions for drainage, maintenance and flood protection, 10 points shall be assessed. R309-540-6(2).

([~~j~~]b) For a pressure tank with a pump cycle that cycles more frequently than once every 4 minutes, 5 points shall be assessed. R309-540-6(5).

[~~(k) For a pressure tank and controls that are not secured against unauthorized access 20 points shall be assessed. R309-545-14(3).~~

] (7) Storage:

(a) A water system with [~~an~~]uncovered finished water storage [~~reservoir~~]shall immediately be assessed a rating of not approved, 200 points shall be assessed. R309-545-9(1) and (2).

(b) For each storage [~~reservoir cover that is not sloped so water will drain~~]tank roof showing evidence of water ponding with deterioration, 10 points shall be assessed. R309.545-9(4).

(c) For each storage [~~reservoir~~]tank that does not have an access [~~opening~~]to the interior for cleaning and maintenance, 9 points shall be assessed. R309-545-14.

(d) For each storage [~~reservoir~~]tank access that does not have a shoebox type lid with a minimum of a [~~2 inch~~]2-inch overlap, 3 points shall be assessed. R309-545-14(2).

(e) For each storage [~~reservoir~~]tank access that lacks a proper gasket between the lid and frame, 3 points shall be assessed. R309-545-14(2).

(f) For each storage [~~reservoir~~]tank access that lacks a minimum rise of 4 inches above the tank roof or a minimum of [~~(~~]18 inches above an earthen cover[~~)~~], 3 points shall be assessed. R309-545-14(1).

(g) For each storage [~~reservoir~~]tank that is not vented, 6 points shall be assessed. R309-545-15.

(h) For each finished water storage [~~reservoir~~]tank vent that is not [~~turned down~~]downturned or covered from rain and dust, 2 points shall be assessed. R309-545-15(1).

(i) For each storage [~~reservoir~~]tank vent that does not terminate a minimum of 24 [~~to 36~~]inches above the surface of the storage tank roof if the tank is a buried structure, 2 points shall be assessed. R309-545-15(2).

(j) For each storage [~~reservoir~~]tank vent that is not screened with number 14 non-corrodible mesh screen, [~~with a larger guage protection screen~~]2 points shall be assessed. R309-545-15(4).

(k) For each storage [~~reservoir~~]tank that lacks an overflow, 15 points shall be assessed. R309-545-13.

(l) For each storage [~~reservoir~~]tank overflow that does not terminated 12 to 24 inches above the ground, 5 points shall be assessed.R309-545-13.

(m) For each storage [~~reservoir~~]tank overflow that is not screened with number 4 non-corrodible mesh screen, 5 points shall be assessed. R309-545-13(3).

(n) For each storage [~~reservoir~~]tank overflow that is connected to a sewer system without an [~~appropriate~~]adequate air gap, 5 points shall be assessed. R309-545-13(5).

(o) For each storage [~~reservoir~~]tank with a drain that [~~is not properly screened 5 points shall be assessed.~~

~~(p) For each storage reservoir with a drain that~~]does not discharge through a physical airgap of at least 2 pipe diameters, 5 points shall be assessed. R309-545-10(1).

([~~q~~]p) For each storage [~~reservoir~~]tank with inadequate or improper means of site drainage or showing evidence of standing surface water within 50 feet of the tank, 5 points shall be assessed. R309-545-7(4).

([~~r~~]q) For each storage [~~reservoir~~]tank with any unsealed roof or wall penetrations, 50 points shall be assessed. R309-545-9(2).

([~~s~~]r) For each storage [~~reservoir~~]tank where the roof and sidewalls [~~are not water tight~~]show signs of deterioration, 10 to 50 points shall be assessed [~~10 to 50 points~~]based upon the size and number of cracks, the loss of structural integrity, and the access of contamination to the drinking water. R309-545-9(1).

([~~t~~]s) For each storage [~~reservoir~~]tank without [~~an~~]a safe access [~~ladder~~](such as ladders for tanks in excess of 20 feet, ladder guards, [~~balcony~~]or railings) or safely located entrance hatches, 2 points shall be assessed. R309-545-19(1), (2) and (3).

([~~u~~]t) For each storage [~~reservoir~~]tank with internal coatings not in compliance with ANSI/NSF standard 61, 30 points shall be assessed. R309-545-11.

([~~v~~]u) For a storage facility [~~which~~]that is not secured against unauthorized access, 20 points shall be assessed[~~ 20 points~~]. R309-545-14(3).

(8) Distribution System:

(a) A water system [~~which~~]that fails to provide [~~at least~~] the minimum water [~~pressure~~]pressures as required in R309-105-9 at all times and at all locations within the distribution system, 50 points shall be assessed[~~ 50 points~~]. R309-105-9 and R309-550-5(1).

(b) A water system using [~~unapproved~~]pipe and materials not meeting the ANSI/NSF 61 standard shall be assessed 30 points. R309-550-6.

(c) A water system with pipelines installed [~~improperly~~] without adequate [~~clearance or~~]separation distance from the sanitary sewer lines shall be assessed 30 points. R309-550-7.

(d) A new water system constructed after January 1, 2007 or an existing water system modification without adequate pressure as defined in R309-105-9(2) shall be assessed 50 points.

(e) A water system which has a distribution line that crosses under a surface water body without adequate protection as outlined in R309-550-8(8)(b) shall be assessed 50 points.

(f) A water system which has distribution system flushing devices, blow-offs or air relief valves, which are directly connected to a sewer or do not have a proper air gap, shall be assessed 20 points. R309-550-6 and R309-550-9.

(g) [~~A~~]For a water system that does not properly follow the AWWA disinfection standards [~~as adopted in R309-105-10(2) and (3)~~]10 points shall be assessed[~~ 10 points~~]. R309-550-8(10).

(h) [~~A~~]For a water system that is required by the local fire authority to provide fire protection or [~~supplies~~]has fire hydrants connected with water mains [~~that are~~]less than 8 [~~inched~~]inches in diameter, 5 points shall be assessed[~~ 5 points~~]. These points will only be assessed for water mains installed after 1995. R309-550-5(4) and (5).

(i) For each air [~~vacuum release~~]relief valve vent piping, which is not [~~properly~~]screened with a No. 14 mesh and [~~turned down~~]downturned, 10 points shall be assessed. R309-550-6(6)(b).

(j) For [~~each~~]an air [~~vacuum~~]release valve located in a chamber, if the air release valve [~~where the~~]discharge piping terminates less than 12 inches above grade or less than one foot above the top of the pipe where the chamber is not subject to flooding, [~~does not extend a proper distance above the ground and flood level~~]10 points shall be assessed. R309-550-6(6)(b).

(k) For each air [~~vacuum release valve~~]relief valve located in a chamber without a drain or adequate sump, or showing evidence of being subject to flooding, 30 points shall be assessed. R309-550-7.

[~~(l) For each air vacuum release valve chamber which shows evidence of flooding 30 points shall be assessed.~~

] ([~~m~~]l) For each air vacuum release valve chamber [~~which~~]that is flooded at the time of inspection, 50 points shall be assessed.

(m) For an unprotected cross-connection in the distribution system as required in R309-550-9, 50 points shall be assessed.

(9) Quantity requirements

(a) A water system [~~which does not have~~]without sufficient source capacity to meet peak [~~daily~~]day and average yearly flow requirements, from 10 to 50 points shall be assessed[~~ from 10 to 50 points~~]. The number of points shall be based upon the severity of the shortage, including the number of times and duration of water outages or low pressure. R309-510-7.

(b) A water system [~~which does not have~~]without sufficient storage capacity to meet average [~~daily flow requirements~~]day demand, plus the required fire suppression volume if applicable, 10 to 50 points shall be assessed[~~ from 10 to 50 points~~]. The number of points shall be based upon the severity of the shortage including the number of times and duration of water outages. R309-510-8.

R309-400-7. Treatment Processes.

(1) General Treatment.

[~~(a) For a treatment facility with chemical feeders and pumps that operate at lower than 20 percent of the feed range 2 points shall be assessed. R309-525-11(7)(a)(viii).~~

] ([~~b~~]a) For a treatment facility without anti-siphon control to assure that liquid chemical solutions cannot be siphoned through solution feeders into the process units, [~~as required in R309-525-11(9)(c)~~]2 points shall be assessed. R309-525-11(9)(b)(ii) and (c).

([e]b) For a treatment facility with a process tank that is not properly labeled to designate the chemical contained, 2 points shall be assessed. R309-525-11(8)(c)(vii).

([~~d~~]c) For a treatment facility with chemicals not stored in covered or unopened shipping containers, unless the chemical is

transferred into a covered storage unit, 2 points shall be assessed. R309-525-11(6)(a)(iii).

([~~e~~]d) For a treatment facility with no cross connection control provided to assure that no direct connections exist between any sewer and the drain or overflow from the feeder, solution chamber, or tank by providing that all pipes terminate at least six inches or two pipe diameters, whichever is greater, above the overflow rim of a receiving sump, conduit, or waste receptacle, [~~2~~]10 points shall be assessed. R309-525-11(9)(b)(iii).

([~~f~~]e) For a treatment facility with no spare parts available for all feeders to replace parts [~~which~~]that are subject to wear and damage, 2 points shall be assessed. R309-525-11(7)(b)(v).

[~~(g) For a treatment facility with chemical feed rates not proportional to flows 10 points shall be assessed. R309-525-11(7)(d)(ii).~~

~~(h) For a treatment facility with liquid chemical feeders without anti-siphon protection in each feed pump 2 points shall be assessed. R309-525-11(9)(c). Tg12~~

~~(i) For a treatment facility with feed lines not protected against freezing 2 points shall be assessed. R309-525-11(8)(d)(i)(C).~~

~~(j) For a treatment facility with feed lines not made of durable, corrosion resistant material 2 points shall be assessed. R309-525-11(8)(d)(i)(A).~~

~~(k) For a treatment facility with any chemical not conducted from the feeder to the point of application in a separate conduit 2 points shall be assessed. R309-525-11(7)(a)(v).~~

] ([~~l~~]f) For a treatment facility where incompatible chemicals are fed, stored or handled together, 2 points shall be assessed. R309-525-11(7)(a)(iv).

([~~m~~]g) For a treatment facility where daily operating records do not reflect chemical dosages and total quantities used, 2 points shall be assessed. R309-105-14[~~(2)(a)~~](3).

([~~n~~]h) For a water system that fails to maintain and properly calibrate all instrumentation needed to verify the treatment process, 2 points shall be assessed. R309-525-25(4).

([~~o~~]i) For a treatment facility without the means to accurately measure the quantities of chemicals used, [~~2~~]20 points shall be assessed. R309-525-11(7)(a)(i) and R309-525-11(6)(b)(iii).

([~~p~~]j) A water system that does not keep acids and caustics in closed corrosion-resistant shipping containers or storage units, 2 points shall be assessed. R309-525-11(11)(a)(i).

([~~q~~]k) For a treatment facility that does not have the vent hose from the feeder to discharge to the outside atmosphere above grade or have the end covered with #14 non-corrodible mesh screen, 2 points shall be assessed. R309-520-[~~10(2)(f)~~]7(2)(f).

([~~r~~]l) For a treatment facility that uses any chemical that is added to water being treated for use in a public water system for human consumption that does not comply with ANSI/NSF Standard 60, 25 points shall be assessed. R309-525-11(5).

([~~s~~]m) For a treatment facility that does not have a finished water sampling tap(s), 2 points shall be assessed. R309-525-18.

([~~t~~]n) For a treatment facility that is not performing adequate process control testing consistent with the specific treatment process, 30 points shall be assessed. R309-525-19.

([~~u~~]o) For a surface water treatment facility that does not have continuous residual disinfection equipment to [~~measure continuously~~]measure the residual in mg/L entering the distribution system, 20 points shall be assessed. R309-215-10(1).

[~~(v) For a treatment facility without provisions for measuring quantities of chemical used to prepare feed solutions 50 points shall be assessed. R309-525-11(6)(b)(iii).~~

] ([~~w~~]p) For a treatment facility without provisions for disposing of empty bags, drums or barrels by an acceptable procedure [~~which~~]that will minimize operator exposure to dusts, 2 points shall be assessed. R309-525-11(6)(b)[~~(ii)~~] and (c).

([~~x~~]q) For a treatment facility [~~which~~]that does not provide cross connection control on the make-up waterlines discharging to solution tanks, [~~5~~]10 points shall be assessed. R309-525-11(9)([e]b)(i).

([~~y~~]r) For a treatment facility with solution tank overflow pipes that do not have a free fall discharge or are not located where noticeable, 2 points shall be assessed. R309-525-11(8)(b)(v)[~~(A)~~].

[~~(z) For a treatment facility with subsurface locations for solution tanks that are not free from sources of possible contamination 2 points shall be assessed. R309-525-11(8)(b)(iv)(A).~~

~~(z1) For a treatment facility with subsurface locations for solution tanks that do not assure positive drainage for ground waters, accumulated water, chemical spills and overflows 2 points shall be assessed. R309-525-11(8)(b)(iv)(B).~~

~~(z2) For a treatment facility with a motor driven transfer pump that is not provided a liquid level limit switch and an overflow from the day tank, which will drain by gravity back into the bulk storage tank 10 points shall be assessed. R309-525-11(8)(e)(v).~~

] ([~~z3~~]s) For a treatment facility without adequate spill containment provisions, 2 points shall be assessed. R309-525-11(6)(a)(iv)(B)[~~(v)~~].

([~~z4~~]t) For a treatment facility with acid storage tanks that are not vented to the outside atmosphere with separate screened vents, 2 points shall be assessed. R309-525-11(8)(b)(vi).

[~~(z5) For a treatment facility without a means to measure the solution level in the tank 2 points shall be assessed. R309-525-11(8)(b)(ii).~~

] ([~~z6~~]u) For a treatment facility without provisions for the proper disposal of water treatment plant waste (such as sanitary, laboratory, sludge, and filter backwash water), 5 points shall be assessed. R309-525-23.

[~~(z7) For a treatment facility that does not use of either a volumetric or gravimetric chemical feeder for dry chemicals 2 points shall be assessed. R309-525-11(7)(c)(i).~~

] ([~~z8~~]v) For a [~~disinfection~~]treatment facility where cross connection control is not provided on the feed lines to the solution tanks, 10 points shall be assessed. [~~R309-520-10(1)(h)~~]R309-525-11(9)(b) and (c).

([~~z9~~]w) For a treatment facility that does not have a means to measure water flow rate, 10 points shall be assessed.

([~~z10~~]x) For a surface water treatment facility where the piping [~~feed lines are~~]is not labeled and color coded [~~for identification~~]to identify the direction of flow and the contained liquid, 2 points shall be assessed. R309-525-8.

([~~z11~~]y) [~~For a treatment facility which is~~]Treatment facilities not secured against unauthorized access, 20 points shall be assessed[~~ 20 points~~].

(z) For a treatment facility using expired chemical reagents for process control, 5 points shall be assessed.

(aa) For a treatment facility with no access to lab or test kits for process testing, 2 points shall be assessed. R309-525-17(1).

(bb) For a treatment facility lacking cross connection control for the in-plant water supply, 10 points shall be assessed. R309-525-11(9)(b)

(2) Disinfection.

(a) General.

[~~(a) For a disinfection facility without an automatic switch over of chlorine cylinders to assure continuous disinfection 2 points shall be assessed. R309-520-10(2)(a).~~

~~(b) For a disinfection facility without scales for weighing cylinders 2 points shall be assessed. R309-520-10(2)(k).~~

~~(c) For a disinfection facility without a leak repair kit for 1 ton cylinders 15 points shall be assessed. R309-520-10(2)(p).~~

~~(d) For a disinfection facility without respiratory equipment available and stored at a convenient location 5 points shall be assessed. R309-520-10(2)(o).~~

~~(e) For a disinfection facility where the chlorine gas feed and storage area is not enclosed and separated from other operating areas 2 points shall be assessed. R309-520-10(2)(i).~~

] ([~~f~~]i) For a [~~disinfection~~]chlorination facility which is not heated, lighted or ventilated as necessary to assure proper operation or the equipment and serviceability, 2 points shall be assessed. R309-520-[~~10~~]7(1)(l).

[~~(g) For a disinfection facility where the chlorination equipment rooms are not vented such that the ventilating fan(s) take suction near the floor, as far as practical from the door and air inlet, with the point of discharge so located as not to contaminate air inlets of any rooms or structures 5 points shall be assessed. R309-520-10(2)(e) (ii).~~

~~(h) For a disinfection facility where the chlorination equipment rooms are not vented such that air inlets are through louvers near the ceiling 2 points shall be assessed. R309-520-10(2)(e) (iii).~~

~~(i) For a disinfection facility where the chlorination equipment rooms are not vented such that louvers for chlorine room air intake and exhaust facilitate airtight closure 2 points shall be assessed. R309-520-10(2)(e) (iv).~~

~~(j) For a disinfection facility where the chlorination equipment rooms are not vented such that separate switches for the fans and lights are outside of the room, at the entrance to the chlorination equipment room and protected from vandalism 2 points shall be assessed. R309-520-10(2)(e) (iv).~~

~~(k) For a disinfection facility where the vent hose from the feeder to discharge to the outside atmosphere is not above grade or does not have the end covered with #14 non-corrodible mesh screen 2 points shall be assessed. R309-520-10(2)(f).~~

~~(l) For a disinfection facility without a bottle of ammonium hydroxide (56%) shall be available for leak detection 2 points shall be assessed. R309-520-10(2)(p).~~

~~(m) For a disinfection facility without full and empty cylinders of chlorine gas restrained in position to prevent upset 2 points shall be assessed. R309-520-10(2)(i).~~

~~(n) For a disinfection facility with full and empty cylinders of chlorine gas stored in rooms not separated from ammonia storage 2 points shall be assessed. R309-520-10(2)(i).~~

~~(o) For a disinfection facility with full and empty cylinders of chlorine gas stored in areas in direct sunlight or exposed to excessive heat 2 points shall be assessed. R309-520-10(2)(i).~~

~~(p) For a disinfection facility where the chlorine room is constructed in a manner that any openings between the chlorine room and the remainder of the plant are not sealed 2 points shall be assessed. R309-520-10(2)(h)(ii).~~

~~(q) For a disinfection facility utilizing 1 ton cylinders without a means of leak detection available 15 points shall be assessed. R309-520-10(2)(p).~~

~~(r) For a disinfection facility without pressure gauges on the inlet and outlets of each chlorine injector 2 points shall be assessed. R309-520-10(2)(b).~~

] ([~~s~~]ii) For a disinfection facility without cross connection control on the solution feeders into the process units as required in R309-525-11(9)(c), [~~5~~]10 points shall assessed. R309-525-11(9)(b)(ii).

([~~t~~]iii) For a [~~disinfection~~]chlorination facility where there is no standby disinfection equipment of sufficient capacity available to replace the largest unit, 10 points shall be assessed. R309-520-[~~10~~]7(1)(k).

[~~(u) For a disinfection facility where a leak detector is provided and not equipped with both an audible alarm and a warning light 5 points shall be assessed. R309-520-10(2)(p).~~

] (iv) For a disinfection facility where the correct reagent is not used for testing free disinfectant residual, 2 points shall be assessed.[~~R309-520-15(3).~~]

[~~(w) For a disinfection facility where hypochlorite liquid feeders are not a positive displacement type 10 points shall be assessed. R309-520-10(1)(b).~~

] ([~~x~~]v) For a treatment facility where the pre- and post-chlorination [~~systems~~]processes are not independent of each other, to prevent possible siphoning of partially treated water into the clear well, 50 points shall be assessed. R309-525-11(9)(b)(iv).

[~~(y) For a disinfection facility where each tank is not provided with a valved drain or protected against backflow in accordance with R309-11(10)(b) and (c) 2 points shall be assessed. R309-525-11(8)(b)(vii).~~

~~(z) For a disinfection facility where overflow pipes are not located where they can be readily monitored 2 points shall be assessed. R309-520-10(1)(g).~~

~~(z1) For a disinfection facility where storage and day tanks are not provided with separate vents that terminate to the outside atmosphere 2 points shall be assessed. R309-525-11(8)(b)(vi).~~

~~(z2) For a disinfection facility where a means consistent with the nature of the chemical solution is not provided in a day tank to maintain a uniform strength of solution 2 points shall be assessed. R309-525-11(d)(8)(c)(iv).~~

~~(z3) For a disinfection facility where any chemical is not conducted from the feeder to the point of application in separate conduit 2 points shall be assessed. R309-525-11(7)(a)(v).~~

] ([~~z4~~]vi) For a disinfection facility where chemical solution tanks are not kept covered, 2 points shall be assessed. R309-525-11(8)(b)(iii).

([~~z5~~]vii) For a disinfection facility without disinfectant residual test equipment, 2 points shall be assessed. R309-520-[~~10~~]7(1)(j).

([~~z6~~]viii) For a disinfection facility where there is no means to measure the volume of water treated, 2 points shall be assessed. R309-520-[~~10~~]7(1)(i).

[~~(z7) For a disinfection facility where provisions are not made for proper storage of sodium chlorite to eliminate any danger of explosion 2 points shall be assessed. R309-525-11(11) (b)(i).~~

~~(z8) For a disinfection facility where sodium chlorite is not stored by itself in a separate room and away from organic materials which would react violently with sodium chlorite 2 points shall be assessed. R309-525-11(11) (b)(i)(A).~~

~~(z9) For a disinfection facility where sodium chlorite storage structures are not constructed of noncombustible materials 2 points shall be assessed. R309-525-11(11)(a)(b)(i)(B).~~

~~(z10) For a disinfection facility where sodium chlorite storage structure is not located in an area where a fire may occur, water should be available to keep the sodium chlorite area sufficiently cool to prevent decomposition from heat and resultant potential explosive conditions 2 points shall be assessed. R309-525-11(11) (b)(i)(C).~~

]

(b) Gas chlorination.

(i) For a gas chlorination facility without an automatic switch over of chlorine cylinders to assure continuous disinfection, 2 points shall be assessed. R309-520-7(2)(a).

(ii) For a gas chlorination facility without scales for weighing cylinders, 2 points shall be assessed. R309-520-7(2)(k).

(iii) For a gas chlorination facility without a leak repair kit, 15 points shall be assessed. R309-520-7(2)(p).

(iv) For a gas chlorination facility without respiratory equipment available and stored at a convenient location, 5 points shall be assessed. R309-520-7(2)(o).

(v) For a gas chlorination facility housed in a water treatment plant building where the chlorine gas feed and storage area is not enclosed and separated from other operating areas, 2 points shall be assessed. R309-520-7(2)(h).

(vi) For a gas chlorination facility where the chlorination equipment rooms are not vented such that the ventilating fan(s) take suction near the floor, as far as practical from the door and air inlet, with the point of discharge so located as not to contaminate air inlets of any rooms or structures, 5 points shall be assessed. R309-520-7(2)(e)(ii).

(vii) For a gas chlorination facility where the chlorination equipment rooms are not vented such that air inlets are through louvers near the ceiling, 2 points shall be assessed. R309-520-7(2)(e)(iii).

(viii) For a gas chlorination facility where the chlorination equipment rooms are not vented such that separate switches for the fans and lights are outside of the chlorine room, at the entrance to the chlorination equipment room and protected from vandalism, 2 points shall be assessed. R309-520-7(2)(e)(v).

(ix) For a gas chlorination facility where the vent hose from the feeder to discharge to the outside atmosphere is not above grade or does not have the end covered with #14 non-corrodible mesh screen, 2 points shall be assessed. R309-520-7(2)(f).

(x) For a gas chlorination facility without a bottle of ammonium hydroxide (56%) available for leak detection, 2 points shall be assessed. R309-520-7(2)(p).

(xi) For a gas chlorination facility where full and empty cylinders of chlorine gas are not restrained in position to prevent upset, 2 points shall be assessed. R309-520-7(2)(i)(ii).

(xii) For a gas chlorination facility with full and empty cylinders of chlorine gas stored in areas in direct sunlight or exposed to excessive heat, 2 points shall be assessed. R309-520-7(2)(i)(iii).

(xiii) For a gas chlorination facility in a water treatment plant building where the chlorine room is constructed in a manner that any openings between the chlorine room and the remainder of the plant are not sealed, 2 points shall be assessed. R309-520-7(2)(h)(ii).

(xiv) For a gas chlorination facility housed in a water treatment plant building that lacks outward-opening doors with panic bars, 2 points shall be assessed. R309-520-7(2)(h)(iii).

(xv) For a gas chlorination facility housed in a water treatment plant building with floor drains that do not discharge to the outside of the building and are not connected to other internal or external drain systems, 5 points shall be assessed. R309-520-7(2)(h)(iv).

(xvi) For a gas chlorination facility without a means of chlorine leak detection, such as a bottle of ammonia hydroxide solution or chlorine leak detection equipment, 15 points shall be assessed. R309-520-7(2)(p).

(c) Chlorine dioxide.

(i) For a chlorine dioxide disinfection facility where provisions are not made for proper storage of sodium chlorite to eliminate any danger of explosion 2 points shall be assessed. R309-520-10(3)(b) and R309-525-11(11)(b)(i).

(ii) For a chlorine dioxide disinfection facility where sodium chlorite is not stored by itself in a separate room and away from organic materials that would react violently with sodium chlorite, 2 points shall be assessed. R309-520-10(5)(a) and R309-525-11(11) (b)(i)(A).

(iii) For a chlorine dioxide disinfection facility where sodium chlorite storage structures are not constructed of noncombustible materials, 2 points shall be assessed. R309-520-10(3)(b)(iv) and R309-525-11(11)(b)(i)(B).

(iv) For a chlorine dioxide disinfection facility where a sodium chlorite storage structure is not located in an area where a fire may occur, water should be available to keep the sodium chlorite area sufficiently cool to prevent decomposition from heat and resultant potential explosive conditions. 2 points shall be assessed if this is not the case. R309-520-10(4)(d) and R309-525-11(11)(b)(i)(C).

(v) For a chlorine dioxide disinfection facility that stores combustible or reactive materials in the operating area, 2 points shall be assessed. R309-520-10(5)(a).

(vi) For a chlorine dioxide disinfection facility that does not store personal protective equipment nearby, 5 points shall be assessed. R309-520-10(5)(c)

(vii) For a chlorine dioxide disinfection facility that does not have an emergency eyewash and shower immediately outside the operating area, 2 points shall be assessed. R309-520-10(3)(b)(viii)

(viii) For a chlorine dioxide disinfection facility that lacks an emergency shutoff for flows to the chlorine dioxide generator, 2 points shall be assessed. R309-520-10(3)(b)(ix)

(ix) For a chlorine dioxide disinfection facility that lacks a distinguishable alarm triggered by an ambient air chlorine dioxide sensor, 2 points shall be assessed. R309-520-10(3)(b)(v)

(x) For a chlorine dioxide disinfection facility that lacks wash down water available in the operating area, 2 points shall be assessed. R309-520-10(3)(b)(xvi)

(xi) For a chlorine dioxide disinfection facility that does not maintain the temperature of the chlorine dioxide operating area between 60 and 100°F, 2 points shall be assessed. R309-520-10(5)(d)

(xii) For a chlorine dioxide disinfection facility that lacks an Operation and Maintenance Manual including safety and emergency response procedures, 2 points shall be assessed. R309-520-10(5)(f)

(d) Ultraviolet (UV)

(i) For a UV disinfection facility that lacks an operating procedure in place to handle UV lamp breakage, power supply interruption, response to alarms, 2 points shall be assessed. R309-520-8(4)(b)

(ii) For a UV disinfection facility that does not calibrate and operate UV intensity sensors per manufacturer's instruction, 2 points shall be assessed R309-520-8(4)

(iii) For a UV disinfection facility that does not use ANSI/NSF Standard 60 chemicals in the cleaning of the UV, 25 points shall be assessed. R309-520-8(3)(j)

(iv) For a UV disinfection facility that can't isolate the UV disinfection system or each UV reactor for maintenance, 2 points shall be assessed. R309-520-8(3)(g)

(v) For a UV disinfection facility that lacks a backup power source for the UV disinfection system, 2 points shall be assessed. R309-520-8(3)(l)

(vi) For a UV disinfection facility that lacks a redundant primary disinfection mechanism, 5 points shall be assessed. R309-520-8(3)(m)

(e) Ozone

(i) For an ozone disinfection facility without a minimum of two ozone aqueous residual analyzers, 2 points shall be assessed. R309-520-9(7)(c)

(ii) For an ozone disinfection facility using chemicals that do not meet ANSI/NSF Standard 60 quench the residual ozone, 25 points shall be assessed. R309-520-9(4)(h)

(iii) For an ozone disinfection facility lacking properly functioning ozone off-gas blowers from the contactor, 2 points shall be assessed. R309-520-9(5)(b)

(iv) For an ozone disinfection facility that lacks a system for treating the final off-gas from each ozone contactor, 2 points shall be assessed. R309-520-9(5)(a)

(v) For an ozone disinfection facility discharging an ozone concentration in the gas discharge exceeding 0.1 ppm by volume, 2 points shall be assessed. R309-520-9(5)(d)

(3) Fluoridation.

(a) General

([~~a~~]i) For a fluoridation facility that does not calculate fluoride concentrations, including chemical dosages and total water quantities[~~,~~] daily, 2 points shall be assessed. R309-105-14[~~(2)(a)~~](3).

([~~b~~]ii) For a fluoridation facility [~~where there is not~~]without a fail-safe device incorporated in the fluoride feed control system to prevent overfeeding fluoride, 30 points shall be assessed. R309-535-5(3).

([~~c~~]iii) For a fluoridation facility that uses fluoride chemicals [~~sodium fluoride, sodium silicofluoride and fluoriosilicic acid~~]that [~~does~~]do not conform to the applicable AWWA standards or with ANSI/NSF Standard 60, 25 points shall be assessed. R309-535-5.

[~~(d) For a fluoridation facility where liquid chemical storage tanks are not equipped with an inverted "J" air vent 2 points shall be assessed. R309-525-11(6)(a)(iv)(c).~~

~~(e) For a fluoridation facility where the make-up water is not properly treated for hardness 2 points shall be assessed. R309-535-5(2)(i).~~

~~(f) For a fluoridation facility with no provisions for the proper disposal of water treatment plant waste (such as sanitary, laboratory, sludge, and filter backwash water) 5 points shall be assessed. R309-525-23.~~

~~(g) For a fluoridation facility without a spring opposed diaphragm type anti-siphon device shall be provided for all fluoride feed lines and dilution water lines 10 points shall be assessed. R309-535-5(2)(f).~~

~~(h) For a fluoridation facility with saturators that do not have a flowmeter on the inlet or outlet line 2 points shall be assessed. R309-535-5(2)(l).~~

~~(i) For a fluoridation facility without an adequate level of fluoride crystals in the saturator 2 points shall be assessed. R309-525-11(d)(8)(b)(i).~~

~~(j) For a fluoridation facility without NIOSH/MSHA certified dust respirator approved for fluoride dust removal as required in R309-525-11(10) for operators handling fluoride compounds 2 points shall be assessed. R309-535-5(4).~~

] ([~~k~~]iv) For a fluoridation facility without scales, loss-of-weight recorders or liquid level indicators, as appropriate, 2 points shall be assessed. R309-535-5(2)(a).

[~~(l) For a fluoridation facility without deluge showers and eye wash devices 2 points shall be assessed. R309-535-5(4).~~

] ([~~m~~]v) For a fluoridation facility without proper personal protective equipment as required in R309-525-11(10) [~~—~~]for operators handling fluoride compounds, [~~2~~]10 points shall be assessed. R309-535-5(4).

[~~(n) For a fluoridation facility where an overflow from the day tank will not drain by gravity back into the bulk storage tank or a containment system 10 points shall be assessed. R309-525-11(8)(c)(v).~~

~~(o) For a fluoridation facility where the saturators are not of the up-flow type 2 points shall be assessed. R309-535-5(2)(l).~~

](vi) For a fluoridation facility lacking a sampling location for measuring the final fluoride level, 2 points shall be assessed. R309-525-18.

(vii) For a fluoridation facility that does not have a means to measure the flow of water to be treated, 2 points shall be assessed. R309-535-5(2)(g).

(viii) For a fluoridation facility without fluoride testing equipment not properly verified or calibrated, 2 points shall be assessed. R309-525-25(4).

(ix) For a fluoride facility adding fluoride compound before lime-soda softening, 2 points shall be assessed. R309-535-5(2)(c).

(x) For a Fluoridation facility lacking cross connection control so that no direct connections exist between any sewer and a drain or overflow from the feeder, solution chamber or tank, 10 points shall be assessed. R309-525-11(9)(b)(iii).

(xi) For a fluoridation facility storing incompatible chemicals in the fluoride storage or injection areas, 10 points shall be assessed. R309-525-11(7)(a)(iv).

(xii) For a fluoridation facility lacking a floor drain to facilitate the washdown of floors, 2 points shall be assessed. R309-535-5(5)(b)

(b) Acid

(i) For a fluoridation facility without deluge showers and eye wash devices, 10 points shall be assessed. R309-535-5(4).

(ii) For a fluoridation facility lacking adequate spill containment provisions, 2 points shall be assessed R309-525-11(6)(a)(iv)(B).

(iii) For a fluoridation facility lacking a vent in the fluorosilicic acid storage units that vents to the atmosphere, 2 points shall be assessed. R309-525-11(8)(b)(vi).

(c) Dry

(i) For a fluoridation facility where the make-up water used for sodium fluoride dissolution is not treated to reduce hardness to less than 75 mg/l as calcium carbonate, 2 points shall be assessed. R309-535-5(2)(i).

(ii) For a fluoridation facility without a spring opposed diaphragm type anti-siphon device for all fluoride feed lines and dilution water lines, 10 points shall be assessed. R309-535-5(2)(f).

(iii) For a fluoridation facility with saturators that do not have a flow meter on the inlet or outlet line, 2 points shall be assessed. R309-535-5(2)(l).

(iv) For a fluoridation facility without an adequate level of fluoride crystals in the saturator, 2 points shall be assessed. R309-525-11(8)(b)(i).

(v) For a fluoridation facility without a NIOSH/MSHA certified dust respirator approved for fluoride dust removal as required in R309-525-11(10) for operators handling dry fluoride compounds, 10 points shall be assessed. R309-535-5(4).

(vi) For a fluoridation facility where an overflow from the day tank will not drain by gravity back into the bulk storage tank or a containment system, 10 points shall be assessed. R309-525-11(8)(c)(v).

(vii) For a fluoridation facility using the sodium fluoride dry chemical where the saturators are not of the up-flow type, 2 points shall be assessed. R309-535-5(2)(l).

(viii) For a fluoride facility where fluoride chemicals stored in uncovered or opened shipping containers and are stored inside a building on pallets, 2 points shall be assessed. R309-535-5(1).

(ix) For a fluoride feed pump that is not tied directly to the well pump or service pump, 30 points shall be assessed. R309-535-5(2)(k).

(x) For a fluoridation facility lacking a vent in the dry chemical storage areas that vents to the atmosphere outside the building, 2 points shall be assessed. R309-535-5(5)(a).

(xi) For a fluoridation facility using sodium fluoride dry chemical and lacking a hopper equipped with an exhaust fan and dust filter and under a negative pressure during transfer of dry fluoride compounds, 10 points shall be assessed. R309-535-5(5)(a).

(xii) For a fluoridation facility that does not vent air from fluoride handling equipment through a dust filter to the outside atmosphere of the building for dust control during transfer of dry fluoride compounds, 10 points shall be assessed. R309-535-5(5)(a).

(xiii) For a fluoridation facility using sodium fluoride dry chemical and lacking a means of disposing of empty bags, drums or barrels handled in a manner that minimizes operators' exposure to fluoride dusts shall be assessed, 10 points. R309-535-5(5)(b).

[~~(4) Activated Carbon.~~

~~(a) For a treatment facility that does not periodically check media depth against design standards 10 points shall be assessed. R309-525-19.~~

~~(b) For a treatment facility that does not have a standard operating practice for the backwash procedure 10 points shall be assessed. R309-525-19.~~

~~(c) For a treatment facility that does not provide cross connection control for the in-plant water supply 2 points shall be assessed. R309-525-11(9)(b).~~

~~(d) For a treatment facility where the output of any chemical pump is inadequate to supply the required dose rate 2 points shall be assessed. R309-525-11(7)(a)(i).~~

~~(e) For a treatment facility where the in plant water supply is inadequate in pressure and quantity 2 points shall be assessed. R309-525-11(9)(a).~~

~~(f) For a treatment facility where the vents from feeders, storage facilities and equipment exhaust does not discharge to the outside atmosphere above grade and does not have the end covered with #14 non-corrodible mesh screen 2 points shall be assessed. R309-520-10(2)(f).~~

] ([~~5~~]4) Filtration Treatment.

(a) For a filtration facility that does not have equipment for each individual filter to continuously monitor the effluent turbidity, 30 points shall be assessed.

(b) [~~For a filtration facility that does not provide a minimum backwash rate of 15 gpm/sf for conventional filters 50 points shall be assessed.~~]For a surface water filtration facility that does not have at least two filter units, each capable of meeting the plant design capacity, 20 points shall be assessed. R309-525-15(3).

(c) For a conventional surface water filtration facility that does not have the ability to filter to waste (to allow a filter to ripen before introduction finished water into the clearwell), [~~50~~]20 points shall be assessed.

(d) For a filtration facility where instrumentation and controls are inoperable, 2 points shall be assessed.

(e) For a filtration facility where a backwash tank is not provided with finished drinking water, 20 points shall be assessed. R309-525-15(7)(a)(ix).

(f) For a conventional surface water filtration facility where the backwash waste water is not settled prior to being recycled to the head of the treatment plant, 2 points shall be assessed. R309-525-15(7)(a).

(g) For a membrane filtration facility where automatic membrane integrity tests are not performed at least daily, 2 points shall be assessed. R309-530-8(3)(b).

(h) For a membrane filtration facility not using ANSI/NSF 60 approved chemicals, 25 points shall be assessed. R309-525-11(5)(b).

(i) For a membrane filtration facility lacking cross-connection control protection for the treatment process, 10 points shall be assessed.

(5) Ion Exchange

(a) For an ion exchange facility without a depth of the exchange resin at least 3 feet, 2 points shall be assessed. R309-535-8(1)(b)(iii).

(b) For an ion exchange facility using a salt for the brine solution not having an ANSI/NSF 60 certification, 25 points shall be assessed. R309-525-11(5)(b).

(c) For an ion exchange facility make-up water inlet that lacks protection from back-siphonage, 2 points shall be assessed

(d) For an ion exchange facility where the overflow discharge piping is not protected with a corrosion resistant screen or is not terminated with a downturned bend with adequate clearance to prevent cross connection, 10 points shall be assessed. R309-525-11(9)(b).

(e) For an ion exchange facility that lacks a brine measuring tank or means of metering provided to obtain proper dilution, 2 points shall be assessed. R309-525-11(8)(b)(i).

(6) Sequestration

(a) For a polyphosphate sequestration facility that uses chemicals not meeting ANSI/NSF 60 certification, 25 points shall be assessed. R309-535-11(5)(d).

(b) For a sequestration facility using phosphate chemicals where total phosphate applied exceed 10 milligrams per liter as PO4, 2 points shall be assessed. R309-535-11(5)(b).

(c) For a sequestration facility that lacks sample taps located on each raw water source, each treatment unit influent and each treatment unit effluent, 2 points shall be assessed. R309-535-11(5)(d).

(d) For a sequestration facility that lacks the testing equipment for accurately measuring the phosphate dosage, 2 points shall be assessed. R309-535-11(5).

R309-400-8. Operator Certification.

(1) A water system that is required to have a certified operator and does not, 30 points shall be assessed[~~30 points~~].

(2) A water system where the operator is not certified at the appropriate level, 10 points shall be assessed[~~10 points~~].

(3) A grade 3 or 4 water system that does not have all direct responsible charge operators (as specified in R309-300-5(5)) certified at the level of the system, 5 to 15 points shall be assessed[~~5 to 15 points~~]. The number of points shall be based on the percentage of time that the water system is operated by operators not certified at the required level.

(4) A water system where the certified operator does not live within a one hour response time, 20 points shall be assessed[~~20 points~~].

(5) A water system may be credited up to a maximum of 20 points, which shall remain on record for as long as the conditions apply. The following items are eligible for credit:

(a) A water system that is not required to have a certified operator and does shall be credited 10 points.

(b) A water system that has operators that are certified at a higher level than required shall be credited 10 points.

(c) A water system that has operators certified in other areas that are not required by that water system, such as treatment [~~or backflow prevention certification,~~]shall be credited 10 points.

R309-400-9. Cross Connection Control Program.

(1) A water system, which does not have any of the below listed components of a cross connection control program in place, 50 points shall be assessed[~~50 points~~].

(2) A water system, which only has some of the components of a cross connection control program in place, shall be assessed the following number of points:

(a) A water system which does not have local authority to enforce a cross connection control program ([~~i.e.~~]e.g., ordinance, bylaw or policy), 10 points shall be assessed[~~10 points~~].

(b) A water system that does not provided public education or awareness material or presentations on an annual basis, 10 points shall be assessed[~~10 points~~].

(c) A water system that does not have an operator with training in the area of cross connection control or backflow prevention, 10 points shall be assessed[~~10 points~~].

(d) A water system with no written records of cross connection control activities, such as, backflow assembly inventory and test history, 10 points shall be assessed[~~10 points~~].

(e) A water system that does not have on-going enforcement activities (hazard assessments and enforcement actions), 10 points shall be assessed[~~10 points~~].

R309-400-10. Drinking Water Source Protection.

Drinking water source protection (for ground water and surface water sources): Points shall be assessed for each source after a system fails to complete source protection [~~plans as~~]requirements according to schedules or deadlines specified in R309-600 and R309-605, unless extensions have been requested from and granted by the Director. The points shall remain until such time as the violation or deficiency [~~no longer exists~~]is corrected or resolved.

(1) For a water system [~~which~~]that has not appointed a designated person for source protection and notified the Division, 5 points shall be assessed.

(2) For a water system [~~which does not maintain a current copy of their source protection plan(s) or source assessment(s) on the water system premises~~]that has not upgraded a Preliminary Evaluation Report to a Drinking Water Source Protection plan, 30 points shall be assessed.

(3) For a water system [~~which does not maintain a current inventory of potential contamination sources or susceptibility analysis and determination~~]that has not submitted an updated Drinking Water Source Protection plan, 10 points shall be assessed.

[~~(4) For a water system which does not maintain current records of land management strategies (such as, ordinances, codes, permits, public education programs, meeting minutes) 10 points shall be assessed.~~

] (4[~~5~~]) For a water system with any new (see R309-110) sources for which a Preliminary Evaluation Report has not been submitted, 150 points shall be assessed. These points shall be included with the points for an unapproved source, not [~~in addition to~~]added to them.

(5[~~6~~]) For a water system [~~which~~]that has any [~~old~~]existing (see R309-110) sources that have come into use for which a source protection plan has not been submitted, 30 points shall be assessed.

(6[~~7~~]) For a water system [~~which~~]that has reconstructed or redeveloped a water source and has not submitted a revised source protection plan, 20 points shall be assessed.

(7) For a water system that has a disapproved plan, update or Preliminary Evaluation Report, 20 points shall be assessed.

R309-400-11. Administrative Issues.

Points in this area shall be assessed at the time that the failure occurs or upon notification of the Director, and shall remain until the issue is resolved unless otherwise specified.

(1) Administrative Data -

(a) A water system, [~~which~~]that has not designated a person or organizational official responsible for the system

including a current address and phone number,10 points shall be assessed[~~10 points~~].

(b) A water system project constructed without proper plan approval, [~~shall be assessed 1 to~~]50 to 200 points shall be assessed based on an evaluation of the project which shall include the structural or engineering integrity of the project; whether the plans and specifications were prepared and stamped by a licensed professional engineer; the adequacy of the materials used and the impact on the operation of the water system (good or bad).[~~The points assessed shall remain on record for a period of one year.~~]

(2) A water system with a current written Emergency Response Program shall be credited 10 points that shall remain on record as long as the Program remains current.

(3) A water system with a written Financial Management Plan including an appropriate rate structure, infra-structure replacement fund, and master plan shall be credited 10 points that shall remain on record as long as the Plan is current.

(4) Sampling Site Plans:

(a) A water system, which does not have an adequate bacteriological sampling site plan, 5 points shall be assessed[~~5 points~~].

(b) A water system, which does not have a lead/copper sampling site plan, 10 points shall be assessed[~~10 points~~].

(5) Customer Complaint:

(a) [~~1~~]25 to 100 points may be assessed for valid and documented customer complaints. The customer complaints include but are not limited to the following:

(i) Turbidity;

(ii) Pressure;

(iii) Taste and Odor;

(iv) Sickness (water suspected); and

(v) Waterborne Disease Outbreak (R309-104-9).

(vi) Periods of Water Outage

(b) The number of points shall be based upon the extent and documentation of the problem and the potential impact to public health. The documentation shall consist of an investigation by Department of Environmental Quality, Department of Health or Local Health Department personnel and may include an epidemiological study linking the drinking water to reported outbreaks of illness where appropriate.

(c) In the case of a documented waterborne disease outbreak, the water system shall automatically be rated Not Approved for at least the duration of the threat to the quality of the drinking water and as long as it takes the water system to correct any deficiency that caused the outbreak.

(d) Points shall only be assessed once per issue and shall not be additive based on the number of calls per issue. These points shall be assessed and updated upon verification of the complaint by the Director and shall remain on record until the issue or deficiency no longer exists. Points may have already been assessed in other areas as appropriate.

(6)(a) The Director may issue directives to a water system that include, but are not limited to the following:

(i) Administrative Orders;

(ii) Rule defined action;

(iii) Rule defined compliance schedule;

(iv) Variance/Exemption requirements;[~~and~~]

(v) Bilateral Compliance Agreement[~~.~~];

(vi) Notice of Violation and Compliance Order; and

(vii) Compliance Action/Enforcement Order.

(b) If the water system does not comply with the directive, the Director may assess [~~1~~]25 to [~~100~~]200 points to the water system. Points shall be assessed based upon the severity of the non-compliance, the threat to public health and the underlying basis for the original directive.

(7) Data Falsification - The Director may assess a water system points for data falsification. The water system may be assessed [~~1~~]25 to [~~50~~]200 points for each occurrence based upon:

(a) the severity of the falsification;

(b) the threat to public health;

(c) the intent of the water system personnel; and,

(d) the type of falsification.

(i) Reports only good data

(ii) Doctored results from the laboratory

(iii) Non-valid sample

Data reported to the Director includes but is not limited to Water Treatment Plant Reports, Disinfection Reports, bacteriological and chemical analyses, and Annual Reports. This assessment of points shall be in addition to any other penalty provided by law.

(8) Water Hauling:

(a) For a community water system that is hauling water as a permanent method of culinary water distribution, 150 points shall be assessed. R309-550-10(1).

(b) For a non-community system that is hauling water as a permanent method of culinary water distribution [~~when there is alternate means of supplying quality drinking water~~]without approval from the director, 150 points shall be assessed. R309-550-10(2).

(c) For a water system, which has been granted an exception to haul water, if any part of the water hauling guidelines [~~are~~]is not followed, 50 points shall be assessed. R309-550-10.

R309-400-12. Reporting and Record Maintenance Issues.

Points may be assessed for failure to provide required reports to the Director by the reporting deadline. The points shall be assigned as the failure occurs and shall remain on record for a period of one year.

(1) Monthly Reports:

(a) For each failure to report the monthly water treatment plant report, [~~10~~]100 points shall be assessed.

(2) Quarterly [~~Repots~~]Reports:

(a) For each failure to report the quarterly disinfection report, [~~10~~]50 points shall be assessed.

(3) Annual Reports:

(a) For failure to provide the annual report, 2 points shall be assessed.

(b) [~~For a community~~]Community water [~~system~~]systems that [~~fails~~]fail to [~~prepare or distribute a~~]send a certification to the Division stating how the consumer confidence report was distributed to its customers as required in R309-225-7(3), [~~2~~]10 points shall be assessed.

(c) Community water systems that fail to mail a copy of the consumer confidence report to the Division as required in R309-225-7(3), 10 points shall be assessed.

KEY: drinking water, environmental protection, water system rating, penalties
Date of Enactment or Last Substantive Amendment: [~~October 12, 2013~~]2014
Notice of Continuation: March 22, 2010
Authorizing, and Implemented or Interpreted Law: 19-4-104

Environmental Quality, Environmental Response and Remediation
R311-201-12
UST Operator Training and Registration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38764
FILED: 08/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed change to allow certified underground storage tank (UST) testers to qualify as third-party Class B operators is made at the request of UST testers. UST testers in general should have sufficient expertise to be able to act as third-party B operators if they choose to do so. The changes to the operator inspection form are made to clarify some questions, make the form easier to use, and focus on the most relevant aspects of the monthly inspections. The nature of the inspection does not change. The change to require the emergency shutoff device to be in an accessible location is made to clarify the original intent of the rule and ensure that, in case of an emergency, the shutoff can be activated by anyone who is dispensing fuel.

SUMMARY OF THE RULE OR CHANGE: The proposed changes add wording to allow certified UST testers to become third-party Class B operators if they meet all other training and registration requirements for Class B operators; incorporate by reference a revised version of the UST operator inspection form; and require that a fuel emergency shutoff device already required for unattended facilities be in a readily accessible location.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-301 and Section 19-6-105 and Section 19-6-402 and Section 19-6-403 and Section 63G-4-102 and Section 63G-4-503 and Sections 63G-4-201 through 63G-4-205

MATERIALS INCORPORATED BY REFERENCES:
- ♦ Updates UST Operator Inspection - Utah, published by DERR, 06/03/2014

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The rule could result in a cost for state-owned UST facilities to relocate an existing emergency shutoff device if one is currently located in a non-accessible location. The aggregate cost would depend on the number of devices that would need to be relocated and the complexity of each relocation situation. A general estimate of the cost to install or relocate an emergency shutoff device is approximately $500.
♦ LOCAL GOVERNMENTS: The rule could result in a cost for local government-owned UST facilities to relocate an existing emergency shutoff device if one is currently located in a non-accessible location. The aggregate cost would depend on the number of devices that would need to be relocated and the complexity of each relocation situation. A general estimate of the cost to install or relocate an emergency shutoff device is approximately $500.
♦ SMALL BUSINESSES: The rule could result in a cost for UST owner/operators to relocate an existing emergency shutoff device if one is currently located in a non-accessible location. The aggregate cost would depend on the number of devices that would need to be relocated and the complexity of each relocation situation. A general estimate of the cost to install or relocate an emergency shutoff device is approximately $500. A certified UST tester who contracts as a third-party Class B Operator could generate increased revenue of approximately $1,200 per UST facility per year. The aggregate amount would depend on the number of sites and the charge per site for performing monthly operator inspections and other Class B operator services.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The rule could result in a cost for UST owner/operators to relocate an existing emergency shutoff device if one is currently located in a non-accessible location. The aggregate cost would depend on the number of devices that would need to be relocated and the complexity of each relocation situation. A general estimate of the cost to install or relocate an emergency shutoff device is approximately $500. A certified UST tester who contracts as a third-party Class B Operator could generate increased revenue of approximately $1,200 per UST facility per year. The aggregate amount would depend on the number of sites and the charge per site for performing monthly operator inspections and other Class B operator services. Non-fiscal impacts- Improved safety will result by ensuring that the emergency shutoff devices are located where they can be used by anyone who is dispensing fuel. Underground storage tank owners will have more options if they choose to use the services of third-party B operators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost to relocate an emergency shutoff device will vary with each situation. General cost estimate is approximately $500.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impacts should be minimal, and would only involve the cost to move an emergency shutoff device. The vast

majority of such devices are currently located in readily-accessible locations, so it is not anticipated that the rule change will affect many businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/16/2014 02:00 PM, Department of Environmental Quality, 195 N 1950 W, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2014

AUTHORIZED BY: Brent Everett, Director

R311. Environmental Quality, Environmental Response and Remediation.
R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training.
R311-201-12. UST Operator Training and Registration.

(a) To meet the Operator Training requirement (42 USC Section 6991i) of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility shall, by January 1, 2012, have UST facility operators that are trained and registered according to the requirements of this section. Each facility shall have three classes of operators: A, B, and C.

(1) A facility may have more than one person designated for each operator class.

(2) An individual acting as a Class A or B operator may do so for more than one facility.

(b) The UST owner or operator shall provide documentation to the Director to identify the Class A, B, and C operators for each facility. If an owner or operator does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(c) After January 1, 2012, new Class A and B operators shall be trained and registered within 30 days of assuming responsibility for an UST facility. New Class C operators shall be trained before assuming the responsibilities of a Class C operator.

(d) The Class A operator shall be an owner, operator, employee, or individual designated under Subsection R311-201-12(d)(2). The Class A operator has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system.

(1) The Class A operator shall:

(A) have a general knowledge of UST systems;

(B) ensure that UST records are properly maintained according to 40 CFR 280;

(C) ensure that yearly UST fees are paid;

(D) ensure proper response to and reporting of emergencies caused by releases or spills from USTs;

(E) make financial responsibility documents available to the Director as required; and

(F) ensure that Class B and Class C operators are trained and registered.

(2) An owner or operator may designate a third-party Class B operator as a Class A operator if:

(A) the UST owner or operator is a financial institution or person who acquired ownership of an UST facility solely to protect a security interest in that property and has not operated the USTs at the facility;

(B) all USTs at the facility are properly temporarily closed in accordance with 40 CFR 280.70 and Section R311-204-4; and

(C) all USTs at the facility are empty in accordance with 40 CFR 280.70(a).

(e) The Class B operator shall implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems. The Class B operator shall be an owner, operator, employee, or third-party Class B operator. The Class B operator shall:

(1) ensure that on-site UST operator inspections are conducted according to the requirements of Subsection R311-201-12(h);

(2) ensure that UST release detection is performed according to 40 CFR 280 subpart D;

(3) ensure that the status of the UST system is monitored every seven days for alarms and unusual operating conditions that may indicate a release;

(4) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(e)(3), if it is not reported as a suspected release according to 40 CFR 280.50;

(5) ensure that appropriate release detection and other records are kept according to 40 CFR 280.34 and 280.45, and are made available for inspection;

(6) ensure that spill prevention, overfill prevention, and corrosion protection requirements are met;

(7) be on site for facility compliance inspections, or designate another individual to be on site for inspections;

(8) ensure that suspected releases are reported according to the requirements of 40 CFR 280.50; and

(9) ensure that Class C operators are trained and registered, and are on-site during operating hours.

(f) After January 1, 2012, any individual providing services as a third-party Class B operator shall be trained and registered in accordance with Subsection R311-201-12(j) and shall:

(1) be <u>certified in accordance with Rule R311-201 as:</u>

<u>(A) a UST Tester, or</u>

(B) a [~~current certified~~]UST installer as either a general installer or service/repair technician, or

(2) meet the training requirements of a certified UST inspector and document comprehensive or general liability insurance with limits of $250,000 minimum per occurrence.

(g) The Class C operator is an employee and is generally the first line of response to events indicating emergency conditions. A Class C operator shall:

(1) be present at the facility at all times during normal operating hours;

(2) monitor product transfer operations according to 40 CFR 280.30(a), to ensure that spills and overfills do not occur;

(3) properly respond to alarms, spills, and overfills;

(4) notify Class A and/or Class B operators and appropriate emergency responders when necessary; and

(5) act in response to emergencies and other situations caused by spills or releases from an UST system that pose an immediate danger or threat to the public or to the environment, and that require immediate action.

(h) UST Operator Inspections.

(1) Each UST facility shall have an on-site operator inspection conducted every 30 days, or as approved under Subsection R311-201-12(h)(4) or (5). The inspection shall be performed by or under the direction of the designated Class B operator. The Class B operator shall ensure that documentation of each inspection is kept and made available for review by the Director.

(2) The UST operator inspection shall document that:

(A) release detection systems are properly operating and maintained;

(B) spill, overfill, vapor recovery, and corrosion protection systems are in place and operational;

(C) tank top manways, tank and dispenser sumps, secondary containment sumps, and under-dispenser containment are intact, and are properly maintained to be free of water, product, and debris;

(D) alarm conditions that could indicate a release are properly investigated and corrected, and are reported as suspected releases according to 40 CFR 280.50 or documented to show that no release has occurred; and

(E) unusual operating conditions and other indications of a release or suspected release indicated in 40 CFR 280.50 are properly reported.

(3) The individual conducting the inspection shall use the form "UST Operator Inspection- Utah" to conduct on-site operator inspections. The form, dated [~~April 30, 2009~~]June 3, 2014, and including information required to be completed during the inspection, is hereby incorporated by reference.

(4) The Director may allow operator inspections to be performed less frequently in situations where it is impractical to conduct an inspection every 30 days. The owner or operator shall request the exemption, justify the reason for the exemption, and submit a plan for conducting operator inspections at the facility.

(5) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and R311-204-4 shall have an operator inspection every 90 days.

(i) A facility that normally has no employee or other responsible person on site, or is open to dispense fuel at times when no employee or responsible person is on site, shall have:

(1) a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders, and

(2) an emergency shutoff device in a readily accessible location, if the facility dispenses fuel.

(j) Operator Training and Registration

(1) Training and testing.

(A) Applicants for Class A and B operator registration shall successfully complete an approved operator training course within the six-month period prior to application.

(B) The training course shall be approved by the Director, and shall include instruction in the following: notification, temporary and permanent closure, installation permitting, underground tank requirements of the 2005 Energy Policy Act, Class A, B, and C operator responsibilities, spill prevention, overfill prevention, UST release detection, corrosion protection, record-keeping requirements, emergency response, product compatibility, Utah UST rules and regulations, UST financial responsibility, and delivery prohibition.

(C) Applicants for Class A and B operator registration shall successfully pass a registration examination authorized by the Director. The Director shall determine the content of the examination.

(D) An individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(j)(1)(A) and (C) by completing the following within the six-month period prior to application:

(i) successfully passing a nationally recognized UST operator examination approved by the Director, and

(ii) successfully passing a Utah UST rules and regulations examination authorized by the Director. The Director shall determine the content of the examination.

(E) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.

(2) Registration application.

(A) Applicants for Class A and B operator registration shall submit a registration application to the Director, shall document proper training, and shall pay any applicable fees.

(B) Class C operators shall be designated by a Class B operator. The Class B operator shall maintain a list identifying the Class C operators for each UST facility. The list shall identify each Class C operator, the date of training, and the trainer. Identification on the list shall serve as the operator registration for Class C operators.

(C) A registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.

(D) Class A and B registration shall be effective for a period of three years, and shall not lapse or expire if the registered operator leaves the employment of the company under which the registration was obtained.

(3) Renewal of registration.

(A) Class A and B operators shall apply for renewal of registration not more than six months prior to the expiration of the registration by:

(i) submitting a completed application form;

(ii) paying any applicable fees; and

(iii) documenting successful completion of any re-training required by Subsection R311-201-12(k).

(B) If the Director determines that the operator meets all the requirements for registration, the Director shall renew the applicant's registration for a period equal to the initial registration.

(C) Any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(j)(1) before receiving the renewal registration.

(k) Re-training.

(1) A Class A operator shall be subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:

(A) lapsing of certificate of compliance;

(B) failure to provide acceptable financial responsibility; or

(C) failure to ensure that Class B and C operators are trained and registered.

(2) A Class B operator shall be subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:

(A) failure to document significant operational compliance, as determined by the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both incorporated by reference in Subsection R311-206-10(b)(1);

(B) failure to perform UST operator inspections required by Subsection R311-201-12(h); or

(C) failure to ensure that Class C operators are trained and registered, and are on-site during operating hours.

(3) To be re-trained, Class A and Class B operators shall successfully complete the appropriate Class A or B operator training course and examination, or shall complete an equivalent re-training course and examination approved by the Director.

(4) Class A and B operators shall be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the Director within 30 days of the re-training. If the documentation is not received, the Director may revoke the certificate of compliance for the facility for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(5) If the documentation of re-training is not received by the Director within six months of the date of determination of non-compliance, the Class A or B operator's registration shall lapse. To re-register, the operator shall meet the requirements of Subsection R311-201-12(j)(1) and (2).

(6) If a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsections R311-201-12(k)(1) or (2), re-training shall not be required if the Class A or B operator successfully completes and documents re-training under Subsections R311-201-12(k)(3) and (4) for a prior determination of non-compliance that occurred during the previous nine months.

(l) Reciprocity.

(1) If the Director determines that another state's operator training program is equivalent to the operator training program provided in this rule, he may accept an applicant's Class A or Class B registration application, provided that the applicant:

(A) submits a completed application form;

(B) passes the Utah UST rules and regulations examination referenced in Subsection R311-201-12(j)(1)(D)(ii), and

(C) submits payment of any applicable registration fees.

(2) The Class A or Class B registration shall be valid until the Utah registration expiration described in Subsection R311-201-12(j)(2)(D).

KEY: hazardous substances, administrative proceedings, underground storage tanks, revocation procedures
Date of Enactment or Last Substantive Amendment: [~~September 14, 2012~~]2014
Notice of Continuation: April 10, 2012
Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-402; 19-6-403; 63G-4-102; 63G-4-201 through 205; 63G-4-503

Environmental Quality, Environmental Response and Remediation
R311-204-3
Disposal

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38765
FILED: 08/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As currently written, Section R311-204-3 contains requirements for labeling of an underground storage tank after removal from the ground, and prior to transport to a disposal facility. The proposed changes remove wording that is outdated (labeling of tanks as having contained leaded fuel) and wording that could cause misunderstanding regarding the contents of the tank while it is transported (labeling of tanks as "flammable").

SUMMARY OF THE RULE OR CHANGE: The proposed changes remove wording requiring that an underground storage tank that has been removed from the ground be labeled as "flammable" and, if appropriate, as having contained leaded gasoline. The proposal does not change the requirement that the tank be labeled with the date of removal and the facility identification number.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-402 and Section 19-6-403

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No cost or savings are anticipated. The proposed changes only modify the labeling requirements for an underground storage tank that has been removed from the ground.
♦ LOCAL GOVERNMENTS: No cost or savings are anticipated. The proposed changes only modify the labeling requirements for an underground storage tank that has been removed from the ground.

♦ SMALL BUSINESSES: No cost or savings are anticipated. The proposed changes only modify the labeling requirements for an underground storage tank that has been removed from the ground.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No cost or savings are anticipated. The proposed changes only modify the labeling requirements for an underground storage tank that has been removed from the ground. Non-fiscal impacts - The proposed change should result in increased safety on the roads during transportation of removed underground tanks by removing the requirement that "flammable" be painted on the tank after removal. In some cases, transports have been stopped by police who have thought the tanks contained flammable liquids during transportation to a disposal facility.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None are anticipated--The changes only simplify the requirements for labeling an underground tank that has been removed from the ground.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule should not have any impact on businesses. It changes the wording that must be put on underground tanks after removal, for proper transport to a disposal facility.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/16/2014 02:00 PM, Department of Environmental Quality, 195 N 1950 W, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2014

AUTHORIZED BY: Brent Everett, Director

R311. Environmental Quality, Environmental Response and Remediation.
R311-204. Underground Storage Tanks: Closure and Remediation.
R311-204-3. Disposal.

(a) Tank labeling. Immediately after being removed, a[~~A~~]ll tanks which are permanently closed by removal must be labeled [~~immediately after being removed from the ground~~]with the following in letters at least two inches high:

(1) the facility identification number, and[~~- information about previously contained substances.~~]

(2) "contained petroleum, removed: month/day/year".

[~~(1) Removed tanks which have contained motor fuels or other regulated products, except leaded motor fuels, must be labeled with letters at least two inches high which read:~~

~~"CONTAINED (UNLEADED GASOLINE, DIESEL OR OTHER AS APPROPRIATE), FLAMMABLE. REMOVED: MONTH/DAY/YEAR."~~

~~(2) Removed tanks which have contained leaded motor fuel, or whose service history is unknown, must be labeled with letters at least two inches high which read:~~

~~"CONTAINED LEADED GASOLINE. HEATING RELEASES LEAD VAPORS, FLAMMABLE. REMOVED: MONTH/DAY/YEAR."~~

] (b) Removed tanks shall be expeditiously disposed of as regulated underground storage tanks by the following methods:

(1) The tank may be cut up after the interior atmosphere is first purged or inerted.

(2) The tank may be crushed after the interior atmosphere is first purged or inerted.

(3) The tank may not be used to store food or liquid intended for human or animal consumption.

(4) The tank may be disposed of in a manner approved by the Director.

(c) Tank transportation. Used tanks which are transported on roads of the State of Utah must be cleaned inside the tank prior to transportation, and be free of all product, free of all vapors, or rendered inert during transport.

KEY: hazardous substances, petroleum, underground storage tanks
Date of Enactment or Last Substantive Amendment: [~~September 9, 2004~~]2014
Notice of Continuation: April 10, 2012
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-402; 19-6-403

Environmental Quality, Environmental Response And Remediation
R311-206-11
Environmental Assurance Fee Rebate Program

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 38766
FILED: 08/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed section implements a change to the Utah Underground Storage Tank (UST) Act made in the 2014 General Legislative Session in H.B. 138. Subsection 19-6-410.5(5)(d) of the UST Act, to be effective 01/01/2015, mandates that the Division of Environmental Response and Remediation shall, by 01/01/2015, create a model for assessing the risk profile of each UST facility participating in the Environmental Assurance Program, and create a rebate schedule listing the amount of the Environmental Assurance Fee an UST owner/operator can receive as a rebate, based on the risk profile.

SUMMARY OF THE RULE OR CHANGE: The proposed section specifies that each UST facility participating in the Environmental Assurance Program shall receive a risk value for purposes of determining the amount of Environmental Assurance Fee that the facility may receive as a rebate. The section incorporates by reference two tables that show the risk factors, the formula used to create the risk profile, and the rebate available to facilities in the different risk tiers. The rule specifies that to be considered as secondarily contained, tanks, piping, and containment sumps must be tested to document that the secondary containment is tight.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-403 and Section 19-6-410.5 and Section 19-6-428

MATERIALS INCORPORATED BY REFERENCES:

- Adds Environmental Assurance Program Risk Factor Table and Calculation, published by DERR, 06/02/2014
- Adds Environmental Assurance Fee Rebate Table, published by DERR, 06/02/2014

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The statutory increase in the Environmental Assurance Fee from 1/2 cent per gallon to 13/20 cent per gallon takes effect 01/01/2015. It is estimated that this change will increase revenue to the Petroleum Storage Tank fund by approximately $550,000 for the remainder of fiscal year 2015. Under the proposed rule approximately $416,500 of the statutory increase will be returned to UST owner/operators as rebates, based on currently-available facility risk and throughput information. This would result in a net increase to the PST Fund of $133,500 for fiscal year 2015.

♦ LOCAL GOVERNMENTS: It is anticipated that the proposed rule will result in increased revenue to the regulated UST community of approximately $416,500 for the last six months of fiscal year 2015, from rebates of the Environmental Assurance Fee. A local government that is an owner/operator of a UST could receive a portion of these rebates, which would depend on the risk value and throughput of the UST facility. The proposed rule requires that to be considered as secondarily contained for purposes of the risk value determination, tank interstitial spaces, piping interstitial spaces, and containment sumps must be tested for tightness. The testing would cost approximately $750 for a typical double-walled UST with double-walled piping, containment at the submersible pump, and under-dispenser containment. The aggregate cost would depend on the number of tanks tested.

♦ SMALL BUSINESSES: It is anticipated that the proposed rule will result in increased revenue to the regulated UST community of approximately $416,500 for the last six months of fiscal year 2015, from rebates of the Environmental Assurance Fee. A small business that is an owner/operator of a UST could receive a portion of these rebates, which would depend on the risk value and throughput of the UST facility. The proposed rule requires that to be considered as secondarily contained for purposes of the risk value determination, tank interstitial spaces, piping interstitial spaces, and containment sumps must be tested for tightness. The testing would cost approximately $750 for a typical double-walled UST with double-walled piping, containment at the submersible pump, and under-dispenser containment. The aggregate cost would depend on the number of tanks tested.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that the proposed rule will result in increased revenue to the regulated UST community of approximately $416,500 for the last six months of fiscal year 2015, from rebates of the Environmental Assurance Fee. An owner/operator of a UST could receive a portion of these rebates, which would depend on the risk value and throughput of the UST facility. The proposed rule requires that to be considered as secondarily contained for purposes of the risk value determination, tank interstitial spaces, piping interstitial spaces, and containment sumps must be tested for tightness. The testing would cost approximately $750 for a typical double-walled UST with double-walled piping, containment at the submersible pump, and under-dispenser containment. The aggregate cost would depend on the number of tanks tested. Non-fiscal impacts--The proposed rule should encourage UST owner/operators to upgrade their higher-risk facilities to improve the facility's risk value and receive a larger rebate. The upgrading of UST systems and monitoring devices should result in fewer petroleum releases and less severe releases.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Cost of secondary containment testing for tanks, piping, and containment sumps is approximately $750 per UST system.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: An UST owner can use the rebate and the new 0% interest loans to upgrade an UST system with containment, double-walled piping, etc. to get into a better risk tier and receive a

higher rebate. Upgraded UST systems will result in fewer releases and releases that are less severe and less expensive to clean up, because they will be caught in secondary containment rather than entering the environment, and will be discovered more quickly by better monitoring systems.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/16/2014 02:00 PM, Department of Environmental Quality, 195 N 1950 W, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2014

AUTHORIZED BY: Brent Everett, Director

R311. Environmental Quality, Environmental Response and Remediation.
R311-206. Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.
R311-206-11. Environmental Assurance Fee Rebate Program.

(a) To meet the requirements of Subsection 19-6-410.5(5)(d), each UST Facility participating in the Program shall receive a risk value calculated according to "Environmental Assurance Program Risk Factor Table and Calculation", which is hereby incorporated by reference. The table, dated June 2, 2014, contains risk factors and the formula for risk value calculation.

(b) The risk value for each facility participating in the Environmental Assurance Program shall be:

(1) calculated on a facility basis;

(2) valid for the calendar year;

(3) based on the facility characteristics as of December 15 of the prior calendar year; and

(4) determined, at sites with mixed equipment, by considering the highest risk-valued UST system component for each risk factor.

(c) To qualify as secondarily contained for purposes of risk calculation, tanks shall:

(1) meet the requirement for secondary containment in Section R311-203-6, and

(2) meet one of the following:

(A) have continuous interstitial monitoring, or

(B) have the interstitial space tested at least once every three years and be documented to be tight by using vacuum, pressure, or liquid testing in accordance with one of the following:

(i) Requirements developed by the manufacturer, or

(ii) A Code of Practice developed by a nationally recognized association or independent testing laboratory.

(d) To qualify as secondarily contained for purposes of risk calculation, piping shall:

(1) meet the requirements for secondary containment outlined in Section R311-203-6, and

(2) meet one of the following:

(A) have continuous monitoring of the interstice by vacuum, pressure, or liquid filled interstitial space, or

(B) use an interstitial monitoring method not listed in Subsection (d)(2)(A), and the integrity of the interstitial space is ensured at least once every three years by using vacuum, pressure, or liquid test in accordance with criteria listed in Subsection (c)(2)(B).

(e) To qualify as secondarily contained for purposes of risk calculation, piping containment sumps and under-dispenser containment shall:

(1) be double-walled with continuous monitoring of the space between the walls, or

(2) be tested at least once every three years to show the piping containment sump or under-dispenser containment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following:

(A) requirements developed by the manufacturer, or

(B) a code of practice developed by a nationally recognized association or independent testing laboratory.

(f) Each facility that participates in the Environmental Assurance Program may be eligible for a rebate of a portion of the Environmental Assurance Fee according to the rebate schedule in "Environmental Assurance Fee Rebate Table", which is hereby incorporated by reference. The table, dated June 2, 2014, lists risk tiers and the rebate for each tier.

(g) A facility that begins participation in the Environmental Assurance Program after January 1 of a calendar year shall have its risk value calculated for that year based on the risk factors in place at the facility on the date the facility begins participation in the Program.

KEY: hazardous substances, petroleum, underground storage tanks
Date of Enactment or Last Substantive Amendment: [~~September 14, 2012~~]2014
Notice of Continuation: April 10, 2012
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-410.5; 19-6-428

Environmental Quality, Environmental Response and Remediation
R311-209-4
Recovery of Management and Oversight Expenses

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 38767
FILED: 08/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In the 2014 General Legislative Session (H.B. 138) changed the Utah Underground Storage Tank (UST) Act (Subsection 19-6-420(10), to be effective 07/01/2015), stating that the director of the Division of Environmental Response and Remediation (DERR) may recover, from the responsible party, expenses incurred by the division for managing and overseeing the abatement, and investigation or corrective action of UST releases not covered by the Petroleum Storage Tank (PST) Fund. The proposed section provides a way for the director to meet the statutory language ("may" recover, rather than "shall" recover) and allow the responsible party to apply for an exemption from reimbursing the DERR for those oversight costs in cases where the responsible party is unable to pay.

SUMMARY OF THE RULE OR CHANGE: The proposed section outlines factors that may be used by the Division director in determining whether to recover expenses incurred by the division for managing and overseeing the abatement, and investigation or corrective action of releases not covered by the PST Fund. These factors include: 1) the responsible party's ability to pay, and 2) other relevant factors the director determines to be appropriate. The responsible party may apply for an exemption from paying these expenses. The director may grant an exemption based upon the application and supporting documentation, considering the factors outlined in the section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-409 and Section 19-6-420

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Cost to the state budget would be staff time to review the exemption applications from responsible parties. The cost would be approximately $8,600 if applications are received for 15% of the current open releases not covered by the PST Fund. The actual cost will depend on the number of exemption applications received. Granting of exemptions would result in a loss of revenue to the state budget. The total loss would depend on the number of exemptions granted and the amount not recovered for each release, which is specific to each release. An estimate of staff time currently expended toward these oversight costs is approximately $3,240 per site per year.
♦ LOCAL GOVERNMENTS: The proposed rule could result in savings for a local government that is a responsible party for an UST release. The government entity could qualify for an exemption from reimbursing the Division for the Division's oversight expenses for UST cleanups not covered by the PST Fund. Aggregate savings would depend on the number of responsible parties that qualify and the dollar value of the exempted expenses. An estimate of typical oversight expenses is approximately $3,240 per site per year.
♦ SMALL BUSINESSES: The proposed rule could result in savings for a small business that is a responsible party for an UST release. The business could qualify for an exemption from reimbursing the Division for the Division's oversight expenses for UST cleanups not covered by the PST Fund. Aggregate savings would depend on the number of responsible parties that qualify and the dollar value of the exempted expenses. An estimate of typical oversight expenses is approximately $3,240 per site per year.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed rule could result in savings for a responsible party for an UST release. The responsible party could qualify for an exemption from reimbursing the Division for the Division's oversight expenses for UST cleanups not covered by the PST Fund. Aggregate savings would depend on the number of responsible parties that qualify and the dollar value of the exempted expenses. An estimate of typical oversight expenses is approximately $3,240 per site per year. Non-fiscal impacts--The impacts of this rule are primarily fiscal, resulting in savings to responsible parties who are able to qualify for the exemption from reimbursing the Division for oversight expenses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No significant costs are anticipated; the cost of preparing an application for exemption should be minimal, and would be offset by receiving an exemption and not being required to reimburse oversight costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This new section allows persons or companies who have releases not covered by the PST Fund to retain funds by applying for and receiving an exemption from reimbursing the state for oversight expenses if there is a genuine hardship or inability to pay. The benefits to the business in these situations outweigh the state's interest in receiving reimbursement for oversight expenses.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

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INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/16/2014 02:00 PM, Department of Environmental Quality, 195 N 1950 W, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2014

AUTHORIZED BY: Brent Everett, Director

R311. Environmental Quality, Environmental Response and Remediation.
R311-209. Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation.
R311-209-4. Recovery of Management and Oversight Expenses.
(a) Beginning July 1, 2015, the Director, in determining whether to recover management and oversight expenses pursuant to Utah Code Ann. 19-6-420(10), may consider the following factors:
(1) The responsible party's ability to pay; and
(2) Any other relevant factors the Director determines to be appropriate.
(b) At any time before or after the Director initiates collection of management and oversight expenses, the responsible party may apply to the Director for an exemption from paying these expenses. The responsible party shall furnish all documentation and information in the form and manner as prescribed by the Director in support of the application. The Director, in his sole discretion, may grant an exemption based on the responsible party's application in consideration of the factors listed in Subsection (a).

KEY: petroleum, underground storage tanks[~~*~~]
Date of Enactment or Last Substantive Amendment: [~~October 9, 1998~~]2014
Notice of Continuation: April 10, 2012
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-409; 19-6-420

Environmental Quality, Environmental Response and Remediation
R311-212
Administration of the Petroleum Storage Tank Loan Fund

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38768
FILED: 08/14/2014

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes create a method to determine the maximum amount of the Petroleum Storage Tank (PST) Fund that can be loaned to underground storage tank (UST) owner/operators, as required by Subsection 19-6-409(9)(g) of the Utah UST Act, enacted in the 2014 General Legislative Session in H.B. 138. Rule references to loan interest are removed, as required by Subsection 19-6-409(8)(b)(i) of the Utah UST Act, enacted in H.B. 138 (2014). The legislation changed the interest rate on PST Fund loans from 3% to 0%. Rule references to the statute are changed because of numbering changes in the UST Act, and other changes are made for clarity of the rule. New versions of the documents used in the loan program are incorporated by reference, to implement legislative changes and make changes recommended by the Attorney General's office to bring the documents into conformity with other state loan documents.

SUMMARY OF THE RULE OR CHANGE: The proposed changes specify the maximum amount that can be loaned from the PST Fund. The maximum is 25% of the fund balance, less the amount of outstanding loans, if the fund balance is at least $10,000,000 at the beginning of each calendar year. At least one application period will be designated each calendar year if these criteria are met at the beginning of the year. The proposed changes provide for closing of an open loan application period if the criteria are no longer met, for opening of a new application period if funds become available through repayment or an increase in the fund balance, and for later review of applications in process when an application period closes. The proposed changes remove references to the "Loan Fund", which no longer exists, remove references to charging of interest on loan proceeds, and update citations of the renumbered UST Act loan provisions. The changes incorporate by reference updated versions of loan documents and incorporate by reference two new documents. Changes to the documents include replacing "Executive Secretary" with "Director", adding and removing wording to make the documents fit current state loan document language, and removing from the documents references to "Loan Fund" and interest charged on loan proceeds.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-403 and Section 19-6-409

MATERIALS INCORPORATED BY REFERENCES:
- ♦ Removes Trust Deed property with underground storage tanks, published by DERR, 06/15/1995
- ♦ Adds Trust Deed Note, published by DERR, 07/29/2014
- ♦ Updates Loan Agreement, published by DERR, 07/29/2014
- ♦ Updates Trust Deed, published by DERR, 07/29/2014
- ♦ Updates Corporate Authorization, published by DERR, 07/29/2014
- ♦ Updates Promissory Note, published by DERR, 07/29/2014
- ♦ Updates Balance Sheet, published by DERR, 07/29/2014
- ♦ Updates Assignment, published by DERR, 07/29/2014

♦ Updates Loan Application, published by DERR, 07/29/2014
♦ Updates Security Agreement, published by DERR, 07/29/2014
♦ Updates Extension and Modification of Promissory Note Agreement, published by DERR, 07/29/2014
♦ Adds Extension and Modification of Trust Deed Note Agreement, published by DERR, 07/29/2014
♦ Updates Assignment of Account, published by DERR, 07/29/2014
♦ Updates General Pledge Agreement, published by DERR, 07/29/2014
♦ Updates Hypothecation Agreement, published by DERR, 07/29/2014

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No costs or savings are anticipated--The changes implement statutory changes and do not of themselves result in costs or savings.
♦ LOCAL GOVERNMENTS: No costs or savings are anticipated--Savings due to removal of the requirement to pay interest on loans come from the statutory change.
♦ SMALL BUSINESSES: No costs or savings are anticipated--Savings due to removal of the requirement to pay interest on loans come from the statutory change.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No costs or savings are anticipated--Savings due to removal of the requirement to pay interest on loans come from the statutory change. Non-fiscal impacts--The proposed changes clarify the amount of money that can be loaned from the PST Fund, and should make loans more attractive to UST owner/operators due to the 0% interest. This will allow UST owner/operators to remove more older tanks (reducing the potential for releases), and upgrade tank systems to take advantage of newer tank technology and the new Environmental Assurance Fee rebate program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are anticipated. The changes implement statutory changes and do not of themselves result in costs to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should not be any significant impacts from the rule changes. The main impact is from the statutory change moving money from the loan fund to the PST fund and removing interest charged on loans. The rule changes only implement the statute and make minor changes for clarity of the rule. Placing a limit on the amount of the PST Fund that can be loaned, required by the statute, could remove the opportunity to apply for a loan at certain times, because the maximum amount available for loans could be reached. This is not likely, however, based on recent loan history, anticipated future loan activity, and the stability of the cash balance of the PST Fund.

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♦ 09/16/2014 02:00 PM, Department of Environmental Quality, 195 North 1950 West, Room 1015, Salt Lake City, Utah

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2014

AUTHORIZED BY: Brent Everett, Director

R311. Environmental Quality, Environmental Response and Remediation.
R311-212. Administration of the Petroleum Storage Tank Loan [~~Fund~~]Program.
R311-212-1. Definitions.
Definitions are found in [~~Section~~]Rule R311-200.

R311-212-2. Declaration of Loan Application Periods, and Loan Application Submittal.
(a) Application for a loan shall be made on forms incorporated in Section R311-212-10, in accordance with Subsection 19-6-40[~~5.3(7)~~]9(9). Loan applications shall be accepted during application periods designated by the Director.
(b) A[~~s long as loan funds are available a~~]t least one application period shall be designated each [~~fiscal~~]calendar year if, on January 1,:
(1) the current balance due for all outstanding loans is less than twenty-five per cent of the cash balance of the Petroleum Storage Tank Trust Fund, and
(2) the cash balance of the Petroleum Storage Tank Trust Fund exceeds $10,000,000.[~~ Additional funds available through repayment of existing loans shall be loaned according to priorities from the most recent application period.~~]
(c) If the requirements of Subsections R311-212-2(b)(1) and (b)(2) are not met on January 1, but are met at a later time in the calendar year, the Director may designate an application period.
(d) An open application period will close if:

(1) the current balance due for all outstanding loans exceeds twenty-five per cent of the cash balance of the Petroleum Storage Tank Trust Fund, or

(2) the cash balance of the Petroleum Storage Tank Trust Fund is less than $10,000,000.

(e) If an open application period closes as required by Subsection R311-212-2(d), loan applications currently under review when the application period closes may be renewed when a new application period opens, unless the applicant must re-apply as required by Subsection R311-212-5(a).

([e]f) Applications must be received by the Director by 5:00 p.m. on the last day of [~~a given~~]the application period.

([~~d~~]g) Loan applications received outside the application period shall be invalid.

R311-212-3. Eligibility Review.

(a) The Director shall determine if the applicant meets the eligibility criteria stated in Subsections 19-6-40[~~5.3(3)~~]9(5), 19-6-40[~~5.3(4)~~]9(6), 19-6-40[~~5.3(5)~~]9(7), and 19-6-40[~~5.3(6)~~]9(8).

(b) To meet the eligibility requirements of 19-6-40[~~5.3(4)~~]9(6) the applicant must, for all facilities for which the applicant requests a loan, demonstrate current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks, or must be able to achieve compliance with the loan proceeds.

(c) To meet the eligibility requirements of 19-6-40[~~5.3(4)~~]9(6) the applicant must meet the following for all facilities owned or operated by the applicant for which the applicant does not request a loan:

(1) The applicant has demonstrated current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks;

(2) All regulated underground petroleum storage tanks owned by the applicant have met the requirements of Section 19-6-412(2) and have a current certificate of compliance;

(3) The applicant has paid all underground storage tank registration fees, interest and penalties which have been assessed; and

(4) The applicant has paid all applicable petroleum storage tank fees, interest and penalties which have been assessed.

(d) To meet the requirements of Section 19-6-40[~~5.3(3)~~]9(5), the loan request must be for the purpose of:

(1) Upgrading petroleum USTs;

(2) replacing USTs; or

(3) Permanently closing USTs. If an applicant requests a loan for closing USTs which will be replaced by above-ground storage tanks, the loan, if approved, will be only for closing the USTs. The security pledged by the applicant for a loan to replace USTs with above-ground storage tanks shall be subject to the limitations in R311-212-6.

R311-212-4. Prioritization of Loan Applications.

(a) When determined by the Director to be necessary, all applications received during a designated application period shall be prioritized by total points assigned. Ten points shall be given for each item that applies to the applicant or the facility for which the loan is requested:

(1) The applicant has less than $1,000,000 annual gross income and fewer than five full-time employee equivalents and is not owned or operated by any person not meeting the income and employee criteria.

(2) The applicant's income is derived solely from operations at UST facilities.

(3) The applicant owns or operates no more than two facilities.

(4) The facility is located in a U.S. Census Bureau population unit containing fewer than 5,000 people.

(5) There are no more than three operating retail outlets selling motor fuel within 15 miles road distance in all directions.

(6) Loan proceeds will be used solely for replacing or upgrading USTs.

(7) All USTs at the facility are greater than 15 years old.

(b) One point shall be given for each road mile of distance from the facility to the nearest operating retail outlet selling motor fuel, to a maximum of 30 points.

(c) Applications which receive the same number of points shall be sub-prioritized according to the date postmarked or the date delivered to the Director by any other method.

(d) Applications shall remain in priority order regardless of availability of funds until a new application period is declared. When a new application period begins, priority order of applications which have not been reviewed terminates. An applicant whose application has not been reviewed or an applicant whose application has not been approved because the applicant has not satisfied the requirements of Subsections 19-6-40[~~5.3~~]9([~~3~~]5) through ([~~6~~]8), loses eligibility to apply for a loan and must submit a new application in the subsequent period to be considered for a loan in that period.

R311-212-5. Loan Application Review.

(a) The applicant shall ensure that the loan application is complete. The completed application with supporting documents shall contain all information required by the application. If the applicant does not submit a complete application within 60 days of eligibility approval, the applicant's eligibility approval shall be forfeited, and the applicant must re-apply.

(b) All costs incurred in processing the application including appraisals, title reports, or UCC-1 releases shall be the responsibility of and paid for by the applicant. The Director may require payment of costs in advance. The Director shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

(c) The review and approval of the application shall be based on information provided by the applicant, and:

(1) review of any and all records and documents on file;

(2) verification of any and all information provided by the applicant;

(3) review of credit worthiness and security pledged; and

(4) review of a site construction work plan.

(d) The applicant must close the loan within 30 days after the Director [~~mails~~]conveys the loan documents for the applicant's signature. If the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply. An exception to the 30 day period may be granted by the Director if the closing is delayed due to circumstances beyond the applicant's control.

R311-212-6. Security for Loans.

(a) When an applicant applies for a loan of greater than $30,000, the [~~loan~~]applicant must pledge for security personal or real property which meets or exceeds the following criteria:

(1) The loan amount may not be greater than 80 percent of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position, or

(2) The loan amount may not be greater than 60 percent of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.

(b) The applicant shall provide acceptable documentation of the value of the property to be used as security using:

(1) a current written appraisal, performed by a State of Utah certified appraiser;

(2) a current county tax assessment notice, or

(3) other documentation acceptable to the Director.

(c) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the Director by a title company or appropriate professional person approved by the Director.

(d) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department. The Department shall accept no less than a second mortgage position on real property pledged for loan security.

(e) Whenever a corporation seeks a loan, its principals must guarantee the loan personally.

(f) The applicant must provide a complete financial statement with cash flow projections for debt service.

(g) Above ground storage tanks and real property on which they are located shall not be acceptable as security.

(h) Underground storage tanks and the real property on which they are located shall not be acceptable as security unless:

(1) The UST facility offered for security has not had a petroleum release which has not been properly remediated; and

(2) The applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in R311-212-3.

(i) If a loan is made without security, the maximum loan repayment period shall be seven years.

R311-212-7. Procedure for Making Loans.

(a) Loan funds shall be obligated after all documents to secure a loan are complete, processed, and appropriately signed by the applicant and the Director.

(b) The Director may approve a borrower's request for one initial disbursement of loan proceeds to the borrower after the loan is closed, and before work begins. The initial disbursement shall be for no more than 40 per cent of the approved loan amount. Disbursement of the remaining loan proceeds, or disbursement of the entire loan proceeds if no initial disbursement is made, shall be made after work at the site is completed, and all paperwork and notifications have been received by the Director.

(1) If an initial loan disbursement is made, the borrower shall begin work on the project no later than 60 days, or another time period approved by the Director, following the initial disbursement. Disbursement of the remaining loan proceeds shall be made no later than 180 days, or another time period approved by the Director, following the initial disbursement.

(2) [~~Funds disbursed through an initial disbursement under Subsection R311-212-7(b) shall begin to accrue interest at 3% per annum on the day they are disbursed. The interest accumulated on these funds from the date of the initial disbursement until the date of the final loan disbursement shall be repaid in full with the first loan payment made by the borrower after the final disbursement, or as otherwise approved by the Director.~~

~~(3)~~]If work is not initiated or completed within the time periods established in Subsection R311-212-7(b)(1), the loan balance shall be paid within 30 days of notice provided by the Director.

(c) Loan proceeds shall not be used to pay underground storage tank registration fees, penalties, or interest assessed under Section 19-6-408 or petroleum storage tank fees, penalties, or interest assessed under Section 19-6-411.

(d) Loans shall not be made for work which is performed before the applicant's loan application is approved and the loan is closed.

R311-212-8. Servicing the Loans.

(a) The Director shall establish a repayment schedule for each loan based on the financial situation and income circumstances of the borrower and the term of loans allowed by Subsection 19-6-40[~~5.3(6)(e)~~]9(8)(b)(ii). Loans shall be amortized with equal payment amounts and payments shall be of such amount to pay all interest and principal in full.

(b) The initial installment payment shall be due on a date established by the Director. Subsequent installment payments shall be due on the first day of each month. A notice of payment and due date shall be sent for each subsequent payment. Non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

(c) The Director shall apply loan payments received first to penalty, next to interest and then to principal.

(d) Loan payments may be made in advance, and the remaining principal balance of the loan may be paid in full at any time without penalty.

(e) Notices of late payment penalty assessed with amounts of penalty and the total payment due shall be sent to the borrower.

(f) The penalty for late loan payments shall be 10 percent of the payment due. The penalty shall be assessed and payable on payments received by the Director more than five days after the due date. A penalty shall be assessed only once on a given late payment. Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Director by methods other than the U.S. Postal Service. If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.

(g) Notice of loans paid in full shall be sent after all penalties, interest and principal have been paid.

(h) Releases of the Director's interest in security shall be prepared and sent to the borrower or filed for public notice as applicable.

R311-212-9. Recovering on Defaulted Loans.

(a) Loans may be considered in default when two consecutive payments are past due by 30 days or more, when the applicant's ability to receive payments for claims against the fund lapses, or if the certificate of compliance lapses or is revoked. Lapsing

under Subsection R311-206-7(e) shall not be considered as grounds for default for USTs which are permanently closed.

(b) The Director may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(c) The Director need not give notice of default prior to declaring the full amount due and payable.

(d) The borrower shall be liable for attorney's fees and collection costs for defaulted loans whether incurred before or after court action.

R311-212-10. Forms.

(a) The forms dated and listed below, on file with the Department, are incorporated by reference as part of [~~Section~~]Rule R311-212, and shall be used by the Director for making loans.

(1) Loan Application version [~~06/21/11~~]7/29/14

(2) Balance Sheet version [~~04/02/04~~]7/29/14

(3) Loan [~~Commitment~~]Agreement version [~~06/15/95~~]7/29/14

(4) Corporate Authorization version [~~06/15/95~~]7/29/14

(5) Promissory Note version [~~06/15/95~~]7/29/14

(6) Extension and Modification of Promissory Note Agreement version [~~06/15/95~~]7/29/14

(7) Security Agreement version [~~06/15/95~~]7/29/14

(8) Hypothecation Agreement [~~06/15/95~~]version 7/29/14

(9) General Pledge Agreement [~~06/15/95~~]version 7/29/14

(10) Assignment [~~06/15/95~~]version 7/29/14

(11) Assignment of Account [~~06/15/95~~]version 7/29/14

(12) Trust Deed version 7/29/14

[~~(i) property with underground storage tanks version 06/15/95; or~~

~~(ii) property without underground storage tanks version 06/15/95.~~](13) Trust Deed Note version 7/29/14

(14) Extension and Modification of Trust Deed Note Agreement version 7/29/14

(b) The Director may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process. The Director may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

R311-212-11. Rules in Effect.

(a) The rules in effect on the closing date of the loan and the forms signed by the parties shall govern the parties.

KEY: hazardous substances, petroleum, underground storage tanks
Date of Enactment or Last Substantive Amendment: [~~October 17, 2011~~]2014
Notice of Continuation: April 10, 2012
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-40[~~5.3~~]9

Environmental Quality, Radiation Control
R313-12-3
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38752
FILED: 08/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Nuclear Regulatory Commission (NRC) has revised Title 10 Code of Federal Regulations (10 CFR). NRC notified the Utah Division of Radiation Control (DRC) that the revised regulations need to be adopted by Agreement States no later than 11/14/2014. All Agreement States are required to maintain rules compatible with NRC regulations. The NRC revised the definitions of "Commencement of Construction" and "Construction". The Board proposes to revise the existing rules by incorporating the federal definitions found in 10 CFR Parts 30, 36, 40, 70, and 150.

SUMMARY OF THE RULE OR CHANGE: The rule will be amended by adding two definitions to Section R313-12-3. They will be listed in alphabetical order with the other definitions in that section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-104

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new burden or reporting requirements on a licensee, the NRC, or an Agreement State. See 76 FR 56961.

♦ LOCAL GOVERNMENTS: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new burden or reporting requirements on the licensee including a local government that may have a radioactive material license. See 76 FR 56961.

♦ SMALL BUSINESSES: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new burden or reporting requirements on a licensee that may also be a "small business". See 76 FR 56961.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new burden or reporting requirements on a licensee. See 76 FR 56961.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new compliance burdens on licensees. See 76 FR 56961.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses with a radioactive material license will not see a fiscal impact due to the proposed changes to Rule R313-12-

3. The proposed changes do not add or remove significant requirements that affect the Radiation Control Program or the Utah Radiation Control Board.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mike Givens by phone at 801-536-0278, by FAX at 801-533-4097, or by Internet E-mail at mgivens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/21/2014

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.
R313-12. General Provisions.
R313-12-3. Definitions.

As used in these rules, these terms shall have the definitions set forth below. Additional definitions used only in a certain rule will be found in that rule.

"A1" means the maximum activity of special form radioactive material permitted in a Type A package.

"A2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity, and surface contaminated object material permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100 or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator produced radioactive material" means material made radioactive by a particle accelerator.

"Act" means Utah Radiation Control Act, Title 19, Chapter 3.

"Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Adult" means an individual 18 or more years of age.

"Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

"Advanced practice registered nurse" means an individual licensed by this state to engage in the practice of advanced practice registered nursing. See Sections 58-31b-101 through 58-31b-801, Nurse Practice Act.

"Agreement State" means a state with which the United States Nuclear Regulatory Commission or the Atomic Energy Commission has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

"Airborne radioactive material" means a radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" means: a room, enclosure, or area in which airborne radioactive material exists in concentrations:

(a) In excess of the derived air concentrations (DACs), specified in Rule R313-15, or

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI), or 12 DAC hours.

"As low as reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, using, or storing radioactive material.

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the Department under the Radiation Control Act or Rules.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to one disintegration or transformation per second.

"Bioassay" means the determination of kinds, quantities or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

"Board" means the Radiation Control Board created under Section 19-1-106.

"Byproduct material" means:

(a) a radioactive material, with the exception of special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition;

(c) (i) a discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) material that

(A) has been made radioactive by use of a particle accelerator; and

(B) is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(d) a discrete source of naturally occurring radioactive material, other than source material, that

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, has determined would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

"Calibration" means the determination of:

(a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) the strength of a source of radiation relative to a standard.

"CFR" means Code of Federal Regulations.

"Chelating agent" means a chemical ligand that can form coordination compounds in which the ligand occupies more than one coordination position. The agents include beta diketones, certain proteins, amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Chiropractor" means an individual licensed by this state to engage in the practice of chiropractic. See Sections 58-73-101 through 58-73-701, Chiropractic Physician Practice Act.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Commencement of construction" means taking any action defined as "construction" or any other activity at the site of a facility subject to these rules that have a reasonable nexus to radiological health and safety.

"Commission" means the U.S. Nuclear Regulatory Commission.

"Committed dose equivalent" (HT,50), means the dose equivalent to organs or tissues of reference (T), that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" (HE,50), is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

"Consortium" means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution, a Federal facility, or a medical facility.

"Construction" means the installation of wells associated with radiological operations; for example, production, injection, or monitoring well networks associated with in-situ recovery or other facilities; the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to these rules that are related to radiological safety or security. The term "construction" does not include:

(a) changes for temporary use of the land for public recreational purposes;

(b) site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(c) preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(d) erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials subject to this part;

(e) excavation;

(f) erection of support buildings; for example, construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings; for use in connection with the construction of the facility;

(g) building of service facilities; for example, paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines;

(h) procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(i) taking any other action that has no reasonable nexus to radiological health and safety.

"Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"Curie" means a unit of measurement of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7 x 1010 disintegrations or transformations per second (dps or tps).

"Cyclotron means a particle accelerator in which the charged particles travel in an outward spiral or circular path. A cyclotron accelerates charged particles at energies usually in excess of 10 megaelectron volts and is commonly used for production of short half-life radionuclides for medical use.

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(a) release of property for unrestricted use and termination of the license; or

(b) release of the property under restricted conditions and termination of the license.

"Deep dose equivalent" (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of one centimeter (1000 mg/cm^2).

"Dentist" means an individual licensed by this state to engage in the practice of dentistry. See sections 58-69-101 through 58-69-805, Dentist and Dental Hygienist Practice Act.

"Department" means the Utah State Department of Environmental Quality.

"Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

"Diffuse source" means a radionuclide that has been unintentionally produced or concentrated during the processing of materials for use for commercial, medical, or research activities.

"Director" means the Director of the Division of Radiation Control.

"Discrete source" means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

"Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

"Dose equivalent" (H_T), means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

"Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purpose of these rules, "limits" is an equivalent term.

"Effective dose equivalent" (H_E), means the sum of the products of the dose equivalent to each organ or tissue (H_T), and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated.

"Embryo/fetus" means the developing human organism from conception until the time of birth.

"Entrance or access point" means an opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"Explosive material" means a chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

"EXPOSURE" when capitalized, means the quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons, both negatrons and positrons, liberated by photons in a volume element of air having a mass of "dm" are completely stopped in air. The special unit of EXPOSURE is the roentgen (R). See Section R313-12-20 Units of exposure and dose for the SI equivalent. For purposes of these rules, this term is used as a noun.

"Exposure" when not capitalized as the above term, means being exposed to ionizing radiation or to radioactive material. For purposes of these rules, this term is used as a verb.

"EXPOSURE rate" means the EXPOSURE per unit of time, such as roentgen per minute and milliroentgen per hour.

"External dose" means that portion of the dose equivalent received from a source of radiation outside the body.

"Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Facility" means the location within one building, vehicle, or under one roof and under the same administrative control

(a) at which the use, processing or storage of radioactive material is or was authorized; or

(b) at which one or more radiation-producing machines or radioactivity-inducing machines are installed or located.

"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

"Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

"Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram.

"Hazardous waste" means those wastes designated as hazardous by the U.S. Environmental Protection Agency rules in 40 CFR Part 261.

"Healing arts" means the disciplines of medicine, dentistry, osteopathy, chiropractic, and podiatry.

"High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of one mSv (0.1 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic x-ray systems are used for healing arts purposes are not considered high radiation areas.

"Human use" means the intentional internal or external administration of radiation or radioactive material to human beings.

"Individual" means a human being.

"Individual monitoring" means the assessment of:

(a) dose equivalent, by the use of individual monitoring devices or, by the use of survey data; or

(b) committed effective dose equivalent by bioassay or by determination of the time weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

"Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of these rules, individual monitoring equipment and personnel monitoring equipment are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence

dosimeters (TLD's), pocket ionization chambers, and personal air sampling devices.

"Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions applicable to radiation sources.

"Interlock" means a device arranged or connected requiring the occurrence of an event or condition before a second condition can occur or continue to occur.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"Lens dose equivalent" (LDE) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

"License" means a license issued by the Director in accordance with the rules adopted by the Board.

"Licensee" means a person who is licensed by the Department in accordance with these rules and the Act.

"Licensed or registered material" means radioactive material, received, possessed, used or transferred or disposed of under a general or specific license issued by the Director.

"Licensing state" means a state which, prior to November 30, 2007, was provisionally or finally designated as such by the Conference of Radiation Control Program Directors, Inc., which reviewed state regulations to establish equivalency with the Suggested State Regulations and ascertained whether a State has an effective program for control of natural occurring or accelerator produced radioactive material.

"Limits". See "Dose limits".

"Lost or missing source of radiation" means licensed or registered sources of radiation whose location is unknown. This definition includes, but is not limited to, radioactive material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

"Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4.

"Member of the public" means an individual except when that individual is receiving an occupational dose.

"Minor" means an individual less than 18 years of age.

"Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.

"Natural radioactivity" means radioactivity of naturally occurring nuclides.

"Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether or not the sources of radiation are in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, from voluntary participation in medical research programs, or as a member of the public.

"Package" means the packaging together with its radioactive contents as presented for transport.

"Particle accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one megaelectron volt. For purposes of these rules, "accelerator" is an equivalent term.

"Permit" means a permit issued by the Director in accordance with the rules adopted by the Board.

"Permitee" means a person who is permitted by the Department in accordance with these rules and the Act.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or another state or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

"Personnel monitoring equipment," see individual monitoring devices.

"Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy. See Sections 58-17a-101 through 58-17a-801, Pharmacy Practice Act.

"Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

"Physician assistant" means an individual licensed by this state to engage in practice as a physician assistant. See Sections 58-70a-101 through 58-70a-504, Physician Assistant Act.

"Podiatrist" means an individual licensed by this state to engage in the practice of podiatry. See Sections 58-5a-101 through 58-5a-501, Podiatric Physician Licensing Act.

"Practitioner" means an individual licensed by this state in the practice of a healing art. For these rules, only the following are considered to be a practitioner: physician, dentist, podiatrist, chiropractor, physician assistant, and advanced practice registered nurse.

"Protective apron" means an apron made of radiation-attenuating materials used to reduce exposure to radiation.

"Public dose" means the dose received by a member of the public from exposure to radiation or to radioactive materials released by a licensee, or to any other source of radiation under the control of a licensee or registrant. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, or from voluntary participation in medical research programs.

"Pyrophoric material" means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (54.4 degrees Celsius) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal

hazard. Included are spontaneously combustible and water-reactive materials.

"Quality factor" (Q) means the modifying factor, listed in Tables 1 and 2 of Section R313-12-20 that is used to derive dose equivalent from absorbed dose.

"Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram

"Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high speed electrons, high speed protons, and other particles capable of producing ions. For purposes of these rules, ionizing radiation is an equivalent term. Radiation, as used in these rules, does not include non-ionizing radiation, like radiowaves or microwaves, visible, infrared, or ultraviolet light.

"Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates.

"Radiation machine" means a device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection rules and has been assigned such responsibility by the licensee or registrant. For a licensee authorized to use radioactive materials in accordance with the requirements of Rule R313-32,

(1) the individual named as the "Radiation Safety Officer" must meet the training requirements for a Radiation Safety Officer as stated in Rule R313-32; or

(2) the individual must be identified as a "Radiation Safety Officer" on

(a) a specific license issued by the Director, the U.S. Nuclear Regulatory Commission, or an Agreement State that authorizes the medical use of radioactive materials; or

(b) a medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee.

"Radiation source". See "Source of radiation."

"Radioactive material" means a solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiobioassay". See "Bioassay".

"Registrant" means any person who is registered with respect to radioactive materials or radiation machines with the Director or is legally obligated to register with the Director pursuant to these rules and the Act.

"Registration" means registration with the Department in accordance with the rules adopted by the Board.

"Regulations of the U.S. Department of Transportation" means 49 CFR 100 through 189.

"Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 sievert (Sv).

"Research and development" means:

(a) theoretical analysis, exploration, or experimentation; or

(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Rule R313-15.

"Restricted area" means an area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A "Restricted area" does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

"Roentgen" (R) means the special unit of EXPOSURE. One roentgen equals 2.58 x 10-4 coulombs per kilogram of air. See EXPOSURE.

"Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

"Shallow dose equivalent" (Hs) which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (seven mg per cm2).

"SI" means an abbreviation of the International System of Units.

"Sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

"Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

"Source container" means a device in which sealed sources are transported or stored.

"Source material" means:

(a) uranium or thorium, or any combination thereof, in any physical or chemical form, or

(b) ores that contain by weight one-twentieth of one percent (0.05 percent), or more of, uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

"Source material milling" means any activity that results in the production of byproduct material as defined by (b) of "byproduct material".

"Source of radiation" means any radioactive material, or a device or equipment emitting or capable of producing ionizing radiation.

"Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) the piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and

(c) it satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission in 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of Section 71.4 in effect on March 31, 1996, (see 10 CFR 71 revised January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

"Special nuclear material" means:

(a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and other material that the U.S. Nuclear Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) any material artificially enriched by any of the foregoing but does not include source material.

"Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or a combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

((175(Grams contained U-235)/350) + (50(Grams U-233/200) + (50(Grams Pu)/200)) is equal to one.

"Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations and measurements of levels of radiation or concentrations of radioactive material present.

"Test" means the process of verifying compliance with an applicable rule.

"These rules" means "Utah Radiation Control Rules".

"Total effective dose equivalent" (TEDE) means the sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

"Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in Subsection R313-15-1107(1)(f).

"U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c), and (d) of Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, effective January 19, 1975 known as the Energy Reorganization Act of 1974, and retransferred to the Secretary of Energy pursuant to section 301(a) of Public Law 95-91, August 14, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977 known as the Department of Energy Organization Act.

"Unrefined and unprocessed ore" means ore in its natural form prior to processing, like grinding, roasting, beneficiating or refining.

"Unrestricted area" means an area, to which access is neither limited nor controlled by the licensee or registrant. For purposes of these rules, "uncontrolled area" is an equivalent term.

"Waste" means those low-level radioactive wastes containing radioactive material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraphs (b), (c), and (d) of the definition of byproduct material found in Section R313-12-3.

"Week" means seven consecutive days starting on Sunday.

"Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knees.

"Worker" means an individual engaged in work under a license or registration issued by the Director and controlled by a licensee or registrant, but does not include the licensee or registrant.

"Working level" (WL), means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are, for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon 220: polonium-216, lead-212, bismuth-212, and polonium-212.

"Working level month" (WLM), means an exposure to one working level for 170 hours. 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

"Year" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the decision to make the change is made not later than December 31 of the previous year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

KEY: definitions, units, inspections, exemptions
Date of Enactment or Last Substantive Amendment: [~~March 19, 2013~~]2014
Notice of Continuation: July 7, 2011
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

Environmental Quality, Radiation Control
R313-17-4
Special Procedures for Decisions Associated with Licenses for Uranium Mills and Disposal of Byproduct Material

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38770
FILED: 08/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule adds a new administrative hearing procedure that applies to specific licensing actions involving certain radioactive material licenses. The new hearing procedure is being added to ensure that the Division of Radiation Control (DRC) is in compliance with the requirements of 42 USC Section 2021(o)(3)(A)(ii), a requirement that must be met in order for the State of Utah to remain compatible with NRC as an Agreement State authorized to regulate uranium mills and disposal of byproduct materials. 42 USC Section 2021(o)(3)(A)(ii) requires Agreement States to provide an opportunity for cross-examination during a licensing proceeding. Previously, DRC met this requirement through procedures under the Utah Administrative Procedures Act (UAPA). However, under Section 19-1-301.5 (enacted in 2012), UAPA no longer applies to DRC licensing procedures. DRC is therefore required to provide a hearing procedure by rule.

SUMMARY OF THE RULE OR CHANGE: 42 USC Section 2021(o)(3)(A)(ii) requires NRC Agreement States to provide an opportunity for cross-examination for licensing actions involving uranium mills and disposal of byproduct materials. Legislative history for the provision clarifies that the procedures may be informal. Consistent with the legislative history and the informal procedures used for DRC licensing actions under Section 19-1-301.5, the DRC is proposing to use an informal question and answer hearing to meet this requirement. The proposed rule ensures that this hearing opportunity will be available to interested persons, as required by federal law, and outlines the procedures that will used for the hearing.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 USC Section 2021 (o)(3)(A)(ii) and Section 19-1-301 and Section 19-1-301.5 and Subsection 19-3-104(4)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: DRC anticipates some costs for implementing these procedures. However, these costs will be billed to the licensee through fees associated with the radioactive material license. In addition, exactly how many licensing actions will take place during a state fiscal year is unknown, therefore additional costs to DRC cannot be determined at this time. However, it is anticipated that administrative costs not otherwise paid by the licensee will increase in implementing these procedures.
♦ LOCAL GOVERNMENTS: No local governments have a byproduct disposal facility or uranium mill license, so therefore local governments are not affected by this rule.
♦ SMALL BUSINESSES: DRC does not anticipate small businesses to be affected by this amendment, because no small businesses are licensees or operate a byproduct disposal facility or uranium mill.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals, tribes, and not for profit public or private organizations will be affected by increased travel costs to prepare for, participate in, and be present at these hearings. In order to properly record and transcribe the public hearings, such hearings will be held in Salt Lake City. The procedures provide an opportunity for the public to ask questions regarding the licensing action at the hearing. However, it is indeterminate how often or if the person or entity will want to attend and ask questions, therefore DRC cannot estimate how a person or entity will be affected. If they do attend, then travel costs may impact these stakeholders.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for the affected person will increase because the licensee must prepare for and attend these hearings. The hearings will be held in Salt Lake City, and if the licensee's corporate offices are located in other states, travel costs associated with the hearings will affect them.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule ensures that the state provides an opportunity for a hearing for interested persons, as required by federal law, and outlines the procedures that will be used for the hearing. The proposed administrative procedures are to meet NRC Agreement State requirements in accordance with federal law found in 42 USC Section 2021(o)(3)(A)(ii). Fiscal impacts will be limited to two or three licensed facilities in Utah. How often a hearing is requested cannot be determined at this time. However, meeting administrative and travel costs will impact the licensee; by how much, depends on how many staff are in attendance and how often licensing actions are requested.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Hultquist by phone at 801-536-4263, by FAX at 801-536-4250, or by Internet E-mail at jhultquist@utah.gov
♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/21/2014

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.
R313-17. Administrative Procedures.
R313-17-4. Special Procedures for Decisions Associated with Licenses for Uranium Mills and Disposal of Byproduct Material.

(1) Definitions. For purposes of this rule:

(a) "Byproduct material" has the same meaning as defined in 42 U.S.C. Section 2014(e);

(b) "License" means a radioactive materials license for a uranium mill or disposal of byproduct material, including any ground water discharge permit incorporated in a license; and

(c) "Question and answer hearing" means the informal hearing described in paragraphs (3) through (5) held for the purpose of responding to questions from the public.

(2) Scope. This rule R313-17-4 applies only to licensing activities that meet both of the following criteria:

(a) they are licensing activities described in R313-17-2(a)(i)(A) through (I); and

(b) they are for licenses or license amendments for uranium mills and disposal of byproduct materials.

(3) Opportunity for Question and Answer Hearing Prior to Director's Decision.

(a) For licensing actions that are subject to the scope of this rule, the division may, at its discretion, schedule a question and answer hearing at the time it proposes the action.

(b) If the division does not choose to schedule a question and answer session at the time it proposes a licensing action, it shall provide notice to the public of an opportunity to request a question and answer session, and it shall schedule and hold a session if there is a request from a member of the public.

(c) Notice of a hearing or an opportunity to request a hearing under this rule shall be made as provided in R313-17-3(5). Members of the public shall be given at least ten days to request a hearing.

(d) The division may combine the question and answer hearing with a licensing hearing held for the purpose of taking public comment on a proposed licensing action.

(4) Procedures Prior to Question and Answer Hearing.

(a) The division shall provide a notice of the question and answer hearing at least 30 days before the hearing. The notice shall also summarize the applicable procedures, including the obligation to provide questions in advance of the hearing.

(b) Any person who proposes to ask questions during the question and answer hearing shall submit the questions to the division. Questions must be received by the division by the deadline specified in the public notice, which shall be no fewer than 15 days after the notice of the question and answer hearing is posted. If a question relies on information that is not included in the licensing record, that information shall be submitted with the questions. The relevance of and the relevant portions of any supporting materials shall be described with reasonable specificity. Information submitted in accordance with this paragraph will become part of the record.

(c) If the Director determines that any of the questions submitted will not be answered during the question and answer hearing, as provided in paragraph (5)(f), the Director shall notify the person who submitted the questions prior to the hearing. Notification shall include a statement about the Director's reasons for the determination.

(5) Procedures for Question and Answer Hearing.

(a) The question and answer hearing shall ordinarily be held in the Department of Environmental Quality offices. Unless the question and answer hearing is held in a place near the proposed facility, the division shall provide an opportunity for the public to participate by telephone or other electronic means.

(b) The question and answer hearing session will not ordinarily be scheduled for longer than three hours. The division may allocate time to those who have submitted questions after considering the number and nature of the questions submitted.

(c) A hearing officer shall manage the question and answer hearing. Representatives of the licensee and division staff shall attend the hearing.

(d) The question and answer hearing shall be recorded and transcribed. Alternatively, the division may elect to have a court reporter record and transcribe the hearing.

(e) The Director shall determine whether the initial and follow-up question will be answered by the applicant, by division staff, or by both. Notwithstanding the Director's decision, the applicant may choose to respond to any question. After the response to a question, the person who submitted the question shall be allowed to follow up with additional questions based on the response provided.

(f) Appropriate questions are those that seek specific factual information about the license application, or about other documents created during the licensing process. The following kinds of questions do not require a response during a question and answer session:

(i) Questions that are not relevant to the licensing action;

(ii) Questions that are based on information that is not in the record;

(iii) Questions that are vague;

(iv) Questions that require speculation;

(v) Questions that seek legal conclusions;

(vi) Questions that have been previously answered;

(vii) Questions that are more appropriately characterized as comments; and

(viii) Questions that would not have to be answered during a trial-type hearing.

(g) Either the agency or the applicant may elect to answer a question even if it is a question that does not require a response under paragraph (f). No waiver will result from answering a question that does not require a response.

(h) Questions requesting information that is clear in the record may be answered by referring the questioner to the record.

(i) In the event that a questioner or the applicant disagrees with the Director's determinations under paragraphs (4)(c), (5)(b), or (5)(e), it may request a determination by the hearing officer. If the

hearing officer disagrees with the Director's determination, the division or, as appropriate, the applicant may then:

(i) comply with the hearing officer's determination during the question and answer hearing;

(ii) comply with the hearing officer's determination by responding to the question in writing no fewer than 10 days before the end of the comment period; or

(iii) notify the questioner or applicant that it contests the determination, and provide information to the questioner about the procedures available to it under paragraph (5)(j).

(j) If a decision of the hearing officer is contested as described in paragraph (5)(i)(iii), the person who asked the question may challenge that failure to comply with the hearing officer's decision on appeal. If the hearing officer's determination is upheld on appeal, the record on appeal shall be supplemented as described in paragraph (6) and R305-7-607.

(6) Formal Questioning During Appeal.

If the procedures in paragraphs (2) through (5) are not used before the Director's final determination, an opportunity for questioning shall be provided on appeal as described in R305-7-607.

KEY: administrative procedures, comments, hearings, adjudicative proceedings
Date of Enactment or Last Substantive Amendment: [~~March 19, 2013~~]2014
Notice of Continuation: July 7, 2011
Authorizing, and Implemented or Interpreted Law: 19-3-104(4); 19-1-301 and 19-1-301.5

Environmental Quality, Radiation Control
R313-22-33
General Requirements for the Issuance of Specific Licenses

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38754
FILED: 08/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Nuclear Regulatory Commission (NRC) has revised the definitions of "Commencement of Construction" and "Construction" in Title 10 of the Code of Federal Regulations (10 CFR). All Agreement States are required to maintain rules compatible with NRC regulations. The NRC notified the Utah Division of Radiation Control (DRC) that the revised regulations need to be adopted by Agreement States no later than 11/14/2014. The Utah Radiation Control Board proposes to revise the existing rules by adopting these definitions.

SUMMARY OF THE RULE OR CHANGE: The rule will be amended by deleting an obsolete definition for "Commencement of Construction" from Subsection R313-22-3(f). The revised definition will be listed in Section R313-12-3.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new burden or reporting requirements on a licensee, the NRC, or an Agreement State. See 76 FR 56961.
♦ LOCAL GOVERNMENTS: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new burden or reporting requirements on the licensee including a local government that may have a radioactive material license. See 76 FR 56961.
♦ SMALL BUSINESSES: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new burden or reporting requirements on a licensee that may also be a "small business". See 76 FR 56961.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new burden or reporting requirements on a licensee. See 76 FR 56961.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new compliance burdens on licensees. See 76 FR 56961.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses with a radioactive material license will not see a fiscal impact due to the proposed changes to Section R313-22-33. The proposed changes do not add or remove significant requirements that affect the Radiation Control Program, licensees, or the Utah Radiation Control Board.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mike Givens by phone at 801-536-0278, by FAX at 801-533-4097, or by Internet E-mail at mgivens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/21/2014

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.
R313-22. Specific Licenses.
R313-22-33. General Requirements for the Issuance of Specific Licenses.

(1) A license application shall be approved if the Director determines that:

(a) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these rules in a manner as to minimize danger to public health and safety or the environment;

(b) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or the environment;

(c) the applicant's facilities are permanently located in Utah, otherwise the applicant shall seek reciprocal recognition as required by Section R313-19-30;

(d) the issuance of the license will not be inimical to the health and safety of the public;

(e) the applicant satisfies applicable special requirements in Sections R313-22-50 and R313-22-75, and Rules R313-24, R313-25, R313-32, R313-34, R313-36, or R313-38; and

(f) in the case of an application for a license to receive and possess radioactive material for commercial waste disposal by land burial, or for the conduct of other activities which the Director determines will significantly affect the quality of the environment, the Director, before commencement of construction of the plant or facility in which the activity will be conducted, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. The Director shall respond to the application within 60 days. Commencement of construction prior to a response and conclusion shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility.[~~ As used in this paragraph the term "commencement of construction" means clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.~~]

KEY: specific licenses, decommissioning, broad scope, radioactive materials
Date of Enactment or Last Substantive Amendment: [~~February 14, ~~]2014
Notice of Continuation: September 23, 2011
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

Environmental Quality, Radiation Control
R313-24-1
Purpose and Authority

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38769
FILED: 08/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this proposed rulemaking is to reference the requirement described in Rule R313-17 that meets the requirement under 42 USC Section 2021(o)(3)(A)(ii) regarding certain licensing actions related to uranium mills and byproduct disposal facilities.

SUMMARY OF THE RULE OR CHANGE: The federal Atomic Energy Act (42 USC Section 2021(o)(3)(A)(ii)) requires Agreements States to include an opportunity for cross-examination as part of certain licensing actions related to 11e.(2) byproduct material. The proposed rulemaking references Rule R313-17 which contains procedural provisions required for uranium mill and byproduct disposal licensing actions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 USC 20121(o)(3)(A)(ii) and Section 19-3-104 and Section 19-3-108

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division of Radiation Control (DRC) anticipates some costs for implementing the procedures as described in Rule R313-17. However, these costs will be billed to the licensee through fees associated with their radioactive material license. In addition, exactly how many licensing actions will take place during a state fiscal year is unknown; therefore additional costs to the Division cannot be determined at this time. However, it is anticipated that administrative costs not otherwise paid by the licensee will increase in implementing these procedures.
♦ LOCAL GOVERNMENTS: No local governments have a byproduct disposal facility or uranium mill license, so therefore local governments are not affected by this rule.
♦ SMALL BUSINESSES: DRC does not anticipate small business to be affected by this amendment, because no small businesses are licensees or operate a byproduct disposal facility or uranium mill.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals, tribes, and not-for-profit public or private organizations will be affected by increased costs to prepare for, participate in and be present at these hearings. In order to properly record and transcribe the public hearings, such

hearings will be held in Salt Lake City. The procedures provide an opportunity for the public to ask questions regarding the licensing action at the hearing. However, it is indeterminate how often or if the person or entity will want to attend and ask questions, therefore DRC cannot estimate how a person or entity will be affected. If they do attend, then travel costs may impact these stakeholders.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for the affected person will increase because the licensee must prepare for and attend these hearings. The hearings will be held in Salt Lake City, and if the licensee's corporate offices are located in other states, travel costs associated with the hearings will affect them.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule ensures that the state provides an opportunity for a hearing for interested persons, as required by federal law, and references the procedures that will be used for the hearing. The proposed administrative procedures are to meet NRC Agreement State requirements in accordance with federal law found in 42 USC Section 2021(o)(3)(A)(ii). Fiscal impacts will be limited to two or three licensed facilities in Utah. How often a hearing is requested cannot be determined at this time. However, meeting administrative and travel costs will impact the licensee; by how much, depends on how many staff are in attendance and how often licensing actions are requested.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ John Hultquist by phone at 801-536-4263, by FAX at 801-536-4250, or by Internet E-mail at jhultquist@utah.gov
♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/21/2014

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.
R313-24. Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements.
R313-24-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements for possession and use of source material in milling operations such as conventional milling, in-situ leaching, or heap-leaching. The rule includes requirements for the possession of byproduct material, as defined in Section R313-12-3 (see "byproduct material" definition (b)), from source material milling operations, as well as, possession and maintenance of a facility in standby mode. In addition, requirements are prescribed for the receipt of byproduct material from other persons for possession and disposal. The rule also prescribes requirements for receipt of byproduct material from other persons for possession and disposal incidental to the byproduct material generated by the licensee's source material milling operations.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

(3) The requirements of Rule R313-24 are in addition to, and not substitution for, the other applicable requirements of Title R313. In particular, the provisions of Rules R313-12, R313-15, R313-18, R313-19, R313-21, R313-22, and R313-70 apply to applicants and licensees subject to Rule R313-24.

(4) See R313-17-4 for special procedures for decisions associated with licenses for activity which results in the production of byproduct material.

KEY: environmental analysis, uranium mills, tailings, monitoring
Date of Enactment or Last Substantive Amendment: [~~March 19, 2013~~]2014
Notice of Continuation: May 24, 2012
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

Environmental Quality, Radiation Control
R313-25-2
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38755
FILED: 08/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Nuclear Regulatory Commission (NRC) has revised the definitions of "Commencement of Construction" and "Construction" in Title 10 of the Code of Federal Regulations (10 CFR). All Agreement States are required to

maintain rules compatible with NRC regulations. The NRC notified the Utah Division of Radiation Control (DRC) that the revised regulations need to be adopted by Agreement States, no later than 11/14/2014. The Utah Radiation Control Board proposes to revise the existing rules by adopting these definitions.

SUMMARY OF THE RULE OR CHANGE: The rule will be amended by deleting an obsolete definition for "Commencement of Construction" from Section R313-25-2. The revised definition will be in Section R313-12-3.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new burden or reporting requirements on a licensee, the NRC or an Agreement State. See 76 FR 56961.
♦ LOCAL GOVERNMENTS: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new burden or reporting requirements on the licensee including a local government that may have a radioactive material license. See 76 FR 56961.
♦ SMALL BUSINESSES: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new burden or reporting requirements on a licensee that may also be a "small business". See 76 FR 56961.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new burden or reporting requirements on a licensee. See 76 FR 56961.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The NRC performed a regulatory analysis of this amendment and determined that the rule change does not impose any new compliance burdens on licensees. See 76 FR 56961.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses with a radioactive material license will not see a fiscal impact due to the proposed changes to Section R313-25-2. The proposed changes do not add or remove significant requirements that affect the Radiation Control Program, licensees, or the Utah Radiation Control Board.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mike Givens by phone at 801-536-0278, by FAX at 801-533-4097, or by Internet E-mail at mgivens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/21/2014

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.
R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.
R313-25-2. Definitions.

As used in Rule R313-25, the following definitions apply:

"Active maintenance" means significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in Sections R313-25-20 and R313-25-21 are met. Active maintenance may include the pumping and treatment of water from a disposal unit, the replacement of a disposal unit cover, or other episodic or continuous measures. Active maintenance does not include custodial activities like repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep.

"Approval application" means an application by a radioactive waste facility regulated under Title 19, Chapter 3 or Title 19, Chapter 5, for a permit, permit modification, license, license amendment, or other authorization.

"Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

[~~"Commencement of construction" means clearing of land, excavation, or other substantial action that could adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.~~]

"Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

"Day" for purposes of this Rule means calendar days.

"Disposal" means the isolation of wastes from the biosphere by placing them in a land disposal facility.

"Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

"Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit may be a trench.

"Engineered barrier" means a man-made structure or device intended to improve the land disposal facility's performance under Rule R313-25.

"Groundwater permit" means a groundwater quality discharge permit issued under the authority of Title 19, Chapter 5 and Rule R317-6.

"Hydrogeologic unit" means a soil or rock unit or zone that has a distinct influence on the storage or movement of ground water.

"Inadvertent intruder" means a person who may enter the disposal site after closure and engage in activities unrelated to post closure management, such as agriculture, dwelling construction, or other pursuits which could, by disturbing the site, expose individuals to radiation.

"Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in Rule R313-25, or engineered structures that provide equivalent protection to the inadvertent intruder.

"Land disposal facility" means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive waste.

"Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

"Near-surface disposal facility" means a land disposal facility in which waste is disposed of within approximately the upper 30 meters of the earth's surface.

"Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care, and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

"Stability" means structural stability.

"Surveillance" means monitoring and observation of the disposal site to detect needs for maintenance or custodial care, to observe evidence of intrusion, and to ascertain compliance with other license and regulatory requirements.

"Tolling period," for purposes of this Rule, means a period during which days are not counted toward the deadlines specified in Subsections R313-25-6(3)(c), (4)(c)(i), (5)(b)(i), and (6)(b)(i).

"Treatment" means the stabilization or the reduction in volume of waste by a chemical or a physical process.

"Waste" means those low-level radioactive wastes containing radioactive material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in (b), (c), and (d) of the definition for byproduct material found in Section R313-12-3.

KEY: radiation, radioactive waste disposal, depleted uranium
Date of Enactment or Last Substantive Amendment: [~~April 3,~~] 2014
Notice of Continuation: September 23, 2011
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

Environmental Quality, Radiation Control
R313-26
Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38771
FILED: 08/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of the passage of H.B. 124, Radiation Control Amendments, during the 2013 General Legislative Session, an amendment was enacted that grants the director of the Utah Division of Radiation Control (DRC) discretion in issuing a generator or site access permit for access to a radioactive disposal site in Utah unless a generator or broker agrees to grant DRC reasonable access to its facilities for the verification of Utah requirements regarding radioactive waste classification. The proposed changes to Rule R313-26 are to change the rule so it is consistent with the Act, as well as identify the required shipment information and documentation, and clarify enforcement requirements.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to Rule R313-26 would: 1) add a condition that those receiving a Radioactive Waste Generator Site Access Permit will be required to grant DRC reasonable access to its facilities. See Subsection R313-26-3(5); 2) require that prior to transport the permittee will provide DRC a copy of the Uniform Low Level Radioactive Waste Manifest for each shipment consigned for disposal within Utah. See Subsection R313-26-4(1); 3) require that Waste Processors, Waste Collectors, and other Waste Brokers include information accompanying the Radioactive Waste Manifest that documents the waste's originating generator name(s), the Low-Level Radioactive Waste compact affiliation, and the state or nation of origin. See Subsection R313-26-4(6); 4) require that shippers ensure that all waste arriving at a Low-Level Radioactive Waste facility in Utah will be secured tightly so that there is no waste material outside of the container, and the physical and containment integrity has not been compromised. See Subsection R313-26-4; and 5) clarification made to which enforcement requirements will apply to the rule. See Subsection R313-26-6.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-3-106.4(2)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is expected that the Environmental Quality Restricted Account (EQRA) will be

affected by the proposed rule change. Fees for a Radioactive Waste Generator Site Access Permit are collected from out-of-state entities who wish to ship radioactive waste for disposal in Utah. The fees collected are placed into the EQRA. If DRC chooses to perform site visits of the permittee facilities, it is expected that the trip and associated costs with be paid for with EQRA funds.

♦ LOCAL GOVERNMENTS: No local governments hold a Generator Site Access Permit and therefore are not affected by the proposed rule changes.

♦ SMALL BUSINESSES: It is expected that out-of-state small businesses may be affected by this amendment. Many of those entities that receive a Radioactive Waste Generator Site Access Permit are small businesses. They will be required to grant DRC reasonable access to their facility. Any costs associated with allowing on-site access are expected to be minimal. Because a permittee already provides an advance copy of the shipping manifest and related information to the disposal facility, any costs to provide the same information to DRC will be minimal. Failure to grant access may affect the status of their permit, which may have a financial cost.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is expected that some individuals and/or corporations may be affected by this amendment. There are individuals and/or corporations that have a Radioactive Waste Generator Site Access Permit. They will be required to grant DRC reasonable access to their facility. Any costs associated with allowing on-site access are expected to be minimal. Because a permittee already provides an advance copy of the shipping manifest and related information to the disposal facility, any costs to provide the same information to DRC will be minimal. Failure to grant access may affect the status of their permit, which may have a financial cost.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Entities that possess a Radioactive Waste Generator Site Access Permit will be required to grant DRC reasonable access to its facilities. Any costs associated with allowing on-site access are expected to be minimal. Because a permittee already provides an advance copy of the shipping manifest and related information to the disposal facility, any costs to provide the same information to the DRC will be minimal. Failure to grant access may affect the status of their permit, which may have a financial cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: If the proposed rule is promulgated, entities that possess a Radioactive Waste Generator Site Access Permit will be required to grant DRC reasonable access to its facilities. Any costs associated with allowing on-site access are expected to be minimal. Because a permittee already provides an advance copy of the shipping manifest and related information to the disposal facility, any costs to provide the same information to DRC will be minimal. Failure to grant access may affect the status of their permit, which may have a financial cost.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

♦ Gwyn Galloway by phone at 801-536-4258, by FAX at 801-533-4097, or by Internet E-mail at ggalloway@utah.gov

♦ Spencer Wickham by phone at 801-536-0082, by FAX at 801-533-4097, or by Internet E-mail at swickham@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/21/2014

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.
R313-26. Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities.
R313-26-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe the requirements for the issuance of permits to generators for accessing a land disposal facility located within the State and requirements for shippers.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

(3) The requirements of Rule R313-26 are in addition to, and not in substitution for, other applicable requirements of these rules.

R313-26-2. Definitions.

As used in Rule R313-26, the following definitions apply:

"Applicant" means a Waste Generator or Waste Broker who applies for a Generator Site Access Permit.

"Disposal" means the isolation of wastes from the biosphere by placing them in a land disposal facility.

"Generator Site Access Permit" means an authorization to deliver radioactive wastes to a land disposal facility located within the State of Utah.

"Land disposal facility" has the same meaning as that given in Section R313-25-2.

"Manifest" means the document, as defined in Appendix G of 10 CFR 20.1001 to 20.2402 (2006),used for identifying the quantity, composition, origin, and destination of radioactive waste during its transport to a disposal facility.

[~~"Packager" means Waste Processor, Waste Collector or Waste Generator as defined in Section R313-26-2.~~

] "Radioactive waste" means any material that contains radioactivity or is radioactively contaminated and is intended for ultimate disposal at a licensed land disposal facility in Utah.

"Shipper" means [~~the person~~]a Waste Generator, Waste Collector, Waste Processor, or other Waste Broker who transports or offers radioactive waste for transport[~~ation,~~] for disposal at[~~typically consigning this type of waste to~~] a land disposal facility in Utah.

"Waste Broker" means a person who arranges for transportation of the radioactive waste for a Waste Generator, who collects or consolidates shipments of radioactive waste for a Waste Generator; or who processes radioactive waste in some manner for a waste generator, and who is not a carrier whose sole function is to transport the radioactive waste. The term includes a Waste Collector or a Waste Processor.

"Waste Collector," "Waste Generator," and "Waste Processor" [~~has~~]have the meaning as defined in Appendix G of 10 CFR 20.1001 to 20.2402 ([~~2006~~]2013).

R313-26-3. Generator Site Access Permits.

(1) A Waste Generator or Waste Broker[~~, Waste Collector, or Waste Processor~~] shall obtain a Generator Site Access Permit from the Director before transferring radioactive waste to a land disposal facility in Utah.

([~~1~~]2) A Generator Site Access Permit application[~~s~~] shall be filed on a form prescribed by the Director.

([~~2~~]3) An [~~A~~]application[~~s~~] shall be received by the Director at least 30 days prior to the date the first shipment under the requested Generator Site Access Permit is proposed to begin transport[~~any shipments being delivered~~] to a land disposal facility in Utah.

([~~3~~]4) Each Generator Site Access Permit application shall include a certification to the Director that the [~~shipper~~]applicant shall comply with all applicable State or Federal laws, administrative rules and regulations, licenses, or license conditions of the land disposal facility regarding the packaging, transportation, storage, disposal and delivery of radioactive wastes.

(5) As a condition of receiving a Generator Site Access permit, an applicant shall, in its Generator Site Access Permit application, grant the division reasonable access to its facilities for the purpose of inspecting and verifying the applicant's waste packaging, waste classification and waste management activities. The purpose of the division's evaluation is to determine whether waste and waste packaging is being managed and prepared in a manner that gives the division reasonable assurance that disposal of waste from the facility at a Utah land disposal facility would be in compliance with Utah law, including the requirement in R313-26-4(7) that a radioactive waste package or shipment that arrives at a Utah land disposal facility for disposal may not exceed the Class A low-level radioactive waste limits set in UAC R313-15-1009 or other radioactive waste prohibited from being disposed under 19-3-103.7. An applicant's grant of reasonable access will not be interpreted to allow division representatives to evaluate a facility for other purposes.

([~~4~~]6) Generator Site Access Permit fees shall be assessed annually by the Director based on the following [~~classifications~~]categories:

(a) Waste Generators shipping [~~more than 1000 cubic feet of~~]radioactive waste [~~annually~~]to a land disposal facility in Utah.

(b) [~~Waste Generators shipping 1000 cubic feet or less of radioactive waste annually to a land disposal facility in Utah.~~

~~(c)~~]Waste Collectors, [~~or~~]Waste Processors, or other Waste Brokers shipping radioactive waste to a land disposal facility in Utah.

([~~5~~]7) A Generator Site Access Permit[~~s~~] shall be valid for a maximum of one year from the date of issuance. The Director may modify individual Generator Site Access Permit terms [~~and prorate the annual fees accordingly~~]for administrative purposes.

([~~6~~]8) A Generator Site Access Permit[~~s~~] may be renewed by filing a [~~new~~]renewal application with the Director. To ensure timely renewal, a Waste [~~g~~]Generator[~~s~~] [~~and~~]or Waste [~~b~~]Broker[~~s~~] shall submit an application[~~s,~~] for Generator Site Access Permit renewal[~~,~~] a minimum of 30 days prior to the expiration date of [~~their~~]a Generator Site Access Permit.

([~~7~~]9) Generator Site Access Permit fees are not refundable.

([~~8~~]10) Transfer of a Generator Site Access Permit shall be approved in advance by the Director.

([~~9~~]11) The number of Generator Site Access Permits required [~~by each generator~~]for a Waste Generator or Waste Broker with more than one facility shall be determined by the following requirements:

(a) A Waste Generator[~~s~~] or Waste Broker who owns multiple facilities within the same state may apply for one Generator Site Access Permit, provided the same contact person within the generator's company shall be responsible for responding to the Director for matters pertaining to the waste shipments.

(b) Facilities which are owned by the same generator and located in different states shall obtain separate Generator Site Access Permits.

(c) A Person[~~s~~] who is a Waste Generator[~~both generate~~] and [~~are~~]is also [~~either~~]a Waste [~~Processor~~]Broker [~~or Waste Collector~~] shall obtain separate Generator Site Access Permits for each category.

R313-26-4. Shipper's Requirements.

(1) [~~The~~](a) Prior to transport, a shipper shall provide to [~~on demand~~]the Director a copy of the Nuclear Regulatory Commission's "Uniform Low Level Radioactive Waste Manifest" for each shipment[~~s~~] consigned for disposal within Utah. The waste manifest shall be sent by the shipper via e-mail to an address as directed by the division at the same time it is sent via e-mail to the disposal facility in Utah. All waste manifests sent via email shall be submitted to the Director in searchable PDF electronic format.

(b) The Director or the Director's delegee may, by telephone, waive the requirement in paragraph (a) for submission of manifests in searchable PDF electronic format for a shipper who hand enters information on the manifests.

(2) The appropriate Generator Site Access Permit number(s) shall be documented on the manifest.

(3) A[~~Waste Generators, Waste Processors and Waste Collectors~~] shipper shall ensure that all Generator Site Access Permits are current prior to shipment of waste to a land disposal facility located in the state of Utah, and that the waste will arrive at the land disposal facility prior to the expiration date of the applicable Generator Site Access Permits.

(4) A shipper shall ensure that each radioactive waste package or shipment that arrives at a Utah land disposal facility for disposal:

(a) does not exceed the Class A low-level radioactive waste limits set in UAC R313-15-1009 or other limitations in 19-3-103.7, and

(b) is compliant with the disposal facility's currently approved Radioactive Material License, as applicable.

(5) A [~~Waste Collector, Waste Processor or Waste Generator~~]shipper shall ensure [~~all~~]that each container of radioactive waste [~~contained within a shipment~~]shipped for disposal at a land disposal facility in the state is traceable to the original generators and states, regardless of whether the waste is shipped directly from the point of generation to the disposal facility.

(6) Waste Processors, Waste Collectors, and other Waste Brokers shall provide information that specifies the waste's originating generator name(s), the Low-Level Radioactive Waste compact affiliation, if applicable, and the state or nation of origin. The information may be provided in a summary spreadsheet or on the Low Level Waste Manifest (542 Form), in a format prescribed by the Director.

([~~5~~]7) The shipper shall ensure that all radioactive waste [~~material~~]that arrives at a Utah land disposal facility for disposal is contained securely. To be contained securely, a package or container of radioactive waste shall meet the requirements specified in R313-19-100(5)(a)(i)(A), and shall contain waste such that, under conditions normally incident to transportation, there is no waste material outside of the container, and the physical and containment integrity has not been compromised.[~~where no release of material can occur under conditions normally incident to transportation and shall utilize waste container(s)/package(s) where containment integrity has not been compromised.~~]

(8) The shipper shall comply with all applicable requirements of R313-19-100.

R313-26-5. Land Disposal Facility Licensee Requirements.

The land disposal facility licensee shall ensure that Waste Generators, Waste Collectors and Waste Processors have a current, unencumbered Generator Site Access Permit prior to accepting a Waste Generator's, Waste Collector's or Waste Processor's waste.

R313-26-6. Enforcement.

[~~Generator Site Access Permittees shall be subject to the provisions of Rule R313-14 for violations of federal regulations, state rules or requirements in the current land disposal facility operating license regarding radioactive waste packaging, transportation, labeling, notification, classification, marking, manifesting or description.~~]The requirements of this Rule are enforceable as provided in 19-3-109, 19-3-110 and R313-14. Penalties may include termination of a Generator Site Access Permit.

KEY: radioactive waste generator permits
Date of Enactment or Last Substantive Amendment: [~~September 22, 2011~~]2014
Notice of Continuation: April 6, 2011
Authorizing, and Implemented or Interpreted Law: 19-3-106.4

Environmental Quality, Radiation Control
R313-70
Payments, Categories and Types of Fees

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38751
FILED: 08/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purposes for changing the rule include making technical corrections, adding clarity to the description of the time when registration fees are due, specifying when a delinquent fee may be transferred to the Office of State Debt Collection, and specifying the circumstances when the director may renew an expired license.

SUMMARY OF THE RULE OR CHANGE: As applicable, the descriptive terms "rule", "section", and "subsection" are added before each citation. The due date for x-ray registration fees is being changed from July 30 to a date specified by the director. This due date comports with Section R313-16-230. Provisions for transferring a delinquent account to the Office of State Debt Collection are added. These accounts include delinquent licensing, registration, and x-ray inspection fees. It is also proposed that the provisions for assessing late fees be deleted. Finally, the changes specify the circumstances that must be met for the director to renew an expired radioactive materials license.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-3-104(6)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The proposed changes include technical corrections that properly cite the Utah Administrative Code and these changes will not have an impact on the state budget. The deletion of the provisions for assessing late fees could result in a decrease in the state budget, but the amount is unknown. Since past due debts are referred to the Office of State Debt Collection and there are processing fees charged to collect the debt, it may be that the processing fees collected will exceed what could have been generated through assessing a late fee.
♦ LOCAL GOVERNMENTS: Since the proposed changes are meant to address technical corrections to citations of the Utah Administrative Code, there are no anticipated costs or savings to local government due to the technical corrections. A number of local government agencies are authorized to use radioactive materials or x-ray systems and, to date, there are no cases where a local government has been referred to the Office of State Debt Collection because of a delinquent account with the Division of Radiation Control.
♦ SMALL BUSINESSES: Since the proposed changes are meant to address technical corrections to citations of the Utah Administrative Code, there are no anticipated costs or savings to small business due to the technical corrections. However, if a small business has a delinquent account that is referred to the Office of State Debt Collection; it may be that the processing fees will be larger than the late fee that is proposed for deletion. The Division is not able to provide an estimate of the impact on a small business because the fee to

process the debt is dependent on the initial amount of the delinquent account and the time it remains unpaid.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Since the proposed changes are meant to accurately cite the Utah Administrative Code, there are no anticipated costs or savings to other persons due to the technical corrections. However, if other persons have a delinquent account that is referred to the Office of State Debt Collection, it may be that the processing fees will be larger than the late fee that is proposed for deletion. The Division is not able to provide an estimate of the costs incurred by other persons because the fee to process the debt is dependent on the initial amount of the delinquent account and the time it remains unpaid.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no expected changes involving compliance costs associated with this rulemaking. Inspection intervals will not be changed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule changes do not include any new fees or requirements for businesses and individuals possessing radioactive material or using x-ray machines in the state. Referring delinquent accounts to the Office of State Debt Collection may cause some business to incur a debt collection fee that is larger than the late fee that is proposed for deletion.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/21/2014

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.
R313-70. Payments, Categories and Types of Fees.
R313-70-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe the requirements to assess fees of registrants and licensees possessing sources of radiation.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsection 19-3-104(6).

R313-70-2. Scope.

The requirements of Rule R313-70 apply to persons who receive, possess, or use sources of radiation provided: however, that nothing in these rules shall apply to the extent a person is subject to regulation by the U.S. Nuclear Regulatory Commission.

R313-70-3. Communications.

Communications concerning [~~the rules in~~]Rule R313-70 should be addressed to the Director, and may be sent to the Division of Radiation Control, Department of Environmental Quality. Communications may be delivered in person at the Division of Radiation Control offices.

R313-70-5. Payment of Fees.

(1) New Application Fee: Applications for radiation machine registration or radioactive material licensing for which a fee is prescribed, shall be accompanied by a remittance in the full amount of the fee. Applications will not be accepted for filing or processing prior to payment of the full amount specified. Applications for which no remittance is received will be returned to the applicant. Application fees will be charged irrespective of the Director's disposition of the application or a withdrawal of the application.

(2) Annual Fee: Persons and individuals who are subject to licensing or registration of radioactive material or radiation machine registration with the Department of Environmental Quality under provisions of the Utah Radiation Control Rules, are assessed an annual fee in accordance with categories of Sections R313-70-7 and R313-70-8. The appropriate fee shall be filed annually with the Director, by the due date the Director specifies[~~July 30~~] for registrants or by the anniversary date for licensees. The account of a licensee or registrant that is delinquent on or after 61 days may be transferred to the Office of State Debt Collection in accordance with Section R21-1-5.[~~—Fees for radiation machine registration will be considered late if not received annually by the last day of August. Licensees may be assessed late fees if license fees are not received within 30 days after the license anniversary date. Late fees may also be assessed for successive 30 day periods during which the annual fee or registration fee remains unpaid.~~]

(3) Inspection Fee: Persons and entities who, under provisions of the Utah Radiation Control Rules, are subject to radiation machine registration with the Department of Environmental Quality are assessed an inspection fee in accordance with Section R313-70-8. Fees for inspection of a radiation machine are due within 30 days of receipt of an invoice from the Agency.[~~—Registrants may be assessed late fees if inspection fees are not received in a timely manner.~~]The inspection account of a registrant that is delinquent on or after 61 days may be transferred to the Office of State Debt Collection in accordance with Section R21-1-5.

(4) Failure to pay the prescribed fee: the Director will not process applications and may suspend or revoke licenses or registrations or may issue an order with respect to the activities as the Director determines to be appropriate or necessary in order to carry out the provisions of this part of Rule R313-70, and of the Act.

(a) General license certificates of registration and new specific licenses issued pursuant to the provisions in Rules R313-21 or R313-22, will be valid for a period of five years unless failure to submit appropriate fee occurs. Specific license renewals issued pursuant to the provisions in Rule R313-22 may be valid for a period of ten[~~s~~] years or less in accordance with Subsections R313-22-34(1)(b) and (1)(c). Machine registrations will be valid for one year during the schedule established by the Director in accordance with[~~interval outlined in~~] Section R313-16-230. Failure to submit appropriate fees will render the license, certificate or registration invalid, at which time a new application with appropriate fees shall be submitted.

(b) Renewal applications shall be filed in a timely manner in accordance with Sections R313-22-37 or R313-16-230. The radioactive material license will expire on the date specified on the license. A general license certificate of registration will expire on the date specified on the certificate of registration. A radiation [~~M~~]machine registration will expire as outlined in Section R313-16-230. The Director may renew a[~~A~~]n expired license if the licensee provides information that explains why the renewal application was not submitted pursuant to the provisions in Subsection R313-22-36(1) and other information the Director may request to determine that issuance of the license will not be inimical to the health and safety of the public.[~~cannot be renewed, rather the licensee will be required to submit an application for a new license and submit the appropriate application and new license fee.~~]

(5) Method of Payment: Fees shall be made payable to: Division of Radiation Control, Department of Environmental Quality.

R313-70-7. License Categories and Types of Fees for Radioactive Materials Licenses.

Fees shall be established in accordance with the Legislative Appropriations Act. Copies of established fee schedules may be obtained from the Director.

TABLE

LICENSE CATEGORY	TYPE OF FEE
(1) Special Nuclear Material	
(a) Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers and neutron generators.	New License or Renewal Annual Fee
(b) Licenses for possession and use of less than 15 g special nuclear material in unsealed form for research and development.	New License or Renewal Annual Fee
(c) All other special nuclear material licenses.	New License or Renewal Annual Fee
(d) Special nuclear material to be used as calibration and reference sources.	New License or Renewal Annual Fee
(2) Source Material.	
(a) Licenses for concentrations of uranium from other areas like copper or phosphates for the production of moist, solid, uranium yellow cake.	New License or Renewal Annual Fee Review Fees
(b) Licenses for possession and use of source material in extraction facilities such as conventional milling, in-situ leaching, heap leaching, and other processes including licenses authorizing the possession of byproduct material (tailings and other wastes) from source material extraction facilities, as well as licenses authorizing the possession and maintenance of a facility in a standby mode, and licenses that authorize the receipt of byproduct material, as defined in Section 19-3-102, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations.	Monthly fee for active or inactive mill Review Fees
(c) Licenses that authorize the receipt of byproduct material, as defined in Section 19-3-102, from other persons for possession and disposal.	Application Fee New License or Renewal Monthly Fee
(d) Licenses for possession and use of source material for shielding.	New License or Renewal Annual Fee
(e) All other source material licenses.	New License or Renewal Annual Fee
(3) Radioactive Material Other than Source Material and Special Nuclear Material.	
(a)(i) Licenses of broad scope for possession and use of radioactive material for processing or manufacturing of items containing radioactive material for commercial distribution.	New License or Renewal Annual Fee

(a)(ii) Other licenses for possession and use of radioactive material for processing or manufacturing of items containing radioactive material for commercial distribution.	New License or Renewal Annual Fee
(b) Licenses authorizing the processing or manufacturing and distribution or redistribution of radio-pharmaceuticals, generators, reagent kits, or sources or devices containing radioactive material.	New License or Renewal Annual Fee
(c) Licenses authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, or sources or devices not involving processing of radioactive material.	New License or Renewal Annual Fee
(d) Licenses for possession and use of radioactive material for industrial radiography operations.	New License or Renewal Annual Fee
(e) Licenses for possession and use of sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	New License or Renewal Annual Fee
(f)(i) Licenses for possession and use of less than 10,000 curies of radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes.	New License or Renewal Annual Fee
(f)(ii) Licenses for possession and use of 10,000 curies or more of radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes.	New License or Renewal Annual Fee
(g) Licenses to distribute items containing radioactive material that require device review to persons exempt from the licensing requirements of Rule R313-19, except specific licenses authorizing redistribution of items that have have been authorized for distribution to persons exempt from the licensing requirements of Rule R313-19.	New License or Renewal Annual Fee
(h) Licenses to distribute items containing radioactive material or quantities of radioactive material that do not require device evaluation to persons exempt from the licensing requirements of Rule R313-19, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Rule R313-19.	New License or Renewal Annual Fee
(i) Licenses to distribute items containing radio-active material that require sealed source or device review to persons generally licensed under Rule R313-21, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Rule R313-21.	New License or Renewal Annual Fee
(j) Licenses to distribute items containing radioactive material or quantities of radioactive material that do not require sealed source or device review to persons generally licensed under Rule R313-21, except specific licenses	New License or Renewal Annual Fee

authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Rule R313-21.	
(k) Licenses for possession and use of radioactive material for research and development, which do not authorize commercial distribution.	New License or Renewal Annual Fee
(l) All other specific radioactive material licenses.	New License or Renewal Annual Fee
(m) Licenses of broad scope for possession and use of radioactive material for research and development which do not authorize commercial distribution.	New License or Renewal Annual Fee
(n) Licenses that authorize services for other licensees, except licenses that authorize leak testing or waste disposal services which are subject to the fees specified for the listed services.	New License or Renewal Annual Fee
(o) Licenses that authorize services for leak testing only.	New License or Renewal Annual Fee
(4) Radioactive Waste Disposal:	
(a) Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of commercial disposal by land by the licensee.	Application Fee New License or Renewal Siting Review Fee
(b) Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	New License or Renewal Annual Fee
(c) Licenses specifically authorizing the receipt of prepackaged waste radioactive material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	New License or Renewal Annual Fee
(d) Licenses authorizing packaging of radioactive waste for shipment to waste disposal site where licensee does not take possession of waste material.	New License or Renewal Annual Fee
(5) Well logging, well surveys and tracer studies.	
(a) Licenses for possession and use of radioactive material for well logging, well surveys and tracer studies other than field flooding tracer studies.	New License or Renewal Annual Fee
(b) Licenses for possession and use of radioactive material for field flooding tracer studies.	New License or Renewal Annual Fee
(6) Nuclear laundries.	
(a) Licenses for commercial collection and laundry of items contaminated with radioactive material.	New License or Renewal Annual Fee
(7) Human use of radioactive material.	
(a) Licenses for human use of radioactive material in sealed sources contained in teletherapy devices.	New License or Renewal Annual Fee
(b) Other licenses issued for human use of radioactive material, except licenses for use of radioactive material contained in teletherapy devices.	New License or Renewal Annual Fee
(c) Licenses of	New License or Renewal

broad scope issued to medical institutions or two or more physicians authorizing research and development, including human use of radioactive material, except licenses for radioactive material in sealed sources contained in teletherapy devices.	Annual Fee
(8) Civil Defense.	
(a) Licenses for possession and use of radioactive material for civil defense activities.	New License or Renewal Annual Fee
(9) Power Source.	
(a) Licenses for the manufacture and distribution of encapsulated radioactive material wherein the decay energy of the material is used as a source for power.	New License or Renewal Annual Fee
(10) General License.	
(a) Measuring, gauging and control devices as described in Subsection R313-21-22(4), other than hydrogen-3 (tritium) devices and polonium-210 devices containing no more than 10 millicuries used for producing light or an ionized atmosphere.	Fee per device
(b) In Vitro testing	Fee per registration certificate
(c) Depleted uranium	Fee per registration certificate
(d) Reciprocal recognition, as provided for in Section R313-19-30, of a license issued by the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State.	Annual fee for license category listed in R313-70-7(1) through (10), per 180 days in one calendar [--------]year

R313-70-8. Registration and Inspection Categories and Types of Fees for Registration of Radiation Machines.

(1) For machines registered under Section R313-16-230, registrants will pay an annual registration fee and an inspection fee that shall be established in accordance with the Legislative Appropriations Act. Copies of established fee schedules may be obtained from the Director.

TABLE

FACILITY TYPE	TYPE OF FEE	
Hospital/Therapy	Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit.
	State Inspection	Per tube.
Medical	Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit.
	State Inspection	Per tube.
Podiatry	Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit.
	State Inspection	Per tube.
Veterinary	Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit.
	State Inspection	Per tube.
Chiropractic	Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit.
	State Inspection	Per tube.
Dental	Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit.
	State Inspection	Per control unit and first tube plus each additional tube connected to a control unit.
Industrial Facility with High or Very High Radiation Areas Accessible to Individuals	Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit.
	State Inspection	Per tube.
Industrial Facility with Cabinet X-ray or Units Designed for Other Industrial Purposes	Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit.
	State Inspection	Per tube.
Other	Registration	Annual per control unit and first

		tube plus annual per each additional tube connected to a control unit.
	State Inspection	Per tube.
Acceptance of work, performed by a person meeting the qualifications in Section R313-16-400, that demonstrates compliance with these rules.		Per tube reviewed.

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KEY: radioactive materials, x-rays, registration, fees
Date of Enactment or Last Substantive Amendment: [~~February 18,~~] 2014
Notice of Continuation: September 23, 2011
Authorizing, and Implemented or Interpreted Law: 19-3-104(6)

Housing Corporation (Utah), Administration
R460-3-1
Single-Family Mortgage Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38788
FILED: 08/15/2014

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendment is to add verbiage to clarify that the Utah Housing Corporation (UHC) not only offers single family mortgages but may also offer mortgage credit certificates (MCC) to qualifying individuals or households.

SUMMARY OF THE RULE OR CHANGE: Section R460-3-1 is amended to: 1) remove references to the term "mortgage" where such verbiage denoted that UHC's single-family program pertained only to mortgages; 2) add reference to mortgage credit certificates (MCC) and related program documents; and 3) add language regarding when an MCC may be obtained and circumstances where a priority may be granted for the allocation of MCC amounts.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 35A-8-711(1)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The purpose for this amendment is to clarify that UHC's single family programs are not strictly relegated to mortgages. Because of this, there is no anticipated cost or savings because Subsection 35A-8-702(3)(b) states that UHC is a "financially independent body" and therefore, receives no state appropriation. Furthermore, the changes made to this rule are clarifying in nature and do not entail any additional requirements.
♦ LOCAL GOVERNMENTS: The purpose for this amendment is to clarify that UHC's single family programs are not strictly relegated to mortgages. Because of this, there is no anticipated cost or savings to any local government because of these changes.
♦ SMALL BUSINESSES: The purpose for this amendment is to clarify that UHC's single family programs are not strictly relegated to mortgages. Because of this, there is no anticipated cost or savings to any small business because of these changes.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The purpose for this amendment is to clarify that UHC's single family programs are not strictly relegated to mortgages. Because of this, there is no anticipated cost or savings to persons other than small business, business, or local government entities because of these changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The purpose for this amendment is to clarify that UHC's single family programs are not strictly relegated to mortgages. Because of this, there are no anticipated additional compliance costs (in excess of existing compliance costs) for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose for this amendment is to clarify that UHC's single family programs are not strictly relegated to mortgages. The mortgage credit certificate program has been thoroughly reviewed and there is no demonstrable fiscal impact on businesses with whom UHC conducts regular business activities.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HOUSING CORPORATION (UTAH)
ADMINISTRATION
2479 LAKE PARK BLVD
WEST VALLEY CITY, UT 84120
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at jhanks@uthc.org

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Grant Whitaker, President and CEO

R460. Housing Corporation, Administration.
R460-3. Programs of UHC.
R460-3-1. Single-Family [~~Mortgage~~]Program.

(1) Eligible mortgage lender.

(a) To be eligible to participate in the single-family [~~mortgage~~]program, a mortgage lender must have as one of its principal purposes the origination of mortgage loans in its usual and regular course of business.

(b) UHC may establish criteria that mortgage lenders must meet relating to approved mortgagee status by the Federal Housing Administration, Rural Housing Service or Department of Veterans Affairs, the financial condition of the mortgage lender, the number of mortgage loan originations during a period specified by UHC, the length of time a mortgage loan origination office has been maintained in the state, seller/servicer approval by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, and other criteria as UHC deems necessary to maintain a safe and sound program and to establish that mortgage loans are a part of a mortgage lender's usual and regular business activities and that the mortgage lender possesses the capability to make and to have adequate financial resources to fund mortgage loans.

(c) UHC may require that mortgage lenders, from time to time, furnish to UHC evidence as UHC may request to confirm a mortgage lender's eligibility to participate in the single-family [~~mortgage~~]program.

(d) A mortgage lender shall employ and maintain qualified personnel to carry out the obligations arising under contracts with UHC.

(e) All transactions between a mortgage lender and UHC shall be subject to the relevant single-family [~~mortgage~~]program contract documents which may include the following: participation agreement, selling supplement, mortgage credit certificate program guide, mortgage purchase agreement ("MPA"), mortgage credit certificate request and reservation ("MCC request"), notice of availability of funds, MPA request, and other documents deemed necessary by UHC ("Program Documents").

(2) Mortgage purchase agreement request; mortgage purchase agreement; mortgage credit certificate request and reservation.

(a) UHC may distribute to mortgage lenders via any electronic, digital, or written means, any interest rate and/or program changes affecting the single-family program.[~~mortgage loans.~~]

(b) Mortgage lenders may submit one or more mortgage purchase agreement or MCC requests to UHC via electronic, digital or written means as specified by UHC, in which an amount of funds is requested for a specific mortgage loan or MCC that the mortgage lender is processing.

(c) UHC may require that each mortgage purchase agreement or MCC request submitted by a mortgage lender be accompanied by an application or other fee in an amount specified by UHC in its Program Documents. The fee shall not be refunded or accrue interest payable by UHC, unless otherwise specified by UHC in the Program Documents.

(d) Upon receipt of a mortgage purchase agreement or MCC request, UHC may deliver to the mortgage lender 1) a mortgage purchase agreement confirming UHC's commitment to purchase the specified mortgage loan or 2) an MCC reservation confirming UHC's commitment to issue an MCC for the requested amount. The mortgage purchase agreement or MCC request shall terminate automatically if the mortgage lender fails to deliver all necessary Program Documents with respect to the mortgage loan or MCC to UHC on or prior to the date specified in the Program Documents.

(3) Single-family mortgage loans.

(a) From time to time, UHC may develop individualized single-family mortgage programs designed to meet the needs of certain populations. In such cases, UHC shall establish maximum fees that may be charged or collected, final mortgage delivery date, interest rate, and loan term. Fee requirements shall be uniformly applied to all mortgage lenders, without preference of one mortgage lender over another.

(b) All mortgage loans shall be made to finance single-family residential housing located in the state which conform to the requirements of the single-family mortgage program or any other requirements specified in the Program Documents.

(c) UHC may provide priority allocations to make mortgage financing available to persons qualified for any of UHC's single-family programs or in targeted, rural, inner city or other areas experiencing difficulty securing mortgage loans to make housing available to persons of low and moderate income.

(d) Each mortgage loan purchased by UHC shall conform to the credit underwriting, property valuation, hazard insurance, title insurance, mortgage insurance, security and collateralization, and all other requirements of the Program Documents. Closings or deliveries must occur on or before the date established in Program Documents. UHC shall have the right to decline to finance any mortgage loan if, in the reasonable opinion of UHC, the mortgage loan does not meet all requirements of the Program Documents.

(4) Income limits of borrowers.

UHC shall establish and may amend maximum income limits for low and moderate income persons eligible as borrowers. The limits shall not exceed 140% of median income as determined by UHC. UHC shall establish and may amend the limits in open public meetings of UHC for which UHC shall give public notice as required by state law. UHC shall make information concerning the limits available to interested persons, including potential borrowers, and shall incorporate the limits as terms of the Program Documents.

(5) Acquisition cost limits.

UHC shall establish and may amend maximum acquisition cost limits for residential housing qualified for UHC financing. The acquisition cost of residential housing is the cost of acquiring a completed residential housing unit and shall include all amounts paid in cash or in kind for all structures, fixtures, improvements, and land. UHC shall establish and may amend the limits in open public meetings of UHC for which UHC shall give public notice as required by state law. UHC shall make information concerning the maximum acquisition cost limits available to interested persons including loan applicants and potential mortgagors, and shall incorporate the limits as terms of the Program Documents.

(6) Mortgage Credit Certificates (MCC).

(a) From time to time, UHC may make available amounts to issue mortgage credit certificates to qualified applicants in conjunction

with a mortgage loan obtained to purchase residential housing within the state of Utah.

(b) All MCCs issued by UHC shall only be done when an eligible mortgage loan shall be made to finance single-family residential housing in the state which conforms to the requirements of the single-family mortgage program or any other requirements specified in the Program Documents.

(c) UHC may provide priority allocations to make mortgage credit certificates available to persons qualified for any of UHC's single-family loan programs or in targeted, rural, inner city or other areas experiencing difficulty securing mortgage loans to make housing available to persons of low and moderate income. Furthermore, UHC may provide an allocation of MCCs to a particular development subject to certain conditions.

(d) Each MCC request reserved and issued by UHC shall conform to all requirements of the Program Documents. UHC shall have the right to decline to issue an MCC if, in the reasonable opinion of UHC, the MCC request does not meet all requirements of the Program Documents.

[~~(6)~~](7) Assumption of single-family mortgage loans.

(a) UHC shall establish and may amend conditions and requirements for the assumption of mortgage loans. The conditions and requirements for the assumption of mortgage loans may vary between the different series of bonds and mortgage insurers or guarantors under which the various mortgage loans have been purchased.

(b) Conditions and requirements for the assumption of mortgage loans may include the following: acquisition cost limits for the residential housing; income limits for the assuming purchaser; the establishment of a limit, expressed as a percentage of the assuming purchaser's income, of the purchaser's monthly housing expenses; a requirement that the purchaser not own any other properties financed under any other UHC program; and any other requirements and qualifications deemed necessary or advisable by UHC. Purchasers, who assume mortgage loans, shall generally be required to satisfy the same requirements that applied to the original borrower.

(c) UHC may impose limits on the maximum amount of assumption fees that may be charged in connection with the assumption of mortgage loans.

(d) UHC may require the continuing liability of the original borrowers in connection with the assumption of mortgage loans.

(e) The required documentation for the assumption of mortgage loans may include documents deemed necessary by UHC, applicable to the particular program.

[~~(7)~~](8) Limitation of frequency of loan applications.

UHC may establish limitations on the frequency with which a Mortgage Lender, on behalf of a particular mortgage applicant or co-applicant, may request a mortgage purchase agreement or otherwise apply for a reservation of mortgage loan funds if UHC deems a limitation to be necessary to ensure the efficient and equitable allocation of funds.

[~~(8)~~](9) Definitions.

(a) As used herein, "Mortgage Lender" shall mean a mortgage lender that UHC has determined to be an eligible mortgage lender in accordance with this Rule.

(b) As used herein, "Mortgage Loan" shall mean a loan secured by a deed of trust or mortgage on a single-family residence that UHC has determined to be an eligible mortgage loan in accordance with this Rule.

KEY: housing finance
Date of Enactment or Last Substantive Amendment: [~~October 22, 2010~~]2014
Notice of Continuation: September 28, 2012
Authorizing, and Implemented or Interpreted Law: 9-4-910; 9-4-911

Human Services, Child and Family Services
R512-310
Reasonable and Prudent Parent Standard

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 38743
FILED: 08/07/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to implement the reasonable and prudent parent standard made into law by H.B. 346 (2014 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule is intended to create standards for normalcy for a child who is in Child and Family Services custody, including a reasonable and prudent parent standard and normalizing activities for children.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-210 and Section 62A-4a-211 and Section 62A-4a-212

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no increase in cost or savings to the state budget because these proposed changes do not increase workload that would require additional staff or other costs.
♦ LOCAL GOVERNMENTS: Local governments have no responsibility for normalcy for a child who is in the custody of Child and Family Services and are therefore not affected by this rule and will have no fiscal impact.
♦ SMALL BUSINESSES: Small businesses have no responsibility for normalcy for a child who is in the custody of Child and Family Services and are therefore not affected by this rule and will have no fiscal impact.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: While individuals may be foster parents for whom this rule applies, there is no expected fiscal impact for those foster parents and other individuals in the category of "persons other than small businesses, businesses, or local government entities" because funding requests for these activities come out of already-existing budgets.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Child and Family Services determined that there will be no compliance costs for affected persons because there are no specific costs involved with the changes being made to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.
R512-310. Reasonable and Prudent Parent Standard.
R512-310-1. Purpose and Authority.

(1) The purpose of this rule is to establish standards for normalcy for a child who is in Child and Family Services custody, including a reasonable and prudent parent standard and normalizing activities for children.

(2) This rule is authorized by Sections 62A-4a-102, 62A-4a-210, 62A-4a-211, and 62A-4a-212.

R512-310-2. Definitions.

As used in this part:

(1) "Activity" is defined in Section 62A-4a-210.

(2) "Age-appropriate" is defined in Section 62A-4a-210.

(3) "Caregiver" is defined in Section 62A-4a-210.

(4) "Child and Family Services" means the Division of Child and Family Services.

(5) "Out-of-home placement" is defined in Section 62A-4a-210.

(6) "Reasonable and prudent parent standard" is defined in Section 62A-4a-210.

R512-310-3. Highlights.

(1) A child who comes into care under this chapter is entitled to participate in age-appropriate activities for the child's emotional well-being and development of valuable life-coping skills.

(2) Child and Family Services shall make efforts to normalize the lives of children in the custody of Child and Family Services and to empower a caregiver to approve or disapprove a child's participation in activities based on the caregiver's own assessment using a reasonable and prudent parent standard, without prior approval of Child and Family Services.

(3) Child and Family Services shall allow a caregiver to make important decisions, similar to the decisions that a parent is entitled to make, regarding the child's participation in activities.

(4) Child and Family Services will verify that private agencies providing out-of-home placement under contract with Child and Family Services promote and protect the ability of a child to participate in age-appropriate activities.

(5) A caregiver is not liable for harm caused to a child in an out-of-home placement if the child participates in an activity approved by the caregiver, provided that the caregiver has acted in accordance with a reasonable and prudent parent standard.

R512-310-4. Requirements for Decision Making.

(1) A caregiver shall use a reasonable and prudent parent standard in determining whether to permit a child to participate in an activity.

(2) A caregiver shall consider:

(a) The child's age, maturity, and developmental level to maintain the overall health and safety of the child;

(b) Potential risk factors and the appropriateness of the activity;

(c) The best interest of the child based on the caregiver's knowledge of the child;

(d) The importance of encouraging the child's emotional and developmental growth;

(e) The importance of providing the child with the most family-like living experience possible; and

(f) The behavioral history of the child and the child's ability to safely participate in the proposed activity.

(3) Child and Family Team Meetings may be convened at any point to discuss whether the caregiver has used the reasonable and prudent parent standard to determine what activities a child may participate in or if the child feels they are being denied the ability to participate in a normalizing activity.

R512-310-5. Participation in Activities.

(1) Caregivers shall ensure that the child has the safety equipment and any necessary permissions and training necessary to safely engage in each activity the child participates in, including but not limited to the following activities:

(a) Boating;

(b) Rock climbing;

(c) Recreational vehicle use;

(d) Sports;

(e) Camping.

R512-310-6 Group Home or Residential Setting Activities.

When children are placed in a group home or residential treatment setting, the provider will incorporate normalcy activities into the program. The activities will be in-line with the reasonable and prudent parent standard and will help children with skills essential for positive development.

KEY: child welfare, foster care
Date of Enactment or Last Substantive Amendment: 2014
Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-210; 62A-4a-211; and 62A-4a-212

Insurance, Administration
R590-172
Notice to Uninsurable Applicants for Health Insurance

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 38787
FILED: 08/15/2014

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to changes in the Affordable Care Act (ACA), this rule is no longer needed.

SUMMARY OF THE RULE OR CHANGE: Due to changes in the ACA, Public Health Service Act (PHSA) 2702, that requires health insurance companies to no longer deny coverage, and has resulted in the withdrawal of the Comprehensive Health Insurance Pool (Pool) from the market, this rule is no longer needed. The law requiring this rule is set to be repealed July 2015. Therefore, this rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-29-116

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This rule will have no fiscal impact on the Insurance Department and the state's budget. The law and rule require insurers to notify applicants they deny coverage to of the availability of the Pool.
♦ LOCAL GOVERNMENTS: The repeal of this rule will have no fiscal impact on local governments since it dealt solely with the relationship between the department and their licensees and applicants of the licensees.
♦ SMALL BUSINESSES: This rule deals with notification requirements to individuals denied coverage by traditional health insurance companies. It had nothing to do with small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule required health insurers that denied coverage to an individual to let that person know about the Pool and then to let the Pool know about the person they have denied. Since the Pool is no longer in operation, this requirement is no longer needed. The cost savings to insureds will be in paper and mailing of the notices, unless notification was made electronically, in which case there will be no cost savings. This will vary from insurer to insurer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule required health insurers that denied coverage to an individual to let that person know about the Pool and then to let the Pool know about the person they have denied. Since the Pool is no longer in operation, this requirement is no longer needed. The cost savings to insureds will be in paper and mailing of the notices, unless notification was made electronically, in which case there will be no cost savings. This will vary from insurer to insurer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The savings to insurers will be minimal with the repeal of this rule.

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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Todd Kiser, Commissioner

R590. Insurance, Administration.
[~~R590-172. Notice to Uninsurable Applicants for Health Insurance.~~
~~R590-172-1. Authority.~~
~~This rule is adopted pursuant to the provisions of Section 31A-29-116.~~

~~R590-172-2. Scope.~~
~~This rule applies to all health insurers doing business in the State of Utah.~~

~~R590-172-3. Definitions.~~
~~For the purpose of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and in addition, the following:~~
~~The term, "health insurance," is defined in Subsection 31A-29-103(5)(a) as any hospital and medical expense-incurred policy; nonprofit health care service plan contract, and health maintenance organization subscriber contract. It does not include workers' compensation insurance, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to~~

~~fault and which is required by law to be contained in any liability insurance policy.~~

~~**R590-172-4. Rule.**~~

~~(1) Notification of Denial to Applicants.~~

~~Every health insurer writing health insurance in the State of Utah will provide a written notice containing the requirements in R590-176-5(3)(a), Health Benefit Plan Enrollment, and the following language to each applicant for health insurance coverage that is denied coverage by the insurer for reasons relating to health:~~

~~"You have been denied health insurance coverage due to a health condition which is uninsurable. The Utah Comprehensive Health Insurance Pool (HIPUtah) was created to provide health insurance to residents of Utah who are denied health insurance and who are considered uninsurable. If you have lived in the State of Utah for 12 consecutive months prior to applying for insurance with this company you may be eligible for health insurance coverage with HIPUtah.~~

~~"However, if you have not lived in the state of Utah for 12 consecutive months, but you are a Utah resident and you are coming from another State's high risk pool or have had 18 months of continuous coverage with the most recent coverage being through a group health plan, you may still be eligible for health insurance coverage with the Utah Comprehensive Insurance Pool.~~

~~"Part or all of the preexisting waiting period will be waived if you are an eligible individual according to the Health Insurance Portability and Accountability Act (HIPAA) or your previous coverage was involuntarily terminated for reasons other than for nonpayment of premium or fraud, and application for HIPUtah is made within 63 days of that termination. The amount of credit given will depend on the length of time an applicant was previously covered under that health insurance.~~

~~"If application for coverage with HIPUtah is made within 30 days of this denial letter and you are declined coverage with the pool, HIPUtah will issue a certificate of insurability and you may reapply for coverage with this company within 30 days of the certificate date.~~

~~"To find out whether you qualify for pool coverage or to make application for pool coverage, Salt Lake City area residents should call 801-442-6660. Residents of other areas in Utah should call 800-705-9173, toll free. The HIPUtah's mailing address is P.O. Box 30192, Salt Lake City, Utah 84130-0192."~~

~~(2) Notification of Denial to HIPUtah.~~

~~(a) Every health insurer writing health insurance in the State of Utah shall provide written notice to HIPUtah for each application in which applicant does not have current individual coverage, for insurance the insurer has denied.~~

~~(b) The notice to HIPUtah shall contain the name and address of the applicant who was denied insurance, and no other personal information. If the applicant applied for the insurance through an insurance producer, the written notice shall provide the name and the address of the insurance producer. The information must be presented in an excel spreadsheet in the format; Applicant, Last Name, First Name, Mailing Address, Producer, Last Name, First Name, Mailing Address.~~

~~(c) The notice shall be submitted to HIPUtah on the 1st of each month. The notice shall be transmitted electronically to HIPUtah through a secure email address at hiputah@exchangeforum.utah.gov.~~

~~**R590-172-5. Enforcement Date.**~~

~~The commissioner will begin enforcing the revised provisions of this rule 45 days from the effective date of the rule~~

~~**R590-172-6. Severability.**~~

~~If a provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions are not affected.~~

~~**KEY: health insurance**~~
~~**Date of Enactment or Last Substantive Amendment: September 15, 2011**~~
~~**Notice of Continuation: April 29, 2010**~~
~~**Authorizing, and Implemented or Interpreted Law: 31A-29-116]**~~

Insurance, Administration
R590-199
Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38784
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to comply with the federal Affordable Care Act (ACA), Public Health Service Act (PHSA) 2718, and to remove reference to the Comprehensive Health Insurance Pool or HIPUtah.

SUMMARY OF THE RULE OR CHANGE: The changes entail the removal of certain requirements for the plan of orderly withdrawal of the company or a portion of its business from the Utah market, which would include the removal of reference to the HIPUtah Pool; removing reference to conversion or portability rights; removal of certification regarding enrollment cap; and removal of the explanation of efforts to place business that is non-renewed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3) and Subsection 31A-4-115(8)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The changes to this rule will have no fiscal impact on the department. They will reduce paper work for the department, as well as the insurer that is withdrawing from the Utah market.
♦ LOCAL GOVERNMENTS: There will be no fiscal impact on local government. The rule deals solely with the department and their relationship to their licensees.

♦ SMALL BUSINESSES: This rule has no impact on small businesses. The rule deals solely with the department and their relationship to their licensees.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This affects health insurance companies that are withdrawing from the Utah market. It reduces the paperwork needed making the process easier and less cumbersome. There will be no change in the fiscal impact to insurers withdrawing from the market.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This affects health insurance companies that are withdrawing from the Utah market. It reduces the paperwork needed making the process easier and less cumbersome. There will be no change in the fiscal impact to insurers withdrawing from the market.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact. It will reduce paperwork required for a company to withdraw from the market.

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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Todd Kiser, Commissioner

R590. Insurance, Administration.
R590-199. Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans.
R590-199-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(3) and 31A-4-115(8).

R590-199-2. Purpose.

This rule is drafted for the purposes of maintaining a health benefit plan market that is stable, fair, and efficient for individuals and small employers and ensuring and maintaining increased access for individuals and small employers to health coverage. It promotes an orderly process by which an insurer can elect to nonrenew health benefit plan coverages without unreasonable disruption to the health insurance market.

R590-199-3. Applicability and Scope.

This rule applies to accident and health insurers.

R590-199-4. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-30-103 apply to this rule.

(2) "Annual Renewal Date" means the annual anniversary of the date [~~of~~]the policy or plan, under which health insurance benefits are provided, was initially issued.

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~~]payable to the Utah [~~Comprehensive Health Insurance Pool~~]Insurance Department. 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~~]Utah mini-COBRA 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-22-723;~~

~~(h)~~]copy of notice required by 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~~]h) service or coverage areas within the state, which indicates withdrawal areas;

([~~j~~]i) 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~~]j) any reinsurance ceding arrangements relating to the health benefit plans being nonrenewed;

[~~(l) information relating to any waiver provided under Section 31A-30-104(5);~~

] ([~~m~~]k) list of all affiliated carriers as described in Section 31A-30-104(4);

([~~n~~]l) certification of compliance executed by the president of the company stating that the withdrawing company is in compliance with 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~~]m) loss ratios for each form issued in Utah [~~and the methodology by which the loss ratio was~~]calculated in compliance with PPACA standards, including a description of all assumptions made;

([~~q~~]n) 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~~]o) 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~~]p) any plans to nonrenew any other line of business in Utah in the future;

([~~v~~]q) copy of the certificate of authority of the company and all affiliates involved in the withdrawal; and

([~~w~~]r) 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.

(4) Availability of coverage through a special enrollment period or a PPACA exchange is not considered assumption or placement with another carrier.

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~~]beginning on the date of discontinuation of the last coverage not renewed.

(6) [~~The~~]A covered carrier's affiliates, as defined in Subsection 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~~]shall occur on the annual renewal date.

R590-199-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may 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: [~~October 3, 2012~~]2014
Notice of Continuation: May 20, 2010
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-4-115; 31A-30-106; 31A-30-107

Insurance, Administration
R590-236
HIPAA Eligibility Following Receipt of a Certificate of Insurability or Denial by an Individual Carrier

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 38785
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to changes in the Affordable Care Act (ACA), Public Health Service Act (PHSA) 2702, this rule is no longer needed.

SUMMARY OF THE RULE OR CHANGE: Due to the ACA that requires health insurance companies to no longer deny coverage, and has resulted in the withdrawal of the Comprehensive Health Insurance Pool (Pool) from the market, this rule is no longer needed. Therefore, this rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3) and Subsection 31A-29-106(1)(f) and Subsection 31A-30-104(7)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This rule will have no fiscal impact on the department and the state's budget. The rule has to do with effective dates of coverage for HIPAA eligible applicants applying for coverage with an individual carrier or the Pool.
♦ LOCAL GOVERNMENTS: The rule will have no fiscal impact on local governments. It has to do with effective dates of coverage for HIPAA eligible applicants applying for coverage with an individual carrier or the Pool.
♦ SMALL BUSINESSES: This rule does not apply to small businesses. The rule applied to individuals seeking coverage from the pool or who were certified by them to seek coverage

from individual carriers and the effective dates of coverage for those individuals. The rule was procedural in nature.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The repeal of this rule will have no fiscal impact on individuals or large employers. The rule applied to individuals seeking coverage from the pool or who were certified by them to seek coverage from individual carriers and the effective dates of coverage for those individuals. The rule was procedural in nature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of this rule will have no fiscal impact on individuals or large employers. The rule applied to individuals seeking coverage from the pool or who were certified by them to seek coverage from individual carriers and the effective dates of coverage for those individuals. The rule was procedural in nature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The repeal of this rule will have no fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
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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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Todd Kiser, Commissioner

R590. Insurance, Administration.
[R590-236. HIPAA Eligibility Following Receipt of a Certificate of Insurability or Denial by an Individual Carrier.
R590-236-1. Authority.
This rule is promulgated and adopted pursuant to Subsections 31A-2-201(3), 31A-29-106(1)(f), and 31A-30-104(7).

R590-236-2. Purpose and Scope.
(1) The purpose of this rule is to provide interpretation of the interplay between federal and state statutes that affect the protections provided by the federal Health Insurance Portability and Accountability Act (HIPAA), Pub.L. 104-191, 110 Stat. 1962, to applicants that apply for coverage with HIPUtah and receive a certificate of insurability from HIPUtah, or denial of coverage by an individual carrier.
(2) The rule addresses the effective dates of coverage for HIPAA eligible applicants applying for coverage with an individual carrier or HIPUtah.
(3) The rule provides guidance for actual and potential interplay between HIPAA, Sections 31A-22-605.1, 31A-30-108, and 31A-29-111 to:
(i) individual carriers,
(ii) the HIPUtah pool administrator; and
(iii) HIPUtah applicants.

R590-236-3. Definitions.
As used in this rule:
(1) "Certificate of insurability" means a certificate issued by HIPUtah pursuant to Subsection 31A-29-111.
(2) "HIPAA" means the federal Health Insurance Portability and Accountability Act, Pub.L. 104-191, 110 Stat. 1962.
(3) "HIPAA eligible" means an applicant who is eligible for coverage under the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1962.
(4) "HIPAA eligibility" means the eligibility required by the federal Health Insurance Portability and Accountability Act, Pub. L. 104-191, 110 Stat. 1962.
(5) "HIPUtah" means the Utah Comprehensive Health Insurance Pool established by Section 31A-29-104.
(6) "Individual carrier" has the same meaning as defined in Subsection 31A-30-103.
(7) "Preexisting condition" means preexisting condition as defined in Subsection 31A-1-301.
(8) "Waiting period" means the period of time beginning on the date the HIPAA eligible submits a substantially complete application for coverage and ends on the date:
(a) coverage is effective;
(b) the application is denied by the insurer; or
(c) which the offer of coverage lapses without being accepted by the HIPAA eligible.

R590-236-4. HIPAA and Subsection 31A-22-605.1, Eligibility and Creditable Coverage.
(1) A HIPAA eligible must submit a substantially complete application no later than 63 consecutive days, excluding waiting periods, following termination of any preceding HIPAA qualified coverage, to preserve HIPAA rights.
(2) A HIPAA eligible cannot have a break in qualifying coverage of 63 or more consecutive days, except for applicable waiting periods to preserve HIPAA rights.
(3) HIPAA eligibles applying within the time period in R590-236-4(1) will receive creditable coverage toward a preexisting condition waiting period.
(4) A waiting period does not count in determining whether a break in qualifying coverage occurred.

R590-236-5. HIPAA and Subsection 31A-29-111(4)(a), 30-Day Provision.
(1) This section applies to a HIPAA eligible that has been denied by an individual carrier and is approved by HIPUtah.

(2) When a HIPAA eligible submits a substantially completed application to an individual carrier within the HIPAA 63-day time period and is denied coverage, to preserve HIPAA rights, the HIPAA eligible must make application to HIPUtah no later than:

(a) the remainder of the 63 consecutive day time period under HIPAA; or

(b) 30 consecutive days after denial by the individual carrier.

(3) Effective Dates.

(a) A HIPAA eligible applying within the time period in R590-236-5(2)(a), shall have an effective date with HIPUtah on the first day of the month following the submission of a substantially completed application, if the required premium is paid.

(b) A HIPAA eligible applying within the time period in R590-236-5(2)(b), shall have an effective date with HIPUtah on the first day of the month following the date of submission of a substantially completed application to the individual carrier who denied coverage immediately prior to the application to HIPUtah, if the required premium is paid.

(c) When a HIPAA eligible applies within both time periods in R590-236-5(2)(a) and (b), the HIPAA eligible shall choose the effective date provided in R590-236-5(3)(a) or (b).

R590-236-6. HIPAA and Subsection 31A-30-108(3)(c)(i), 30-Day Provision.

(1) This section applies to a HIPAA eligible who meets HIPUtah's eligibility requirements but does not meet HIPUtah's health underwriting criteria, having been previously denied by an individual carrier, and is issued a certificate of insurability under Section 31A-29-111.

(2)(a) A HIPAA eligible may reapply with the individual carrier who denied coverage immediately prior to HIPUtah's issuance of a certificate of insurability to preserve HIPAA rights, no later than:

(i) the remainder of the 63 consecutive day time period under HIPAA; or

(ii) 30 consecutive days after the date of issuance of a certificate of insurability.

(b) R590-236-6(2)(a) applies only to a HIPAA eligible that has:

(i) submitted a substantially completed application to an individual carrier within the HIPAA 63-day time period;

(ii) is denied coverage by an individual carrier; and

(iii) makes application to HIPUtah no later than:

(I) the remainder of the 63 consecutive day time period under HIPAA; or

(II) 30 consecutive days after denial by the individual carrier.

(3) Effective Dates.

(a) A HIPAA eligible applying within the time period in R590-236-6(2)(a)(i), shall have an effective date with the individual carrier on the first day of the month following the submission of a substantially completed application, if the required premium is paid.

(b) A HIPAA eligible applying within the time period in R590-236-6(2)(a)(ii), shall have an effective date with the individual carrier on the first day of the month following the original submission of a substantially completed application to the individual carrier who denied coverage immediately prior to the application to HIPUtah, if the required premium is paid.

(c) When a HIPAA eligible applies within both time periods in R590-236-6(2)(a)(i) and (ii), the HIPAA eligible shall choose the effective date provided in R590-236-6(3)(a) or (b).

R590-236-7. HIPAA and Subsection 31A-30-108(3)(c)(ii)(B), 45-Day Provision.

(1) This section applies to a HIPAA eligible who applies first with HIPUtah, meets HIPUtah's eligibility requirements, but does not meet HIPUtah's health underwriting criteria and is issued a certificate of insurability under Section 31A-29-111.

(2) When a HIPAA eligible submits a substantially completed application to HIPUtah within the HIPAA 63-day time period and is issued a certificate of insurability, the HIPAA eligible may make application to an individual carrier no later than:

(a) the remainder of the 63 consecutive day time period under HIPAA; or

(b) 45 consecutive days after the date of issuance of a certificate of insurability by HIPUtah.

(3) Effective Dates.

(a) A HIPAA eligible qualifying under option R590-236-7(2)(a) shall have an effective date of the first of the month following the submission of the substantially completed application to an individual carrier, if the required premium is paid.

(b) A HIPAA eligible qualifying under R590-236-7(2)(b) shall have an effective date of the day following the submission of the substantially completed application to HIPUtah, if the required premium is paid.

(c) When a HIPAA eligible applies within both time periods in R590-236-7(2)(a) and (b), the HIPAA eligible shall choose the effective date provided in R590-236-7(3)(a) or (b).

R590-236-8. Severability.

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

R590-236-9. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule immediately upon the effective date of the rule.

KEY: HIPAA eligibility
Date of Enactment or Last Substantive Amendment: April 9, 2007
Notice of Continuation: October 25, 2011
Authorizing, and Implemented or Interpreted Law: 31A-29-106; 31A-30-104; 31A-2-201]

Insurance, Administration
R590-249
Secondary Medical Condition Exclusion

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38786
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to comply with the federal Affordable Care Act (ACA), Public Health Service Act (PHSA) 2715.

SUMMARY OF THE RULE OR CHANGE: The rule will provide further consumer protections. It informs the consumer of the policy's limitations and exclusions. It clarifies that the rule applies to disclosures in the Summary of Benefits and Coverage.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3) and Subsection 31A-22-613.5(2)(e)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This rule will have no fiscal impact on the department. It will not require additional filings with the department nor additional work of its employees. It simply requires health insurers to notify applicants of limitations and exclusions in coverage they are considering.
♦ LOCAL GOVERNMENTS: The changes to this rule will have no fiscal impact on local governments. It deals solely with the relationship between the department and their licensees and applicants of their licensees.
♦ SMALL BUSINESSES: The changes to this rule will require insurers and their agents to notify applicants of limitations and exclusions in the coverage they are considering. The federal government is already requiring this and insurers and their agents are already doing it so there will be no additional expense. It is an educational benefit to the applicant.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes to this rule will require insurers and their agents to notify applicants of limitations and exclusions in the coverage they are considering. The federal government is already requiring this and insurers and their agents are already doing it so there will be no additional expense. It is an educational benefit to the applicant.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule will require insurers and their agents to notify applicants of limitations and exclusions in the coverage they are considering. The federal government is already requiring this and insurers and their agents are already doing it so there will be no additional expense. It is an educational benefit to the applicant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact to businesses as a result of these changes.

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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Todd Kiser, Commissioner

R590. Insurance, Administration.
R590-249. Secondary Medical Condition Exclusion.
R590-249-1. Authority.

This rule is promulgated by the [~~insurance~~]commissioner pursuant to Subsections 31A-2-201(3) wherein the commissioner may adopt rules to implement the provisions of Title 31A and 31A-22-613.5(2)(e) wherein the commissioner shall develop examples of limitations or exclusions of[~~, authorizing the commissioner to adopt a rule to implement disclosure requirements and provide examples of coverage limitations or exclusions, including~~] a secondary medical condition.

R590-249-2. Purpose and Scope.

(1) The purpose of this rule is to establish examples of limitations or exclusions from coverage, including related secondary conditions.[~~ The examples provided in R590-249-4 are not all inclusive.~~]

(2) This rule applies to all health benefit plans.

R590-249-3. General Instructions.

The insurer shall provide a clear written statement that discloses the policy limitations and exclusions, including related secondary medical conditions that are set forth in the policy:

(1) upon application;[~~ and~~]

(2) when requested by the insured; and

(3) in any materials a carrier is required to provide to an insured, including the Summary of Benefits and Coverage as defined in 45 CFR 147.200.

R590-249-4. Examples.

The following policy limitation or exclusion examples are not all inclusive:

(1) charges in connection with reconstructive or plastic surgery that may have limited benefits, such as, a chemical peel that does not alleviate a functional impairment;

(2) complications relating to services and supplies for, or in connection with, gastric or intestinal bypass, gastric stapling, or other similar surgical procedure to facilitate weight loss, or for, or in connection with, reversal or revision of such procedures, or any direct complications or consequences thereof;

(3) complications by infection from a cosmetic procedure, except in cases of reconstructive surgery:

(a) when the service is incidental to or follows a surgery resulting from trauma, infection or other diseases of the involved part; or

(b) related to a congenital disease or anomaly of a covered dependent child that has resulted in functional defect; or

(4) [~~complications relating to services, supplies or drugs which have not yet been approved by the United States Food and Drug Administration (FDA) or which are used for purposes other than the FDA-approved purpose; or~~

~~(5)~~]complications that result from an injury or illness resulting from active participation in illegal activities.

R590-249-5. Penalties.

Any insurer found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to the penalties as provided under Section 31A-2-308.

R590-249-6. Enforcement Date.

The commissioner will begin enforcing this rule [~~July 1, 2009~~]January 1, 2016.

R590-249-7. Severability.

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

KEY: health insurance, exclusions
Date of Enactment or Last Substantive Amendment: [~~December 31, 2008~~]2014
Notice of Continuation: December 23, 2013
Authorizing, and Implemented or Interpreted Law: 31A-22-613.5

Insurance, Administration
R590-255
Utah NetCare Alternative Coverage Notification Rule

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 38789
FILED: 08/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The statute requiring this rule, Section 31A-22-724, has been repealed.

SUMMARY OF THE RULE OR CHANGE: This rule was developed to comply with Section 31A-22-724 requiring health insurers to notify employers of their employees option for alternative coverage through Utah NetCare. Utah NetCare no longer exists and Section 31A-22-724 was repealed from the law in H.B. 47 in the 2013 General Legislative Session, Insurance Law Amendments. Therefore, this rule is no longer necessary and is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-22-724

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The repeal of this rule will have no fiscal impact on the department or the state's budget. It required insurers to send letters to employers they insured to inform them and their employees of alternative coverage through Utah NetCare, which no longer exists.
♦ LOCAL GOVERNMENTS: This rule had no impact on local governments. It dealt solely with the relationship between the department, their health insurance company licensees and the employers insured with the health insurance company.
♦ SMALL BUSINESSES: Individuals and agencies are not impacted financially by this rule. Only health insurance companies licensed with the department.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Health insurance companies doing business in Utah were required to send letters to employers they insured, as well as their employees, if asked to do so. The letter made them aware of alternative coverage offered by Utah NetCare. Now that they do not need to send the letter out, health insurers will save on preparation and distribution costs. The savings to insurers will vary according to the number of employer groups and their employees they sent letters to. This would not be a major expense.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Health insurance companies doing business in Utah were required to send letters to employers they insured, as well as their employees, if asked to do so. The letter made them aware of alternative coverage offered by Utah NetCare. Now that they do not need to send the letter out, health insurers will save on preparation and distribution costs. The savings to insurers will vary according to the number of employer groups and their employees they sent letters to. This would not be a major expense.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The elimination of this requirement will save health insurers some time and money in preparation and mailing costs. It will not be a significant savings.

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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Todd Kiser, Commissioner

R590. Insurance, Administration.
[~~R590-255. Utah NetCare Alternative Coverage Notification Rule.~~
~~R590-255-1. Authority.~~
~~This rule is promulgated pursuant to Section 31A-22-724 wherein the commissioner shall develop a model letter.~~

~~R590-255-2. Purpose and Scope.~~
~~(1) The purpose of this rule is to adopt a model letter for insurers to provide to employers as required by Section 31A-22-716 to notify an employee of the employee's options for alternative coverage.~~
~~(2) This rule applies to all accident and health insurers doing business in Utah that are required to offer alternative coverage pursuant to Section 31A-22-724.~~

~~R590-255-3. General Instructions.~~
~~(1) An insurer shall provide an employer:~~
~~(a) a letter that explains alternative coverage; or~~
~~(b) the Utah NetCare: Utah's Alternative Coverage letter.~~
~~(2) The letter required by this Subsection (1) shall be provided:~~
~~(a) to an employer at renewal;~~
~~(b) when requested by an employer; and~~
~~(c) when requested by an employee.~~

~~R590-255-4. Enforcement Date.~~
~~The commissioner will begin enforcing this rule 45 days from the rule's effective date.~~

~~R590-255-5. Penalties.~~
~~A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.~~

~~R590-255-6. Severability.~~
~~If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.~~

~~KEY: insurance alternative coverage, NetCare~~
~~Date of Enactment or Last Substantive Amendment: February 9, 2010~~
~~Authorizing, and Implemented or Interpreted Law: 31A-22-724~~]

Labor Commission, Antidiscrimination and Labor, Antidiscrimination
R606-1
Antidiscrimination

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38744
FILED: 08/07/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to improve efficiencies in the investigative process and to clarify when and how the Division will disclose to the parties information obtained by the Division during the course of the investigation.

SUMMARY OF THE RULE OR CHANGE: This rule change alters the time frame for respondents to respond to a claim of discrimination from 10 days to 30 days, allows a response by email, and outlines the elements required in a response. The change also allows parties access to information obtained during the course of the investigation with some limitations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-5-101 et seq. and Section 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division does not anticipate an immediate cost or savings but these rule changes may slightly reduce cost per investigation by allowing time for a more complete response from the parties. The Division does not anticipate a cost or savings to the state as an employer.
♦ LOCAL GOVERNMENTS: The Division does not anticipate a cost or savings to local governments, while these changes may improve efficiency, the requirements remain the same.
♦ SMALL BUSINESSES: The Division does not anticipate a cost or savings to small businesses, while these changes may improve efficiency, the requirements remain the same.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Division does not anticipate a cost or savings to persons other than small businesses, businesses, or local government entities, while these changes may improve efficiency, the requirements remain the same.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These rule changes do not change the requirements of the process, so there should be no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These rule changes may allow businesses the opportunity to

better and more easily respond to claims of discrimination including resolving the matter prior to filing the response.

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

LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR,
ANTIDISCRIMINATION
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:
♦ Kerry Chlarson by phone at 801-530-6921, by FAX at 801-530-7601, or by Internet E-mail at kchlarson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.
R606-1. Antidiscrimination.
R606-1-1. Authority.

This rule is established pursuant to Section 34A-5-104.

R606-1-2. Definitions.

The following definitions are complementary to the statutory definitions specified in Section 34A-5-102, and shall apply to all rules of R606.

A. "Act" means the Utah Antidiscrimination Act, prohibiting discriminatory or unlawful employment practices.

B. "Charging party" means the person who initiated agency action.

C. "Director" means the Director, Division of Antidiscrimination and Labor.

D. "Division" means the Division of Antidiscrimination and Labor.

E. "Disability" is defined in Section 34A-5-102 and is further defined as follows:

1. Being regarded as having a disability is equivalent to being disabled or having a disability.

2. Having a record of an impairment substantially limiting one or more major life activities is equivalent to being disabled or having a disability.

3. Major life activity means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

4. An individual will be considered substantially limited in the major life activity of employment or working if the individual is likely to experience difficulty in securing, retaining, or advancing in employment because of a disability.

5. Has a record of such an impairment means has a history of, or has been regarded as having, a mental or physical impairment that substantially limits one or more major life activity.

6. Is regarded as having an impairment means:

a. has a physical or mental impairment that does not substantially limit major life activities but is treated as constituting such a limitation;

b. has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment; or

c. has none of the impairments listed in the definition of physical or mental impairment above but is treated as having such an impairment.

F. "He, His, Him, or Himself" shall refer to either sex.

G. "Investigator" shall mean the individual designated by the Commission or Director to investigate complaints alleging discriminatory or prohibited employment practices.

H. "Qualified disabled individual" means a disabled individual who with reasonable accommodation can perform the essential functions of the job in question.

I. "Reasonable accommodation": For the purpose of enforcement of these rules and regulations the following criteria will be utilized to determine a reasonable accommodation.

1. An employer shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled applicant or employee unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its program

2. Reasonable accommodation may include:

a. making facilities used by the employees readily accessible to and useable by disabled individuals; and

b. job restructuring, modified work schedules, acquisition or modification of equipment or devices, and other similar actions.

3. In determining pursuant to Rule R606-1-2.J.1 whether an accommodation would impose an undue hardship on the operation of an employer, factors to be considered include:

a. the overall size of the employer's program with respect to number of employees, number and type of facilities, and size of budget;

b. the type of the employer's operation, including the composition and structure of the employer's work force; and

c. the nature and cost of the accommodation needed.

4. An employer may not deny an employment opportunity to a qualified disabled employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

5. Each complaint will be handled on a case-by-case basis because of the variable nature of disability and potential accommodation.

J. "Sexual Harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

R606-1-3. Procedures--Request for Agency Action and Investigation File.

A. CONTENTS OF REQUEST FOR AGENCY ACTION

A request for agency action as specified in Section 34A-5-107, shall be filed at the Division office on a form designated by the Division. The completed form shall include all information required by Section 63G-4-201(3).

B. FILING OF REQUEST FOR AGENCY ACTION

1. A request for agency action must be filed within 180 days after the alleged discriminatory or prohibited employment practice occurred.

2. A request for agency action shall be filed either by personal delivery or regular mail addressed to the Division's office in Salt Lake City, Utah.

3. Investigators and any other persons designated by the Division, shall be available to assist in the drafting and filing of requests for agency action at the Division's office during normal business hours.

C. RESPONSE/ANSWER TO REQUEST FOR AGENCY ACTION

1. The Division shall mail a copy of the request for agency action to the charging party and the respondent/employer within ten working days of the filing of the request for agency action.

2. The respondent must answer the allegations of discrimination or prohibited employment practice set out in the request for agency action in writing within [~~ten~~]thirty(30) [~~working~~]days [~~of receipt~~]from the date of the request for agency action was sent. The response/answer shall be mailed, emailed, or faxed to the Division office. Any correspondence sent by email must be sent to the email address specified by the Division.

3. The response must:

a. Specifically address each allegation raised in the charge of discrimination, and

b. Be accompanied by any supporting evidence.

4. Failure to respond to a charge of discrimination will result in an investigation and possible determination without input or evidence from the non-responsive party.

5. Responses submitted beyond the thirty (30) day time limit described in subsection (2) will not be considered.

D. INVESTIGATION

Pursuant to Section 34A-5-104(2)(b) and Section 34A-5-107(3)(b), the Division may, with reasonable notice to the parties, conduct on-site visits, interviews, fact finding conferences, obtain records and other information and take such other action as is reasonably necessary to investigate the request for agency action. A party's unjustified failure to cooperate with the Division's reasonable investigative request may result in the Division concluding its investigation based on such other information as is available to the Division.

E. AMENDMENT OF REQUEST FOR AGENCY ACTION

1. All allegations of discrimination or prohibited employment practice set out in the request for agency action may be amended, either by the Division or the charging party prior to commencement of an evidentiary hearing and the respondent may amend its answer. Amendments made during or after an evidentiary hearing may be made only with the permission of the presiding officer. The Division shall permit liberal amendment of requests for agency action and filing of supplemental requests for agency action in order to accomplish the purpose of the Act.

2. Amendments or a supplemental request for agency action shall be in writing, or on forms furnished by the Division, signed and verified. Copies shall be filed in the same manner as in the case of original requests for agency action.

3. Amendments or a supplemental request for agency action shall be served on the respondent as in the case of an original request for agency action.

4. A request for agency action or a supplemental request for agency action may be withdrawn by the charging party prior to the issuance of a final order.

F. MAILING OF REQUEST FOR AGENCY ACTION

The mailing specified in Section 63G-4-201(3) shall be performed by the Division and the persons known to have a direct interest in the requested agency action as specified in Section 63G-4-201 (3)(b) shall be the charging party and the respondent/employer.

G. CLASSIFICATION OF PROCEEDING FOR PURPOSE OF UTAH ADMINISTRATIVE PROCEDURES ACT

Pursuant to Section 63G-4-202(1), the procedures specified in Section 34A-5-107(1) through (5) are an informal process and are governed by Section 63G-4-203. Any settlement conferences scheduled pursuant to Section 34A-5-107(3) are not adjudicative hearings.

H. PRESIDING OFFICER

For those procedures specified in Section 34A-5-107(1) through (5), the presiding officer shall be the Director or the Director's designee. The presiding officer for the formal hearing referred to in Section 34A-5-(6) through (11) shall be appointed by the Commission.

R606-1-4. Adjudication and Review Pursuant to Section 34A-5-107.

A. After a charge of discrimination has been investigated, the Director shall issue a Determination and Order. Alternatively, the Director may refer the charge to an investigator for further investigation.

B. A party dissatisfied with the Director's Determination and Order may request a de novo evidentiary hearing. The request must be in writing, state the party's reasons for seeking review, and must be received by the Division within 30 days of the date the Director signed the Determination and Order.

1. In computing the foregoing 30-day period, the day on which the Determination and Order are signed by the Director shall not be included. The last day of the 30-day period shall be included unless it is a weekend or legal holiday, in which event the 30-day period runs until the end of the next business day.

2. Unless a timely request for hearing is received by the Division, the Director's Determination and Order is the final Commission Order.

3. If a timely request for hearing is received, the Division will transmit the request to the Division of Adjudication within the Commission for assignment to an Administrative Law Judge. The ALJ will conduct a de novo formal hearing and issue an order in conformity with the requirements of the Utah Administrative Procedures Act.

C. A party may request review of the ALJ's order by complying with the provisions of Section 34A-1-303 and Section 63G-4-301 of the Utah Administrative Procedures Act.

R606-1-5. Release of Information Obtained Through the Investigative Process.

A. Pursuant to Utah Code Subsection 34A-5-107(14), the Division will release information gained through its investigations or proceedings to a party to facilitate their participation in the investigation under the following circumstances:

1. The request is made in writing.

2. The Division has not received a request from the person or entity providing the information that such information be considered confidential.

3. The release of the information will not, in the determination of the Division impede the investigation; and

4. The Division has not determined the requested information should remain confidential or otherwise be protected.

B. If a person or entity requests in writing the information provided to the Commission be kept confidential, the Division will consider the reasons underlying the request and make a decision regarding the confidentiality of the information. This determination will govern the release of such information.

C. After the conclusion of the investigation, either party may request a copy of investigation file.

D. The Division generally will not release the following information:

1. work product;

2. witness names;

3. Social Security information;

4. bank account numbers; and

5. medical records, including the ADA questionnaire, unless an appropriate release of medical information is obtained.

E. The Division may charge for the costs of providing copies to the parties.

R606-1-[5]6. Designation as Formal Proceedings.

The adjudicative proceedings referred to in Subsections 34A-5-107(6)-(10) are classified as formal proceedings for purposes of the Utah Administrative Procedures Act.

R606-1-[6]7. Declaratory Orders.

A. PURPOSE

As required by Section 63G-4-503, this rule provides the procedures for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and Orders governing or issued by the agency.

B. PETITION FORM AND FILING

1. The petition shall be addressed and delivered to the Director, who shall mark the petition with the date of receipt.

2. The petition shall:

(a) be clearly designated as a request for an agency Declaratory Order;

(b) identify the statute, rule, or Order to be reviewed;

(c) describe in detail the situation or circumstances in which applicability is to be reviewed;

(d) describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

(e) include an address and telephone where the petitioner can be contacted during regular work days;

(f) declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

(g) be signed by the petitioner.

C. REVIEWABILITY

The agency shall not review a petition for a Declaratory Order that is:

1. not within the jurisdiction and competence of the agency;

2. trivial, irrelevant, or immaterial; or

3. otherwise excluded by state or federal law.

D. PETITION REVIEW AND DISPOSITION

1. The Director shall promptly review and consider the petition and may:

(a) meet with the petitioner;

(b) consult with Legal Counsel; or

(c) take any action consistent with law that the agency deems necessary to provide the petition adequate review and due consideration.

2. The Director may issue an order pursuant to Section 63G-4-503(6).

E. ADMINISTRATIVE REVIEW

Review of a Declaratory Order is per Section 63G-4-302 only.

R606-1-[7]8. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

KEY: discrimination, employment, time
Date of Enactment or Last Substantive Amendment: [~~April 3, 2001~~]2014
Notice of Continuation: August 30, 2011
Authorizing, and Implemented or Interpreted Law: 34A-5-101 et seq.; 63G-4-102 et seq.

Workforce Services, Employment Development
R986-900-902
Options and Waivers

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 38750
FILED: 08/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department was granted a waiver for some food stamp clients.

SUMMARY OF THE RULE OR CHANGE: The Federal government grants waivers for high unemployment areas for some food stamp recipients. This rule change just shows Utah has been granted this waiver.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-103 and Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(b)

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 applies to federally-funded programs so there are no costs or savings to local governments.
♦ 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 for this change to anyone, including persons 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.

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 10/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2014

AUTHORIZED BY: Jon Pierpont, 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.

(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 (EBT).

(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, regardless of the amount earned;

(xiv) have no fixed address;

(xv) are pregnant regardless of trimester;

(xvi) 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.

(l) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.

KEY: food stamps, public assistance
Date of Enactment or Last Substantive Amendment: [~~January 8, 2013~~]2014
Notice of Continuation: September 8, 2010
Authorizing, and Implemented or Interpreted Law: 35A-3-103

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 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 October 1, 2014.

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 (example). Deletions made to the rule appear struck out with brackets surrounding them ([~~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 may 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 30, 2014, 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.

Changes in Proposed Rules are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

Environmental Quality, Solid and Hazardous Waste
R315-15
Standards for the Management of Used Oil

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 38611
FILED: 08/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division received public comment on proposed changes to Rule R315-15 and is making changes to the proposed rule. The changes are made in Sections R315-15-1 and R315-15-18.

SUMMARY OF THE RULE OR CHANGE: Subsection R315-15-1.1(j) is changed to read as it did prior to the rule change proposed in the July 1, 2014, Bulletin with the word "person" changed to "authorized employee." In Subsection R315-15-18(b)(3), the language proposed in the rule change proposed in the July 1, 2014, Bulletin is removed and the numbering corrected. In Subsection R315-15-18(e)(2), the limit of 0.5 ppm proposed in the rule change proposed in the July 1, 2014, Bulletin is changed to 1 ppm. (DAR NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the July 1, 2014, issue of the Utah State Bulletin, on page 56. 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 CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-704

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The rule change will have no effect on the state budget as two of the rule changes return to the rule that which existed prior to the proposed rule change published in the July 1, 2014, Bulletin. The third change raises the reporting limit which will have no effect on costs.
♦ LOCAL GOVERNMENTS: The rule change will have no effect on the local government budgets as two of the rule changes return to the rule that which existed prior to the proposed rule change published in the July 1, 2014, Bulletin. The third change raises the reporting limit which will have no effect on costs.
♦ SMALL BUSINESSES: The rule change will have no effect on small businesses budgets as two of the rule changes return to the rule that which existed prior to the proposed rule change published in the July 1, 2014, Bulletin. The third change raises the reporting limit which will have no effect on costs.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The rule change will have no effect on other budgets as two of the rule changes return to the rule that which existed prior to the proposed rule change published in the July 1, 2014, Bulletin. The third change raises the reporting limit which will have no effect on costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs will not be effected as two of the rule changes return to the rule that which existed prior to the proposed rule change published in the July 1, 2014, Bulletin. The third change raises the reporting limit which will have no effect on compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Compliance costs for businesses will not be effected as two of the rule changes return to the rule that which existed prior to the proposed rule change published in the July 1, 2014. Bulletin. The third change raises the reporting limit which will have no effect on compliance costs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@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: 10/02/2014

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-15. Standards for the Management of Used Oil.
R315-15-1. Applicability, Prohibitions, and Definitions.

1.1 APPLICABILITY

This section identifies those materials that are subject to regulation as used oil under R315-15. This section also identifies some materials that are not subject to regulation as used oil under R315-15, and indicates whether these materials may be a hazardous waste as defined under R315-2.

(a) Used oil. It is presumed that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for

disposal. Except as provided in R315-15-1.2, the requirements of R315-15 apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in R315-2-9.

(b) Mixtures of used oil and hazardous waste.

(1) Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste which are listed in R315-2-10 are subject to regulation as hazardous waste under R315-2 [-]rather than as used oil under R315-15.

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10. A person may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, Update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Characteristic hazardous waste. A mixture of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in R315-2-9 and a mixtures of used oil and hazardous waste that is listed in R315-2-10 solely because it exhibits one or more of the characteristics of hazardous waste identified in R315-2-9 are subject to:

(i) Except as provided in R315-15-1(b)(2)(iii), regulation as hazardous waste under R315-1 through R315-14, and R315-50 rather than as used oil under R315-15, if the resultant mixture exhibits any characteristics of hazardous waste identified in R315-2-9; or

(ii) Except as specified in R315-15-1.1(b)(2)(iii), regulation as used oil under R315-15, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under R315-2-9.

(iii) Regulation as used oil under R315-15, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability, e.g., mineral spirits, provided that the mixture does not exhibit the characteristic of ignitability under R315-2-9(d).

(3) Conditionally exempt small quantity generator hazardous waste. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under R315-2-5, which incorporates by reference 40 CFR 261.5, are subject to regulation as used oil under R315-15.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in R315-15-1.1(c)(2) materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not used oil and thus not subject to R315-15, and

(ii) If applicable, are subject to the hazardous waste regulations R315-1 through R315-14, R315-50, and R315-101 and 102.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under R315-15.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under R315-15.

(d) Mixtures of used oil with products.

(1) Except as provided in (d)(2) mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under R315-15.

(2) Mixtures of used oil and diesel fuel mixed on site by the generator of the used oil for use in the generator's own vehicles are not subject to R315-15 after the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of R315-15-2.

(e) Materials derived from used oil.

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, e.g., re-refined lubricants, are:

(i) Not used oil and thus are not subject to R315-15, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of R315-1 through R315-14 and R315-50 as provided in R315-2-3(c)(2)(i).

(2) Materials produced from used oil that are burned for energy recovery, e.g., used oil fuels, are subject to regulation as used oil under R315-15.

(3) Except as provided in R315-15.1.1(e)(4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to R315-15, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations R315-1 through R315-14, and R315-50 if the materials are listed or identified as hazardous wastes.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to R315-15.

(f) Wastewater. Wastewater contaminated with de minimis quantities of used oil, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewaters at facilities that have eliminated the discharge of wastewater, are not subject to the requirements of Rule R315-15. For purposes of this paragraph only, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility.

(1) Used oil mixed with crude oil or natural gas liquids, e.g., in a production separator or crude oil stock tank, for insertion into a

crude oil pipeline is exempt from the requirements of R315-15. The used oil is subject to the requirements of R315-15 prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of R315-15.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of R315-15, provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of R315-15.

(4) Except as provided in R315-15-1.1 (g)(5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of R315-15 only if the used oil meets the specification of R315-15-1.2. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of R315-15.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of R315-15. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, e.g., by pouring collected used oil into the waste water treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of R315-15.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to Rule R315-15 until it is transported ashore.

(i) Used oil containing PCBs. In addition to the requirements of R315-15, marketers and burners of used oil who market used oil containing PCBs at concentrations greater than or equal to 2 ppm are subject to the requirements found in R315-15-8 and 40 CFR 761.20(e).

(j) Inspections. Any duly authorized employee of the Director, may, at any reasonable time and upon presentation of credentials, have access to and the right to copy any records relating to used oil, and inspect, audit, or sample. Any authorized employee obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. The employee may also make record of the inspection by photographic, electronic, audio, video, or any other reasonable means.

(k) Violations, Orders, and Hearings. If the Director has reason to believe a person is in violation of any provision of R315-15, procedural requirements for compliance shall follow Utah Code Annotated 19-6-721 and Utah Administrative Code R305-7.

1.2 USED OIL SPECIFICATIONS

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under R315-15 until:

(a) It has been demonstrated not to exceed any allowable levels of the constituents and properties shown in Table 1;

(b) The person making that claim complies with R315-15-7.3, R315-15-7.4, and R315-15-7.5(b); and

(c) The used oil is delivered to a used oil burner.

. . . . . .

1.3 PROHIBITIONS

Except as authorized by the Director, a person may not place, discard, or otherwise dispose of used oil in any of the following manners:

(a) Surface impoundment and waste piles . Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under R315-7 or R315-8.

(b) Use as a dust suppressant, weed suppressant, or for road oiling. The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited. Any disposal of used oil on the ground is prohibited under Utah Code Annotated 19-6-706(1)(a)(iii).

(c) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(1) Solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the Director; or

(2) Any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under R315-15.

(d) Used oil shall not be disposed in a solid waste treatment, storage, or disposal facility, except for the disposal of hazardous used oil as authorized under R315-2.

(e) Used oil shall not be disposed in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water.

1.4 BURNING IN PARTICULAR UNITS

Burning in particular units. Off-specification used oil fuel may be burned for energy recovery only in the devices described in R315-15-6.2(a).

1.5 DISPOSAL OF DE MINIMIS USED OIL

(a) R315-15-1.3 does not apply to release of de minimis quantities of used oil identified under Utah Code Annotated 19-6-706(4)(a) except for the requirements of 19-6-706(i) and (ii).

(b) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities in accordance with Utah Code Annotated 19-6-706 (2) (a) if:

(1) To the extent that all oil has been reasonably removed from the item or substance; and

(2) No free flowing oil remains in the item or substance.

1.6 USED OIL FILTERS

(a) Disposal of Used Oil Filters. A person may dispose of a nonterne plated used oil filter as a non-hazardous solid waste when that filter is gravity hot-drained by one of the methods described in R315-15-1.6(b) and is not mixed with hazardous waste defined in R315-2.

(b) "Gravity hot-drained" means drained for not less than 12 hours near operating temperature but above 60 degrees Fahrenheit. A nonterne used oil filter is a container of used oil and is subject to R315-15 until it is gravity hot-drained by one of the following methods:

(1) puncturing the filter anti-drain back valve or the filter dome end and gravity hot-draining;

(2) gravity hot-draining and crushing;

(3) dismantling and gravity hot-draining; or

(4) any other equivalent gravity hot-draining method authorized by the Director that will remove used oil from the filter at least as effectively as the methods listed in R315-15-1.6(b)(1) through (3).

1.7 DEFINITIONS

(a) Definitions of terms used in R315-15 are found in: R315-1.7(b) through (j); and R315-1-1.

(b) The term "de minimis quantities of used oil" defined inUtah Code Annotated 19-6-706(4)(b), and 19-6-708(3)(a) means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations and does not apply to used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases. Nor does it apply to accumulations of quantities of used oil that pose a potential threat to human health or the environment.

(c) "Financial responsibility" means the mechanism by which a person who has a financial obligation satisfies that obligation.

(d) "Used oil" means any oil, refined from crude oil or synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities. Used oil includes engine oil, transmission fluid, compressor oils, metalworking oils, hydraulic oil, brake fluid, oils used as buoyants, lubricating greases, electrical insulating, and dialectic oils.

(e) "Polychlorinated biphenyl (PCB)" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.

(f) "On-specification used oil" means used oil that does not exceed levels of constituents and properties specified in R315-15-1.2.

(g) "Off-specification used oil" means used oil that exceeds levels of constituents and properties specified in R315-15-1.2.

(h) "Parts per million (ppm)" means a weight-per-weight ratio used to describe concentrations. Parts per million (ppm) is the number of units of mass of a contaminant per million units of total mass (e.g., micrograms per gram).

1.8 LABORATORY ANALYSES

Laboratory analyses used to satisfy the requirements of R315-15 shall be performed by a laboratory that holds a current Utah Certification for environmental laboratories issued by the Utah Department of Health, Laboratory Improvement under R444-14 Utah Administrative Code. The laboratory shall be certified for the method(s) and analyte(s) applied to generate the environmental data.

R315-15-18. Polychlorinated Biphenyls (PCBs).

(a) Used oil containing polychlorinated biphenyl (PCB) concentrations of 50 ppm and above is subject to TSCA regulations in 40 CFR 761. Used oil containing PCB concentrations greater than or equal to 2 ppm but less than 50 ppm is subject to both R315-15 and 40 CFR 761.

(b) Used oil transporter PCB testing. Used oil transporters shall determine whether the PCB content of used oil being transported is less than 2 ppm prior to transferring the oil into the transporter's vehicles. The transporter shall make this determination as follows:

(1) Used dielectric oil. Dielectric oil used in transformers and other high voltage devices shall be certified to be less than 2 ppm prior to loading to the transporter's vehicle through either:

(A) Laboratory testing following the procedures described in R315-15-18(d) below, or

(B) Written certification from the generator that the PCB content of the used oil is less than 2 ppm PCBs based on manufacturing specifications and process knowledge.

(2) Other used oils historically containing PCBs. Used oils that have historically contained PCBs, including high pressure hydraulic oils, capacitors, heat transfer fluids, oil cooled electric motors, and lubricants shall be certified to be less than 2 ppm prior to transfer through either:

(A) Laboratory testing following the procedures described in R315-15-18(d) below, or

(B) Written certification from the generator that the PCB content of the used oil is less than 2 ppm PCBs based on manufacturing specifications and process knowledge.

(3) [~~Suspicious oil. If a transporter suspects or has knowledge that used oil may have an increased likelihood of containing PCBs, the used oil transporter shall make a PCB determination in the same manner as described under (1) above.~~

~~(4)~~]Used oils not falling into categories described under (1) [~~to (3)~~]and (2) above are not required to be tested for PCBs under R315-15-18(b).

(c) Used oil marketer PCB testing. To ensure that used oil destined for burning is not a regulated waste under the TSCA regulations, used oil fuel marketers shall also determine whether the PCB content of used oil being burned for energy recovery is below 2 ppm. A marketer shall make this determination in a manner consistent with the used oil marketer's sampling and analysis plan.

(d) Laboratory testing for PCBs. Used oil testing for total PCBs shall include the following Aroclors (registered trademark): 1016, 1221, 1232, 1242, 1248, 1254, and 1260. If plasticizers (used in polyvinyl chloride plastic, neoprene, chlorinated rubbers, laminating adhesives, sealants and caulk and joint compounds etc.) are present, then the used oil shall also be analyzed for Aroclors (registered trademark) 1262 and 1268. If other Aroclors (registered trademark) are known or suspected to be present, then the used oil shall be analyzed for those additional Aroclors (registered trademark).

(e) The following Utah Certified Laboratory SW-846 methodologies shall be used:

(1) Preparation method 3580A, clean up method 3665A, and analytical method 8082A.

(2) Individual Aroclors (registered trademark) shall be reported with a reporting limit of [~~0.5~~]1 ppm or less.

(3) If the source of the PCBs is known to be an Aroclor (registered trademark), and the Aroclor (registered trademark) is unlikely to be significantly altered in homologue composition such as weathering, Aroclors (registered trademark) listed in R315-15-18(d) shall be reported. Analytical results from all 209 individual congeners or ten homologue groups shall be submitted for any sample that has an altered homologue composition such as weathering unless prior approval is obtained from the Director.

KEY: hazardous waste, used oil
Date of Enactment or Last Substantive Amendment: 2014
Notice of Continuation: May 17, 2012
Authorizing, and Implemented or Interpreted Law: 19-6-704

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 help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **Proposed Rule**; continue the rule as it is by filing a **Five-Year Notice of Review and Statement of Continuation (Review)**; or amend the rule by filing a **Proposed Rule** and by filing a **Review**. By filing a **Review**, the agency indicates that the rule is still necessary.

A **Review** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at http://www.rules.utah.gov/publicat/code.htm. The rule text may also be inspected at the agency or the Division of Administrative Rules. **Reviews** are effective upon filing.

Reviews are governed by Section 63G-3-305.

Commerce, Occupational and Professional Licensing

R156-60a

Social Worker Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38730
FILED: 08/04/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 60, Part 2, provides for the licensure of social service workers, certified social worker interns, certified social workers, and clinical social workers. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-60-203(3) provides that the Social Worker Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division director. This rule was enacted to clarify the provisions of Title 58, Chapter 60, Part 2, with respect to social service workers, certified social worker interns, certified social workers, and clinical social workers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in August 2009, no written comments have been received by the Division with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 60, Part 2, with respect to social service workers. certified social worker interns, certified social workers, and clinical social workers. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 08/04/2014

Commerce, Occupational and Professional Licensing
R156-60b
Marriage and Family Therapist Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38734
FILED: 08/05/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 60, Part 3, provides for the licensure of marriage and family therapists and associate marriage and family therapists. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-60-303(3)(a) provides that the Marriage and Family Therapist Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division director. This rule was enacted to clarify the provisions of Title 58, Chapter 60, Part 3, with respect to marriage and family therapists and associate marriage and family therapists.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in August 2009, no written comments have been received by the Division with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 60, Part 3, with respect to marriage and family therapists and associate marriage and family therapists. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 08/05/2014

Commerce, Occupational and Professional Licensing
R156-78
Vocational Rehabilitation Counselor Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38761
FILED: 08/14/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 78, provides for the licensure of vocational rehabilitation counselors. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-78-201(3)(a) provides that the Vocational Rehabilitation Counselor Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 78, with respect to vocational rehabilitation counselors.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was first enacted in September 2009, only one written comment was received by the Division with respect to this rule. An 08/19/2009 email from Hunter Finch was received by the Division regarding DAR No. 32820 and this rule, wherein Mr. Finch suggested some minor changes to the proposed rule. The Division filed a nonsubstantive rule change on 08/31/2009 under DAR No. 32916 to make the corrections suggested by Mr. Finch.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 78, with respect to vocational rehabilitation counselors. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Debra Hobbins by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at dhobbins@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 08/14/2014

Commerce, Occupational and Professional Licensing

R156-79

Hunting Guides and Outfitters Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38735
FILED: 08/05/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 79, provides for the licensure of hunting guides and outfitters. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-79-201(3)(a) provides that the Hunting Guides and Outfitters Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division director. This rule was enacted to clarify the provisions of Title 58, Chapter 79, with respect to hunting guides and outfitters.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was first enacted in September 2009, the Division received several written comments with respect to this rule. An 08/19/2009 email from Hunter Finch was received by the Division regarding this rule, wherein Mr. Finch recommended a change to an incorrect statute citation. The Division filed a nonsubstantive rule change in DAR No. 32964 to make the correction suggested by Mr. Finch. The Division also received an 08/30/2009 letter from Louise Stark/White Cloud Outfitters where she suggested some changes to the proposed new rule, but overall supported the proposed new rule. The Division received an 08/07/2009 email from Scott Brown, American Heart Association, supporting the CPR (cardiopulmonary resuscitation) requirements for hunting guides and outfitters. On 08/30/2009, letters were also received from George McQuiston in which he suggested changes to the new proposed rule, Alesha Williams/Flying J Outfitters in which it appears her comments were directed to the newly created statute (Title 58, Chapter 79) which was passed during the 2009 General Legislative Session and not necessarily the proposed new rule, and Tim Pilling in which he suggested changes to the new proposed rule. Based on written comments received by the Division which contained various suggested changes, the Division filed another proposed rule amendment filing in November 2009 and a 11/10/2009 rule hearing was conducted on those additional proposed amendments. The additional proposed amendments were ultimately made effective on 12/08/2009.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 79, with respect to hunting guides and outfitters. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kristina Bean by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at kbean@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 08/05/2014

Human Services, Recovery Services
R527-10
Disclosure of Information to the Office of Recovery Services

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38728
FILED: 08/04/2014

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 62A-11-104.1(2) requires the Office of Recovery Services (ORS) to specify by rule the type of health insurance and financial record information financial institutions and insurance companies are required to provide. Subsection 62A-1-111(16) gives the department authority and responsibility to collect child support payments and any other money due to the department. Section 62A-11-107 gives ORS the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law.

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 since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must continue for ORS to be in compliance with Subsection 62A-11-104.1(2). Information from financial institutions and insurance companies helps ORS successfully collect child support and provide insurance information to families.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Casey Cole by phone at 801-536-0360, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 08/04/2014

Human Services, Recovery Services
R527-450
Federal Tax refund Intercept

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38729
FILED: 08/04/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. 42 USC 664 authorizes the Secretary of Treasury to determine whether any past-due child support amounts are payable to an individual upon receiving a notice from the state agency administering a plan for collecting child support. 45 CFR 303.72 outlines federal requirements for requesting collection of past-due support by federal tax refund intercept and how collections received by ORS shall be distributed. As authorized under these laws, this rule provides the certification criteria for federal tax intercept, the notice requirements, the conditions under which an earned income credit may be refunded, the requirement for distribution of funds collected through this process, and when ORS is required to delete or modify a previously certified debt.

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 since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides the information necessary for certifying a support debt for federal tax refund intercept, for making necessary refunds and adjustments, and for

distributing collected amounts. The laws upon which this rule is based are still in effect. Therefore, this rule must continue.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Casey Cole by phone at 801-536-0360, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 08/04/2014

Human Services, Services for People with Disabilities
R539-2
Service Coordination

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38745
FILED: 08/07/2014

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 62A-5-103(2) provides statutory authority for the Division to administer an array of services and supports to persons with disabilities and their families; make rules that establish eligibility criteria; enhance the quality of life for a person with a disability directly or by contract with private organizations; and supervise those organizations and private services providers. Rule R539-2 sets forth standards for the way in which our Division provides services, including planning, developing and managing those services and how they will be provided through the use of privately contracted support coordinators and service providers. All of which are explicitly or nearly explicitly required by the statute cited above. Currently, the rule states that authority for this rule comes from Subsection 62A-5-103(2)(b). The Division is preparing a rule amendment that will change this to cite the entirety of Subsection 62A-5-103(2).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has received no written comments either in support or opposition to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division has received no comments in opposition to the rule. This rule sets forth necessary rules regarding how applicants are selected and ranked according to need to receive services, the process by which individualized service plans are crafted to meet a persons needs, the process by which applicants are placed on one of the Medicaid waivers that the Division operates, how the Division oversees and manages its contractors and ensures quality services. These are all functions that the Division must layout in rule to continue to provide services to people with disabilities in the State of Utah. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
195 N 1950 W
THIRD FLOOR
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Nathan Wolfley by phone at 801-538-4154, by FAX at 801-538-4279, or by Internet E-mail at nwolfley@utah.gov

AUTHORIZED BY: Paul Smith, Director

EFFECTIVE: 08/07/2014

Human Services, Services for People with Disabilities
R539-3
Rights and Protections

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38746
FILED: 08/07/2014

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 62A-5-103(2)(e) provides statutory authority for the Division to "supervise the programs and facilities operated by, or under contract with, the division." Subsection 62A-5-103(2)(g) states that the

Division has responsibility to "ensure that a person with a disability is not deprived of that person's constitutionally protected rights without due process procedures." The purpose of Rule R539-3 is to support persons with disabilities in exercising their rights and ensuring that those rights are protected and not unduly infringed upon. Currently, the rule states that authority for this rule comes from Subsection 62A-5-103(2)(b). The Division is preparing a rule amendment that will change this to cite the entirety of Subsection 62A-5-103(2).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has received no written comments either in support or opposition to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division has received no comments in opposition to the rule. This rule is comprised of necessary provisions which help preserve the rights and privileges of persons with disabilities while they are receiving services through the Division, including establishing committees for reviewing potential human rights violations, setting forth protections for a person's personal property and privacy, allowing for administrative hearings, and prohibiting certain actions and procedures outright. This rule has helped protect the dignity and basic rights of countless people in services over the years and is heavily relied upon by the Division. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
195 N 1950 W
THIRD FLOOR
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Nathan Wolfley by phone at 801-538-4154, by FAX at 801-538-4279, or by Internet E-mail at nwolfley@utah.gov

AUTHORIZED BY: Paul Smith, Director

EFFECTIVE: 08/07/2014

Natural Resources; Oil, Gas and Mining; Coal
R645-105
Blaster Training, Examination and Certification

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38738
FILED: 08/05/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas, and Mining as necessary for the regulation of coal mining operations and reclamation operations. Subsection 40-10-17(2)(o)(iv) specifically requires all blasting operations be conducted by trained and competent persons and rules promulgated on training, examination, and certification of persons engaged in and responsible for blasting.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes blaster training and certification to enhance public and worker safety near coal mining blasting operations. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 08/05/2014

Natural Resources; Oil, Gas and Mining; Coal
R645-106
Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38740
FILED: 08/05/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas, and Mining as necessary for the regulation of coal mining operations and reclamation operations. Subsection 40-10-3(20)(a) specifically provides that coal mining operations as defined in the Act do not include the extraction of coal incidental to the extraction of other minerals.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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 necessary to identify the percentage of incidental coal that is allowed in other mineral mining before the coal mining act and regulations are applicable to an extraction operation. This rule should be continued so Utah's coal program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 08/05/2014

Natural Resources; Oil, Gas and Mining; Coal
R645-400
Inspection and Enforcement: Division Authority and Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38739
FILED: 08/05/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas, and Mining as necessary for the regulation of coal mining operations and reclamation operations. Sections 40-10-19 and 40-10-22 specifically establish provisions for right of entry upon coal mining operations, authority for inspections, and procedures for violation of permits.

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 ensure adequate coal mining inspection and enforcement provisions are in place to enable a fair and consistent process for issuance and resolution of such matters. This rule should also be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; COALROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 08/05/2014

Natural Resources; Oil, Gas and Mining; Oil and Gas
R649-10
Administrative Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38741
FILED: 08/05/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-6-5 provides the rulemaking authority to the Board of Oil, Gas, and Mining for regulation of the oil and gas industry. Also, the Administrative Procedures Act (APA) at Title 63G, Chapter 4, was approved by the Legislature and Subsection 63G-4-102(6) specifies that it does not preclude an agency from enacting a rule provided the rule complies with the APA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: One written comment was received in June 2014 and one was received in July 2014. Both comments were in support of renewal.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule exists as a vehicle for Division decisions to be appealed to the Board of Oil, Gas, and Mining should disagreements arise between the public and the Division. This rule also states the method the Division uses to begin the process of informal adjudicative proceedings, enabling the public to pursue remedy at an informal level prior to Board formal matters, and therefore the rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; OIL AND GAS
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 08/05/2014

Public Safety, Administration
R698-5
Hazardous Chemical Emergency Response Commission

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38762
FILED: 08/14/2014

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: Pursuant to Subsection 53-2a-702(2), the Department of Public Safety has primary responsibility for all emergency planning activities under the federal Emergency Planning and Community Right To Know Act of 1986, and shall prepare policy and procedure and make rules necessary for implementation of that act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the last five-year review of this rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: A continuation of this rule is necessary because it establishes a state hazardous chemical emergency response commission advisory committee, and sets minimum rules for the creation, modification or dissolution of local emergency planning committees, as well as the supervision of the overall planning and direction of the local emergency planning committees.

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

ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 1ST FLR
SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

AUTHORIZED BY: Keith Squires, Commissioner

EFFECTIVE: 08/14/2014

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Amy Lightfoot by phone at 801-718-7901, by FAX at 801-965-4608, or by Internet E-mail at alightfoot@utah.gov

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their administrative 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 make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **Changes in Proposed Rules** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the 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.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

Notices of Effective Date are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Administrative Services
Facilities Construction and Management
No. 38617 (AMD): R23-19. Facility Use Rules
Published: 07/01/2014
Effective: 08/07/2014

No. 38618 (R&R): R23-22. General Procedures for Acquisition and Selling of Real Property
Published: 07/01/2014
Effective: 08/07/2014

No. 38615 (AMD): R23-23. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation
Published: 07/01/2014
Effective: 08/07/2014

Education
Administration
No. 38621 (AMD): R277-462. Comprehensive Counseling and Guidance Program
Published: 07/01/2014
Effective: 08/07/2014

No. 38622 (AMD): R277-463.Class Size Average and Pupil-Teacher Ratio Reporting
Published: 07/01/2014
Effective: 08/07/2014

No. 38623 (AMD): R277-470. Charter Schools - General Provisions
Published: 07/01/2014
Effective: 08/07/2014

No. 38624 (AMD): R277-472. Charter School Student Enrollment and Transfers and School District Capacity Information
Published: 07/01/2014
Effective: 08/07/2014

No. 38625 (AMD): R277-480-4. Charter School Revolving Account Application and Conditions
Published: 07/01/2014
Effective: 08/07/2014

No. 38626 (AMD): R277-602-3. Parent/Guardian Responsibilities
Published: 07/01/2014
Effective: 08/07/2014

No. 38627 (NEW): R277-710. Intergenerational Poverty Interventions in Public Schools
Published: 07/01/2014
Effective: 08/07/2014

No. 38628 (AMD): R277-719. Standards for Selling Foods Outside of the Reimbursable Meal in Schools
Published: 07/01/2014
Effective: 08/07/2014

Environmental Quality
Air Quality
No. 38493 (AMD): R307-101-3. Version of Code of Federal Regulations Incorporated by Reference
Published: 06/01/2014
Effective: 08/07/2014

No. 38492 (AMD): R307-214. National Emission Standards for Hazardous Air Pollutants
Published: 06/01/2014
Effective: 08/07/2014

No. 38491 (AMD): R307-401-12. Reduction in Air Contaminants
Published: 06/01/2014
Effective: 08/07/2014

No. 38489 (AMD): R307-410-2. Definitions
Published: 06/01/2014
Effective: 08/07/2014

No. 38490 (AMD): R307-410-6. Stack Heights and Dispersion Techniques
Published: 06/01/2014
Effective: 08/07/2014

Solid and Hazardous Waste
No. 38609 (AMD): R315-1-1. Definitions
Published: 07/01/2014
Effective: 08/15/2014

No. 38610 (AMD): R315-2-4. Exclusions
Published: 07/01/2014
Effective: 08/15/2014

Health
Center for Health Data, Health Care Statistics
No. 38571 (AMD): R428-1. Adoption of Health Data Plan
Published: 06/15/2014
Effective: 08/05/2014

No. 38562 (R&R): R428-2. Health Data Authority Standards for Health Data
Published: 06/15/2014
Effective: 08/05/2014

No. 38563 (AMD): R428-5. Appeal and Adjudicative Proceedings
Published: 06/15/2014
Effective: 08/05/2014

No. 38564 (R&R): R428-10. Health Data Authority Hospital Inpatient Reporting Rule
Published: 06/15/2014
Effective: 08/05/2014

No. 38565 (R&R): R428-11. Health Data Authority Ambulatory Surgical Data Reporting Rule
Published: 06/15/2014
Effective: 08/05/2014

No. 38566 (AMD): R428-12. Health Data Authority Survey of Enrollees in Health Plans
Published: 06/15/2014
Effective: 08/05/2014

No. 38567 (AMD): R428-13. Health Data Authority. Audit and Reporting of Health Plan Performance Measures
Published: 06/15/2014
Effective: 08/05/2014

No. 38568 (AMD): R428-15. Health Data Authority Health Insurance Claims Reporting
Published: 06/15/2014
Effective: 08/05/2014

Family Health and Preparedness, Child Care Licensing
No. 38544 (AMD): R430-6. Background Screening
Published: 06/15/2014
Effective: 08/15/2014

Judicial Performance Evaluation Commission
Administration
No. 38595 (AMD): R597-3. Judicial Performance Evaluations
Published: 07/01/2014
Effective: 08/08/2014

Natural Resources
Wildlife Resources
No. 38616 (AMD): R657-3. Collection, Importation, Transportation, and Possession of Animals
Published: 07/01/2014
Effective: 08/11/2014

No. 38600 (AMD): R657-6. Taking Upland Game
Published: 07/01/2014
Effective: 08/11/2014

No. 38605 (AMD): R657-9. Taking Waterfowl, Common Snipe and Coot
Published: 07/01/2014
Effective: 08/11/2014

No. 38603 (AMD): R657-46. The Use of Game Birds in Dog Field Trials and Training
Published: 07/01/2014
Effective: 08/11/2014

No. 38601 (AMD): R657-54. Taking Wild Turkey
Published: 07/01/2014
Effective: 08/11/2014

No. 38604 (AMD): R657-62. Drawing Application Procedures
Published: 07/01/2014
Effective: 08/11/2014

No. 38602 (NEW): R657-68. Trial Hunting Authorization
Published: 07/01/2014
Effective: 08/11/2014

Public Service Commission
Administration
No. 38545 (AMD): R746-341. Lifeline/Link-up Rule
Published: 06/15/2014
Effective: 08/06/2014

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, 2014 through August 15, 2014. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Division of Administrative Rules (801-538-3764).

A copy of the **Rules Index** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (http://www.rules.utah.gov/).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)
CPR = Change in Proposed Rule
EMR = 120-Day (Emergency) Rule
EXD = Expired Rule
EXP = Expedited Rule
EXT = Five-Year Review Extension
GEX = Governor's Extension
LNR = Legislative Nonreauthorization
NEW = New Rule (Proposed Rule)
NSC = Nonsubstantive Rule Change
R&R = Repeal and Reenact (Proposed Rule)
REP = Repeal (Proposed Rule)
5YR = Five-Year Notice of Review and Statement of Continuation

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
Administration					
R13-2	Access to Records	38570	5YR	06/02/2014	2014-12/53
R13-2	Access to Records	38569	AMD	07/22/2014	2014-12/6
Child Welfare Parental Defense (Office of)					
R19-1	Parental Defense Counsel Training	38547	5YR	05/21/2014	2014-12/53
Debt Collection					
R21-2	Office of State Debt Collection Administrative Procedures	38497	NSC	05/29/2014	Not Printed
R21-3	Debt Collection Through Administrative Offset	38496	NSC	05/29/2014	Not Printed
Facilities Construction and Management					
R23-3	Planning and Programming for Capital Projects	38405	5YR	04/03/2014	2014-9/49
R23-19	Facility Use Rules	38617	AMD	08/07/2014	2014-13/8
R23-22	General Procedures for Acquisition and Selling of Real Property	38618	R&R	08/07/2014	2014-13/13
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	38587	5YR	06/10/2014	2014-13/133
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	38615	AMD	08/07/2014	2014-13/18
R23-29	Across the Board Delegation	38404	5YR	04/03/2014	2014-9/49
R23-29	Across the Board Delegation	38425	R&R	06/09/2014	2014-9/4
R23-33	Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board	38247	NEW	03/10/2014	2014-3/2
Finance					
R25-7	Travel-Related Reimbursements for State Employees	38175	AMD	02/07/2014	2014-1/4
R25-7	Travel-Related Reimbursements for State Employees	38471	AMD	06/23/2014	2014-10/4
R25-10	State Entities' Posting of Financial Information to the Utah Public Notice Website	38653	5YR	06/25/2014	2014-14/79
Fleet Operations					
R27-4-13	Disposal of State Vehicles	38312	AMD	04/22/2014	2014-6/4
R27-7-3	Driver Eligibility to Operate a State Vehicle	38073	AMD	03/11/2014	2013-22/14
Purchasing and General Services					
R33-1	Utah State Procurement Rules Definitions	38500	R&R	07/08/2014	2014-11/4
R33-1	Utah Procurement Rules, "General Procurement Provisions," Definitions	38689	5YR	07/08/2014	2014-15/61
R33-2	Procurement Organization	38501	R&R	07/08/2014	2014-11/6

R33-2	Rules of Procedure for Procurement Policy Board	38690	5YR	07/08/2014	2014-15/61
R33-3	Source Selection and Contract Formation	38502	R&R	07/08/2014	2014-11/9
R33-3	Procurement Organization	38691	5YR	07/08/2014	2014-15/62
R33-4	Specifications	38503	R&R	07/08/2014	2014-11/28
R33-4	General Procurement Provisions, Prequalifications, Specifications, and Small Purchases	38692	5YR	07/08/2014	2014-15/62
R33-5	Construction and Architect-Engineer Selection	38504	R&R	07/08/2014	2014-11/32
R33-5	Request for Information	38693	5YR	07/08/2014	2014-15/63
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38218	EXT	01/02/2014	2014-3/57
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38446	5YR	04/17/2014	2014-10/111
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38505	R&R	07/08/2014	2014-11/43
R33-6	Bidding	38694	5YR	07/08/2014	2014-15/64
R33-7	Cost Principles	38219	EXT	01/02/2014	2014-3/57
R33-7	Cost Principles	38447	5YR	04/17/2014	2014-10/111
R33-7	Cost Principles	38506	R&R	07/08/2014	2014-11/49
R33-7	Request for Proposals	38695	5YR	07/08/2014	2014-15/64
R33-8	Property Management	38507	R&R	07/08/2014	2014-11/56
R33-8	Exceptions to Procurement Requirements	38696	5YR	07/08/2014	2014-15/65
R33-9	Insurance Procurement	38220	EXT	01/02/2014	2014-3/57
R33-9	Insurance Procurement	38448	5YR	04/17/2014	2014-10/112
R33-9	Insurance Procurement	38508	R&R	07/08/2014	2014-11/59
R33-9	Cancellations, Rejections, and Debarment	38697	5YR	07/08/2014	2014-15/65
R33-10	State Construction Contracts and Drug and Alcohol Testing	38509	R&R	07/08/2014	2014-11/62
R33-10	Preferences	38698	5YR	07/08/2014	2014-15/66
R33-11	Surplus Property	38524	R&R	07/08/2014	2014-11/64
R33-11	Form of Bonds	38699	5YR	07/08/2014	2014-15/66
R33-12	Rules of Procedure for Procurement Policy Board and Procurement Appeals Panel	38510	R&R	07/08/2014	2014-11/71
R33-12	Terms and Conditions, Contracts, Change Orders and Costs	38700	5YR	07/08/2014	2014-15/67
R33-13	General Construction Provisions	38511	NEW	07/08/2014	2014-11/79
R33-14	Procurement of Design-Build Transportation Project Contracts	38512	NEW	07/08/2014	2014-11/83
R33-15	Architect-Engineer Services	38513	NEW	07/08/2014	2014-11/84
R33-16	Controversies and Protests	38514	NEW	07/08/2014	2014-11/86
R33-17	Procurement Appeals Board	38515	NEW	07/08/2014	2014-11/87
R33-18	Appeal to the Utah Court of Appeals	38516	NEW	07/08/2014	2014-11/89
R33-19	General Provisions Related to Protest or Appeal	38518	NEW	07/08/2014	2014-11/90
R33-20	Records	38519	NEW	07/08/2014	2014-11/91
R33-21	Interaction Between Procurement Units	38520	NEW	07/08/2014	2014-11/92
R33-22	Reserved	38526	NEW	07/08/2014	2014-11/94
R33-23	Reserved	38527	NEW	07/08/2014	2014-11/95
R33-24	Unlawful Conduct	38521	NEW	07/08/2014	2014-11/95
R33-25	Executive Branch Insurance Procurement	38522	NEW	07/08/2014	2014-11/97
R33-26	State Surplus Property	38523	NEW	07/08/2014	2014-11/98
Records Committee					
R35-1	State Records Committee Appeal Hearing Procedures	38572	5YR	06/03/2014	2014-13/133
R35-1a	State Records Committee Definitions	38573	5YR	06/03/2014	2014-13/134
R35-2	Declining Appeal Hearings	38574	5YR	06/03/2014	2014-13/135
R35-3	Prehearing Conferences	38575	5YR	06/03/2014	2014-13/135
R35-4	Compliance with State Records Committee Decisions and Orders	38576	5YR	06/03/2014	2014-13/136
R35-5	Subpoenas Issued by the Records Committee	38577	5YR	06/03/2014	2014-13/136
R35-6	Expedited Hearing	38578	5YR	06/03/2014	2014-13/137

Risk Management					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	38250	AMD	04/30/2014	2014-4/4
AGRICULTURE AND FOOD					
Animal Industry					
R58-3	Brucellosis Vaccination Requirements	38294	AMD	04/16/2014	2014-5/4
R58-20	Domesticated Elk Hunting Parks	38251	5YR	01/17/2014	2014-4/67
Conservation Commission					
R64-1	Agriculture Resource and Development Loans (ARDL)	38712	5YR	07/23/2014	2014-16/59
R64-3	Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES)	38071	NEW	05/08/2014	2013-22/15
R64-3	Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES)	38071	CPR	05/08/2014	2014-7/82
Marketing and Development					
R65-12	Utah Small Grains and Oilseeds Marketing Order	38287	NEW	04/16/2014	2014-5/5
Regulatory Services					
R70-310	Grade A Pasteurized Milk	38467	NSC	05/16/2014	Not Printed
R70-310	Grade A Pasteurized Milk	38636	EXT	06/18/2014	2014-14/87
R70-310	Grade A Pasteurized Milk	38651	5YR	06/24/2014	2014-14/79
R70-310	Grade A Pasteurized Milk	38652	NSC	07/11/2014	Not Printed
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	38315	AMD	05/08/2014	2014-6/5
R70-530	Food Protection	38262	R&R	03/27/2014	2014-4/5
ALCOHOLIC BEVERAGE CONTROL					
Administration					
R81-1-16	Disqualification Based Upon Conviction of Crime	38274	AMD	03/25/2014	2014-4/10
R81-1-32	Further Application	38323	AMD	04/29/2014	2014-6/7
R81-7	Single Event Permits	38275	AMD	03/25/2014	2014-4/11
R81-10b	Temporary Beer Event Permits	38276	AMD	03/25/2014	2014-4/14
ATTORNEY GENERAL					
Administration					
R105-2	Records Access and Management	38245	NSC	01/30/2014	Not Printed
CAPITOL PRESERVATION BOARD (STATE)					
Administration					
R131-4	Capitol Preservation Board General Procurement Rule	38546	EMR	05/21/2014	2014-12/49
R131-4	Capitol Preservation Board General Procurement Rule	38557	AMD	07/22/2014	2014-12/8
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	38476	5YR	05/01/2014	2014-10/113
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	38479	AMD	07/08/2014	2014-11/103
COMMERCE					
Consumer Protection					
R152-21	Credit Services Organizations Act Rules	38266	5YR	01/29/2014	2014-4/67
R152-26	Telephone Fraud Prevention Act	38125	AMD	01/07/2014	2013-23/4

Corporations and Commercial Code					
R154-2	Utah Uniform Commercial Code, Revised Article 9 Rules	38320	R&R	04/21/2014	2014-6/9
Occupational and Professional Licensing					
R156-1-501	Unprofessional Conduct	38157	AMD	01/21/2014	2013-24/6
R156-1-501	Unprofessional Conduct	38253	NSC	01/31/2014	Not Printed
R156-15	Health Facility Administrator Act Rule	38337	AMD	05/08/2014	2014-7/5
R156-15A-231	Administration of Building Code Training Fund and Factory Built Housing Fees Account	38549	AMD	07/22/2014	2014-12/10
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	38279	AMD	04/08/2014	2014-5/7
R156-24b	Physical Therapy Practice Act Rule	38473	AMD	06/23/2014	2014-10/9
R156-31b	Nurse Practice Act Rule	38475	R&R	06/23/2014	2014-10/11
R156-38a-401	Requirements for a Letter of Credit and/or Evidence of a Cash Deposit as Alternate Security for Mechanics' Lien	38533	NSC	05/29/2014	Not Printed
R156-40	Recreational Therapy Practice Act Rule	38517	AMD	07/08/2014	2014-11/105
R156-40a-302a	Qualifications for Licensure	38548	AMD	07/22/2014	2014-12/13
R156-42a	Occupational Therapy Practice Act Rule	38254	5YR	01/21/2014	2014-4/68
R156-42a	Occupational Therapy Practice Act Rule	38313	AMD	04/21/2014	2014-6/24
R156-44a	Nurse Midwife Practice Act Rule	38249	5YR	01/16/2014	2014-4/69
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38155	AMD	01/21/2014	2013-24/7
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38257	5YR	01/27/2014	2014-4/69
R156-55a	Utah Construction Trades Licensing Act Rule	38151	AMD	01/21/2014	2013-24/10
R156-55a-301	License Classifications - Scope of Practice	38380	NSC	04/14/2014	Not Printed
R156-60	Mental Health Professional Practice Act Rule	38421	5YR	04/08/2014	2014-9/50
R156-60-102	Definitions	38390	AMD	05/22/2014	2014-8/6
R156-60a	Social Worker Licensing Act Rule	38730	5YR	08/04/2014	Not Printed
R156-60b	Marriage and Family Therapist Licensing Act Rule	38734	5YR	08/05/2014	Not Printed
R156-61	Psychologist Licensing Act Rule	38233	5YR	01/13/2014	2014-3/49
R156-63a	Security Personnel Licensing Act Contract Security Rule	38450	AMD	06/23/2014	2014-10/45
R156-63b	Security Personnel Licensing Act Armored Car Rule	38474	AMD	06/23/2014	2014-10/48
R156-67	Utah Medical Practice Act Rule	38106	AMD	01/07/2014	2013-23/5
R156-68	Utah Osteopathic Medical Practice Act Rule	38107	AMD	01/07/2014	2013-23/6
R156-68	Utah Osteopathic Medical Practice Act Rule	38552	AMD	07/28/2014	2014-12/14
R156-69	Dentist and Dental Hygienist Practice Act Rule	38149	AMD	01/21/2014	2013-24/20
R156-72	Acupuncture Licensing Act Rule	38165	AMD	02/10/2014	2014-1/8
R156-77	Direct-Entry Midwife Act Rule	38375	AMD	05/22/2014	2014-8/7
R156-78	Vocational Rehabilitation Counselor Licensing Act Rule	38761	5YR	08/14/2014	Not Printed
R156-79	Hunting Guides and Outfitters Licensing Act Rule	38735	5YR	08/05/2014	Not Printed
R156-80a	Medical Language Interpreter Act Rule	38388	5YR	03/31/2014	2014-8/37
R156-81	Retired Volunteer Health Care Practitioner Act Rule	38382	5YR	03/25/2014	2014-8/37
Real Estate					
R162-2f	Real Estate Licensing and Practices Rules	38213	AMD	02/25/2014	2014-2/4
R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	38270	AMD	03/31/2014	2014-4/16
R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	38389	AMD	05/22/2014	2014-8/8
CORRECTIONS					
Administration					
R251-111	Government Records Access and Management	38255	NEW	03/26/2014	2014-4/25

CRIME VICTIM REPARATIONS

Administration

R270-1-13	Awards	38221	EMR	01/04/2014	2014-3/47
R270-3	ADA Complaint Procedure	38258	EXT	01/27/2014	2014-4/75
R270-3	ADA Complaint Procedure	38498	5YR	05/12/2014	2014-11/171
R270-4	Government Records Access and Management Act	38259	EXT	01/27/2014	2014-4/75
R270-4	Government Records Access and Management Act	38499	5YR	05/12/2014	2014-11/171

EDUCATION

Administration

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R277-105	Recognizing Constitutional Freedoms in the Schools	38409	5YR	04/04/2014	2014-9/51
R277-105	Recognizing Constitutional Freedoms in the Schools	38432	AMD	06/09/2014	2014-9/8
R277-116	Utah State Board of Education Internal Audit Procedure	38183	AMD	02/07/2014	2014-1/10
R277-117	Utah State Board of Education Protected Documents	38295	5YR	02/13/2014	2014-5/59
R277-117	Utah State Board of Education Protected Documents	38299	AMD	04/07/2014	2014-5/16
R277-118	LEA Post-employment Benefits Plans	38433	NEW	06/09/2014	2014-9/11
R277-119	Discretionary Funds	38357	NEW	05/08/2014	2014-7/7
R277-400	School Emergency Response Plans	38296	5YR	02/13/2014	2014-5/59
R277-400	School Emergency Response Plans	38300	AMD	04/07/2014	2014-5/17
R277-400-5	Plan(s) Content--Educational Services and Student Supervision and Building Access	38426	NSC	04/29/2014	Not Printed
R277-410-5	Accreditation Procedures	38434	AMD	06/09/2014	2014-9/13
R277-419-9	Provisions for Maintaining Student Membership and Enrollment Documentation and Documentation of Student Education Services Provided by Third Party Vendors for School Year 2014-2015	38585	EMR	06/09/2014	2014-13/129
R277-437	Student Enrollment Options	38185	AMD	02/07/2014	2014-1/12
R277-438	Dual Enrollment	38347	5YR	03/14/2014	2014-7/89
R277-462	Comprehensive Counseling and Guidance Program	38591	5YR	06/10/2014	2014-13/137
R277-462	Comprehensive Counseling and Guidance Program	38621	AMD	08/07/2014	2014-13/20
R277-463	Class Size Average and Pupil-Teacher Ratio Reporting	38590	5YR	06/10/2014	2014-13/138
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R277-470-6	Charter School Mentoring Program	38186	AMD	02/07/2014	2014-1/14
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R277-472	Charter School Student Enrollment and Transfers and School District Capacity Information	38624	AMD	08/07/2014	2014-13/28
R277-477	Distribution of Funds from the Interest and Dividend Account and Administration of the School LAND Trust Program	38541	AMD	07/08/2014	2014-11/109
R277-477-3	Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans	38326	NSC	04/01/2014	Not Printed
R277-480	Charter School Revolving Account	38588	5YR	06/10/2014	2014-13/139
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R277-486	Professional Staff Cost Program	38348	5YR	03/14/2014	2014-7/89

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R277-491	School Community Councils	38542	AMD	07/08/2014	2014-11/113
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R277-503-4	Licensing Routes	38435	AMD	06/09/2014	2014-9/14
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R277-516	Education Employee Required Reports of Arrests and Required Background Check Policies for Non-licensed Employees	38594	5YR	06/10/2014	2014-13/139
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R277-524	Paraprofessional/Paraeducator Programs, Assignments, and Qualifications	38349	5YR	03/14/2014	2014-7/90
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R277-601	Standards for Utah School Buses and Operations	38410	5YR	04/04/2014	2014-9/52
R277-601-3	Standards	38436	AMD	06/09/2014	2014-9/17
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R277-724	Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program	38351	5YR	03/14/2014	2014-7/90
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R277-725	Electronic High School	38437	AMD	06/09/2014	2014-9/18
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R277-735	Corrections Education Programs	38360	AMD	05/08/2014	2014-7/11
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R307-335	Degreasing and Solvent Cleaning Operations	37829	AMD	06/02/2014	2013-15/23
R307-335	Degreasing and Solvent Cleaning Operations	37829	CPR	06/02/2014	2013-23/54
R307-335	Degreasing and Solvent Cleaning Operations	37829	CPR	06/02/2014	2014-7/85
R307-335	Degreasing and Solvent Cleaning Operations	37829	CPR	06/02/2014	2014-9/46
R307-357-4	Standards	38332	AMD	05/08/2014	2014-7/16
R307-357-4	Standards	38495	NSC	05/29/2014	Not Printed
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R307-401-19	General Approval Order	37833	CPR	01/06/2014	2013-23/55
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Radiation Control					
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R313-14	Violations and Escalated Enforcement	38076	CPR	04/03/2014	2014-4/50
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R313-25	License Requirements for Land Disposal of Radioactive Waste - General Provisions	38082	CPR	04/03/2014	2014-4/53
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Economic Development, Pete Suazo Utah Athletic Commission					
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Center for Health Data, Vital Records and Statistics					
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R414-1-5	Incorporations by Reference	38381	AMD	07/28/2014	2014-8/22
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R414-51	Dental, Orthodontia	38135	REP	01/10/2014	2013-23/33
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R414-306	Program Benefits and Date of Eligibility	38466	AMD	07/01/2014	2014-10/53
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R414-510	Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program	38532	AMD	07/15/2014	2014-11/153
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R527-38	Unenforceable Cases	38277	5YR	02/05/2014	2014-5/61
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R523-1	Procedures	38297	REP	04/07/2014	2014-5/27
R523-4	Local Mental Health Authorities and Local Substance Abuse Authorities	38292	NEW	04/07/2014	2014-5/36
R523-5	Certification of Designated Examiners and Case Managers	38293	NEW	04/07/2014	2014-5/42
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R590-195	Car Rental Related Licensing Rule	38308	REP	04/22/2014	2014-6/59
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ABBREVIATIONS

AMD = Amendment (Proposed Rule)
CPR = Change in Proposed Rule
EMR = 120-Day (Emergency) Rule
EXD = Expired Rule
EXP = Expedited Rule
EXT = Five-Year Review Extension
GEX = Governor's Extension
LNR = Legislative Nonreauthorization
NEW = New Rule (Proposed Rule)
NSC = Nonsubstantive Rule Change
R&R = Repeal and Reenact (Proposed Rule)
REP = Repeal (Proposed Rule)
5YR = Five-Year Notice of Review and Statement of Continuation

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