

UTAH STATE BULLETIN

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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

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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/001/2014: 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 fire conditions and mitigate potential 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 May 12, 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 May 2014.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

EO/001/2014

Governor's Executive Order EO 002 2014: Establishing an Ethics Policy for Executive Branch Agencies and Employees

EXECUTIVE ORDER

Establishing an Ethics Policy for Executive Branch Agencies and Employees

WHEREAS, State employees hold themselves to high ethical standards and act with integrity in their positions of public trust;

WHEREAS, confidence in government increases when State employees make decisions based upon the best interests of the public at large, without influence by those who may seek special favors and without regard to personal gain;

WHEREAS, public confidence is enhanced when State employees avoid situations and transactions that create the appearance of impropriety;

WHEREAS, compliance with a strong ethics policy protects public employees from any perception of wrongdoing; and

WHEREAS, the Utah State law governing ethical standards of public employees can and should be improved;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by the authority vested in me by the Constitution and laws of this State do hereby order that the Executive Branch and all Executive Branch employees are subject to the following restrictions:

1. Application

a. This order applies to all Executive Branch department or agency employees and replaces and supersedes any prior Executive Order establishing an Ethics Policy for Executive Branch Agencies and Employees. This order may be adopted by independently elected officers and their employees. This order does not apply to any Legislative Branch or Judicial Branch employee.

b. Each Executive Branch department or agency shall amend their existing policy to be consistent with the restrictions set forth below.

2. Prohibition Against the Receipt of Gifts

a. Subject to the exceptions set forth below, an employee covered by this order is prohibited from accepting a gift or other compensation, either directly or indirectly, that might be intended to influence or reward the individual in the performance of official state business. This prohibition shall apply notwithstanding Utah Code Ann. Section 67-16-5, which provides that gifts up to \$50 may be allowed in certain circumstances. Additionally, this order does not abrogate any restriction imposed by the Utah Procurement Code contained in Title 63G, Chapter 6a, Utah Code Annotated.

b. For purposes of this order, the term "gift" does not include:

i. campaign contributions received in accordance with Title 20A, Chapter 11, Utah Code Annotated;

ii. food, refreshments, or meals of limited value;

iii. an item presented on behalf of a foreign government that becomes the property of the State;

iv. opportunities, discounts, rewards and prizes open to the general public or all employees of the State of Utah;

v. plaques or mementos recognizing service;

vi. trinkets or mementos of nominal value;

vii. gifts from family members, extended family members, or other employees of the State of Utah;

viii. gifts from personal friends where it is clear that the gift is motivated by personal friendship and not by the employee's position with the State.

ix. small efforts of common courtesy or other services of nominal monetary value;
 x. funeral flowers or memorials;
 xi. bequests, inheritances and other transfers at death;
 xii. attendance or participation at events sponsored by other governmental entities;
 xiii. attendance or participation at widely attended events that are related to governmental duties; and
 xiv. travel to and from widely attended events related to governmental duties where acceptance of such travel would result in financial savings to the State of Utah.

xv. items of limited value presented to all participants at an event, as part of the event, if the employee is a participant in the event.

c. If an employee receives a gift, either directly or indirectly, that cannot be accepted, the employee may return the gift, pay its market value, or donate the gift to the State of Utah. If the gift is perishable or not practical to return, the gift may, with approval of the Department or Agency head, be shared with co-workers or given to charity.

3. Prohibition Against Nepotism in Hiring and Contracting

a. An employee covered by this order may not take part in any hiring or employment decision relating to a family member. If a hiring or employment matter arises relating to a family member, then 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 matter. This prohibition shall apply notwithstanding the exceptions contained in Utah Code Ann. Section 52-3-1.

b. An employee covered by this order may not take part in any contracting decision: (i) relating to a family member; or (ii) relating to any entity in which a family member is an officer, director or partner, or in which a family member owns or controls 10% or more of the stock of such entity. If a contracting matter arises relating to a family member, then 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 matter.

c. For the purposes of this order, the term "family member" shall mean an employee's spouse, siblings, step-siblings, siblings-in-law, parents, step-parents, parents-in-law, children, step-children, children-in-law, any person living in the same household as the employee, and any individual claimed as a dependent for tax purposes.

4. Prohibition Against Lobbying Executive Branch Department or Agency Employees

a. An employee covered by this order may not knowingly permit a former employee, previously subject to this order during the course of his/her employment in the Executive Branch, to lobby the current employee unless a two-year period has passed since the completion of the former employee's employment.

b. For purposes of this order, the terms "to lobby" and "lobbying" shall mean to receive compensation or other remuneration for attempting to influence executive action as a "Lobbyist" as defined in Utah Code Ann. Section 36-11-102(11).

c. Nothing in this order is intended to prevent an employee from consulting with a former employee about an issue or action, unless the former employee is acting as a lobbyist, as defined above, regarding the specific issue or action.

5. Penalties

a. An employee covered by this order who violates this order is subject to appropriate discipline as provided in Utah Administrative Rule R477-11 and as determined by the Executive Branch department or agency head or the Governor's Chief of Staff.

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, this 2nd day of June 2014.

(State Seal)

Gary R. Herbert
Governor

Attest:

Spencer J. Cox
Lieutenant Governor

EO 002 2014

Governor's Executive Order EO 003 2014: 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 June 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 9th day of June 2014.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

EO 003 2014

Governor's Proclamation 2014/07/E: Calling the Sixtieth Legislature Into the Seventh Extraordinary Session

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

WHEREAS, since the close of the 2014 General Session of the 60th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, GARY R. HERBERT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 60th Legislature into the Seventh Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 18st day of June 2014, at 1:30 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2014 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 16th day of June 2014.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2014/07/E

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 June 03, 2014, 12:00 a.m., and June 16, 2014, 11:59 p.m. are included in this, the July 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 July 31, 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 October 29, 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 OF 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, Facilities
Construction and Management
R23-19
Facility Use Rules**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38617

FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to this rule address the following issues: 1) the current rule did not allow caterers to use food warmers, and they are now allowed, but they have to meet certain safety requirements; 2) costs for damage repairs to state facilities are increasing, so now groups are being asked to provide additional insurance for events; 3) requests for personal appliances have increased, along with associated electrical and mechanical costs, as well as the potential fire hazards risks, therefore personal appliances are being prohibited (with the exception of personal fans) in private offices or cubicles, although they are allowed in break rooms; 4) provisions are included for personal appliances that are prescribed by a licensed physician for an employee with a medical condition; 5) the current rule did not have any facility fire safety requirements in place for live and artificial trees, including their electrical decorations, so those requirements are now being added; and 6) the provision that prohibits signs or posters from being on sticks or poles on facility grounds are being deleted.

SUMMARY OF THE RULE OR CHANGE: The following amendments are being proposed: 1) a provision to allow the exception of gelled food warming fuel used for catering events; 2) liability insurance has been increased from \$1,000,000 across the board to \$1,000,000 per person and \$2,000,000 per occurrence; 3) a restriction on personal appliances within a private office or cubical space, unless employee has a medical related condition that requires some sort of device, and has a signed statement by a Utah licensed physician verifying that fact; 4) safety requirements have been added for live and artificial trees, located inside of a state facility, including any electrical decorations; and 5) the provision that prohibited signs or posters from being on sticks or poles on facility grounds are being deleted.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-5-103 and Section 63A-5-204

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs, but there is a potential for savings to the state budget. This is due to decreased costs for the building mechanical and electrical systems through removal of the personal

appliances, and coverage for damage repair supplied by the increased liability insurance. There is also potential savings to the state, because there are safety requirements in place for artificial and live trees, along with their electrical decorations, which will decrease the chances of fire damage inside a state facility.

◆ **LOCAL GOVERNMENTS:** Local government could be affected if they were the entity applying for the facility use permit, with the increased coverage requirements. Otherwise there would be no cost or savings to these entities.

◆ **SMALL BUSINESSES:** Small businesses could be affected if they were the entity applying for the facility use permit, with the increased coverage requirements, but the increased insurance can help them reduce business liability costs.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals could be affected if they were the entity applying for the facility use permit, with the increased coverage requirements, but the increased insurance can help them reduce individual liability costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: For requests for facility use permits, the cost of the insurance policy with defined coverage amounts. For approval for personal appliances, the cost of a doctor visit to obtain an authorization, and possibly the cost of the personal appliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Small businesses and individuals could be affected if they were applying for the facility use permit, with the increased coverage requirements however, they may have less liability costs because of the extra insurance.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov

◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov

◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cglead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Joshua Haines, Director

R23. Administrative Services, Facilities Construction and Management.

R23-19. Facility Use Rules.

R23-19-1. Purpose.

The purpose of this rule is to regulate the use of state facilities and grounds as defined below, providing rules regarding political signs, as well as authorizing written policies to be created pursuant to this rule.

R23-19-2. Authority and Applicability.

(1) This Rule is authorized under Sections 63A-5-103 and 63A-5-204 which authorizes the making of rules regarding the use and management of state facilities and grounds owned or occupied by the State for the use of its department and agencies.

(2) This Rule shall apply to all state facilities and grounds except as follows:

(a) To the extent not authorized by law or the Utah Constitution, this Rule does not apply to state facilities and grounds under the jurisdiction of the legislative and judicial branches of the State of Utah government.

(b) This Rule does not apply to state facilities and grounds under the jurisdiction of the Utah State Board of Regents.

(c) This Rule does not apply to state facilities and grounds under the jurisdiction of the Capitol Preservation Board.

(d) This Rule does apply to state facilities and grounds under a lease to the extent consistent with the lease agreement, as the lease agreement shall control the use of the property under the lease. Notwithstanding this, the requirements of the constitutions of the United States and the State of Utah shall supersede the provisions of any such lease agreement and in particular, in the exercise of freedom of speech or assembly rights under such constitutions in any such leased facilities and grounds, the provisions of this rule regarding time, place and manner shall apply.

R23-19-3. Definitions.

(1) "Agency" means a State of Utah department, division or agency.

(2) "DFCM" means the Division of Facilities Construction and Management, a division within the Department of Administrative Services.

(3) "Event" or "events" are commercial, community service, private and state sponsored activities involving one or more persons. A free speech activity is not an event for purposes of this rule. The term "activity" or "activities" may be substituted in this rule for the term "event" or "events."

(4) "Facility Use Application" means a form, if required by the policies of the Managing Agency, which may require information identifying the event, time, location and purpose for a facility use permit that needs to be completed by a prospective user and submitted to the Managing Agency of the State Office Building.

(5) "Facility Use Permit" ("Permit") means a written permit issued by the Managing Agency authorizing the use of an area of state facilities and grounds for an event in accordance with this rule.

(6) "Freedom of Speech Activity" is as defined in Rule R23-20.

(7) "State Sponsored Activity" means any event sponsored by the state that is related to state business. This does not include extra-curricular activities.

(8) "Private Activity" means an event sponsored by private individuals, business or organizations that is not a commercial or community service activity.

(9) "Managing Agency" means the agency responsible for the management, operations and use of the facility. If DFCM is responsible for the maintenance of state facilities and grounds, the agreement between DFCM and the occupying agency shall identify the "Managing Agency."

(10) "State Facilities and Grounds" means State of Utah facilities and/or grounds where the principal use of the facility and/or grounds is related to state office or program functions or is under the control of any State of Utah agency; all of which is subject to the exclusions of Rule R23-19-2(2).

(11) "Community Service Activities" means events sponsored by governmental, quasi-governmental and charitable organizations, city and county government departments and agencies, public schools, and charitable organizations held to support or recognize the public or charitable functions of such sponsoring group.

(12) "Commercial Activities" means events that sponsored or conducted for the promotion of commercial products or services, and include advertising, private parties, private company or organization meetings, and any other non-public organization event. Commercial activities do not include private, community service, state sponsored, or free speech activities.

(13) "Political Sign" means a sign regarding a candidate for political office or regarding a political issue to be considered in an election.

(14) "Commercial Solicitation" is as defined in rule R23-19-6.

(15) "State" means the State of Utah and any of its agencies, departments, divisions, officers, and legislators, members of the judiciary, persons serving on state boards or commissions, and employees of the above entities and persons.

R23-19-4. State Office Building Use Requirements.

(1) The Managing Agency may adopt policies, which require a Facility Use Permit to be submitted. Such policies may provide for a waiver of the policy adopted under this Rule R23-19-4(1) under criteria specified in the policies. The policies may specify the form of the application, including:

(a) The time, place, purpose and scope of the proposed activity;

(b) Whether the applicant requests a waiver of any requirement of this rule or provision of the Facility Use Permit;

(c) A certificate of liability insurance in the amount of \$1,000,000 per person, ~~\$2,000,000 per~~ occurrence, except for Freedom of Speech Activities where no insurance is required; and

(d) Any required fee subject to the following:

(i) Fees may be assessed for the use of state facilities and grounds through the written policies of the Managing Agency. When any activity is subject to a fee, the Managing Agency should consider at a minimum the actual cost to the State including utilities, janitorial, security and rental cost for equipment. The following applies to specific activities:

(ii) "Freedom of Speech Activities." There are no fees for freedom of speech activities, but costs for requested use of state equipment or supplies may be assessed through the uniformly applied policies of the Managing Agency.

(ii) "Commercial Activities" or "Private Activities" shall be assessed a fee, which is reasonably comparable to fees charged for similar activities within the County of the state facilities and grounds. There shall be no fee waiver allowed for commercial or private activities.

(iii) "Community Service Activities" shall be assessed a fee of 50 percent of the fee for a commercial activity and such fee may only be waived if requested in a facility use application and granted by the approving authority. There shall be no waiver of the fee related to the costs of requested use of state equipment and supplies, which is assessed through the uniformly applied policies of the Management Agency.

(iv) "State Sponsored Activities." There are no fees for state sponsored activities, except that state agencies will be required to pay the costs and fees identified in the uniform policies of the Management Agency when the activity is not required for the conducting of state business, such as after-hour social events, employee recognition events, and holiday parties.

(2) The proposed activity shall not interfere with the operation of governmental business or public access. No persons shall unlawfully intimidate or interfere with persons seeking to enter or exit any facility, or use of any state facilities and grounds.

(3) The consumption, distribution or open storage of alcoholic beverages in state facilities and grounds is prohibited. This provision shall not apply to state facilities and grounds under the jurisdiction of the Department of Alcohol Beverage Control or golf courses under the Division of Parks and Recreation.

(4) Open flames, flammable fluids, candles, burning incense or explosives are prohibited, except that a gelled alcohol food warming fuel used for food preparation or warming, whether catered or not, is allowed provided that it is in:

(a) a one ounce capacity container (29.6 ml) on a noncombustible surface; or

(b) a container on a noncombustible surface, not exceeding one quart (946 g ml) capacity with a controlled pouring device that will limit the flow to a one ounce (29.6 ml) serving.

(5)(a) The use of a personal space heater is prohibited, except as provided in Subsection (b).

(b) Any person with a medical related condition may obtain approval by the managing agency to use a personal space heater provided the person submits a signed statement by a Utah licensed physician verifying that the medical related condition requires a change in the standard room temperature and the use of the space heater meets the specifications in Subsection (c).

(c) If a space heater is approved by the managing agency, the space heater shall:

(i) not exceed 900 watts at its highest setting;

(ii) be equipped with a self-limiting element temperature setting for the ceramic elements;

(iii) have a tip-over safety device;

(iv) be equipped with a built-in timer not to exceed eight hours per setting;

(v) be equipped with a programmable thermostat; and

(vi) be equipped with an overheat protection feature.

(d) Notwithstanding any other provision of this Rule, if the space heater is to be placed in a facility leased by the State through the Division, the placement must also be approved by the Real Estate Section of the Division.

(6) For Personal appliances, other than space heaters regulated under Rule R23-19-4(5) above, the following applies:

(a) Personal appliances are prohibited in a private office or cubical but are allowed in break areas.

(b) "Personal appliances" for purposes of this Rule include, but are not limited to: coffee makers, refrigerators, air conditioners, food warmers, hot plates, microwaves, waffle makers, toasters and toaster ovens.

(c) "Personal appliances" for purposes of this Rule does not include personal fans, which are allowed.

(d) Any person with a medical related condition may obtain approval by the managing agency to use a personal appliance that would otherwise be prohibited, if the person submits a signed statement by a Utah licensed physician verifying that the medical related condition requires the use of the personal appliance in the employee's private office or cubicle.

(Z[6]) No displays, including but not limited to signs, shall be affixed to state facilities and grounds.

(8[7]) User shall not sublet any part of the premises or transfer or assign the premises or change the purpose of the permitted activity without the written consent of the state.

(9[8]) Alteration and damage to a state facilities and grounds including grass, shrubs, trees, paving or concrete, is prohibited.

(10[9]) All costs to repair any damage or replace any destruction, regardless of the amount or cost of restoration or refurbishing shall be at the expense of the persons(s) responsible for such damage or destruction.

(11[9]) Service animals are permitted, but the presence of other animals is allowed only with advance written permission of the Managing Agency. Owners/caretakers are responsible for the safety to the animal, persons, grounds and facilities.

(12[+]) Littering is prohibited.

(13[2]) Decorations.

(a) All cords must be taped down with 3M #471 tape or equivalent as determined by the Managing Agency.

(b) There shall be no posting or affixing of placards, banners, or signs attached to any part of any building or on the grounds. All signs or placards shall be hand held. [~~Signs or posters may not be on sticks or poles.~~]

(c) No adhesive material, wire, nails, or fasteners of any kind may be used on the buildings or grounds.

(d) Nothing may be used as a decoration, or be used in the process of decorating, that marks or damages structure(s).

(e) All decorations and supporting structures shall be temporary.

(f) Any writing or use of ink, paint or sprays applied to any area of any building is prohibited.

(g) Users may not decorate the outside of any facility or any portion of the grounds.

(h) Signs, posters, decorations, displays, or other media shall be in compliance with the state law regarding Pornographic and Harmful Materials and Performances, Section 76-10-1201 et seq.

(14) Live cut trees. Any live cut trees placed inside a building must be treated with fire retardant as approved by the facility manager.

(15) The following applies to artificial trees:

(a) Artificial trees shall be listed flame retardant by an independently nationally recognized laboratory with evidence of the listing available to the facility manager.

(16) The facility manager has the right to deem a tree unsafe and request that agency to remove the tree immediately if these rules are not strictly followed.

(17) All electrical decorations, including but not limited to those on trees, shall be UL listed in good condition without frayed wiring, loose connections or broken sockets. They must be used according to the manufacturers' recommendations. The electrical connection, including cabling must be approved in advance by the facility manager. Any electrical decorations must be turned off at the end of the business day for each particular agency.

(18[3]) Set up/Clean up.

(a) All deliveries and loading/unloading of materials shall be limited to routes and elevators as specified by the Managing Agency.

(b) All decorations, displays and exhibits shall be taken down by the designated end time of the event in a manner that is least disruptive to state business.

(c) Users shall leave all state facilities and grounds in its original condition and appearance.

(19[4]) Parking. There must be compliance with the written parking requirements adopted by the Managing Agency.

(15[20]) Compliance with Laws.

(a) Users shall conform to all applicable and constitutional laws and requirements, including health, safety, fire, building and other codes and similar requirements. Occupancy limits as posted in or applicable to any public area will dictate, unless otherwise limited for public safety, the number of persons who can assemble in the public areas. Under no circumstance will occupancy limits be exceeded. State security personnel shall use reasonable efforts to ensure compliance with occupancy, safety, and health requirements.

(b) Safety requirements as used in this rule include safety and security requirements made known to the Managing Agency by the Utah Department of Public Safety or the federal government for the safety and security of special events and/or persons.

(c) "No Smoking" statutes, rules and policies, including the Utah Indoor Clean Air Act, Section 26-38 et seq. shall be observed.

(d) All persons must obey all applicable firearm laws, rules, and regulations.

(16[21]) Security and Supervision at Events.

(a) The Managing Agency may adopt written policies regarding security requirements for events, which must be followed.

(b) At least one representative of the applicant identified in the application and permit shall be present during the entire activity.

(17[22]) Photography, Portraits and Video/Filming.

(a) Any photography, videotaping or filming, shall require advance notice to, and permission from the Managing Agency for scheduling.

(b) This Subsection (16) shall not apply to tourists and does not apply to the extent it is the exercise of a free speech activity.

(18[23]) Commercial, Private and Community Service Activities. A Managing Agency may determine through its written policies to categorically not allow any commercial, private and/or

community service activities. However, if commercial or private activities are allowed, then community service activities shall be allowed subject to all the requirements of this rule and a facility use permit.

(19[24]) Liability.

(a) The state, Managing Agency and their designees, employees and agents shall not be deemed in default of any issued permit, or liable for any damages if the performance of any or all of their obligations under the permit are delayed or become impossible because of any act of God, terrorism, war, riot or civil disobedience, epidemic, strike, lock-out or labor dispute, fire, or any other cause beyond their reasonable control.

(b) Except as required by law, the state shall not be responsible for any property damage or loss, nor any personal injury sustained during, or as a result of, any use, activity or event.

(c) Users/applicants shall be responsible for any personal injury, vandalism, damage, loss, or other destruction of property caused by the user or an attendee at the applicant's event.

(25[0]) Indemnification. Individuals and organizations using any state facilities and grounds do so at their own risk and shall indemnify and hold harmless the state from and against any and all suits, damages, claims or other liabilities due to personal injury or death, and from damage to or loss of property arising out of or resulting from the conduct of such use or activities on the Capitol Hill Complex.

(26[1]) Enforcement of Rules. If any person or group is found to be in violation of any of the applicable laws and rules, a law enforcement officer or state security officer may issue a warning to cease and desist from any non-complying acts. If the law enforcement or security officer observes a non-compliant act after a warning, the officer may take disciplinary action including citations, fines, cancellations of event or activity, or removal from the state facility and grounds.

R23-19-5. Facility Use Permit - Denial - Appeal - Cancellation - Revocation - Transfer.

(1) Within ten (10) working days of receipt of a completed application, the Managing Agency shall issue a Facility Use Permit or notice of denial of the application.

(2) The Managing Agency may deny an application if:

(a) The application does not comply with the applicable rules;

(b) The event would conflict or interfere with a state sponsored activity, a time or place reserved for freedom of speech activities, the operation of state business, or a legislative session; and/or

(c) The event poses a safety or security risk to persons or property.

(3) The Managing Agency may place conditions on the approval that alleviates such concerns.

(a) If the applicant disagrees with a denial of the application or conditions placed on the approval, the applicant may request a reconsideration of the Managing Agency's determination by delivering the written request for reconsideration and reasons for the disagreement to the Managing Agency within five (5) working days of the issuance of the notice of denial or approval with conditions.

(b) Within ten (10) days after the Managing Agency receives the written request for reconsideration, the Managing Agency may modify or affirm the determination.

(c) If the matter is still unresolved after the issuance of the Managing Agency's reconsideration determination, the applicant may appeal the matter, in writing, within ten (10) calendar days to the Executive Director of the Department of Administrative Services who will determine the process of the appeal.

(5) Facility Use Permits are non-transferable. The purpose, time, place and other conditions of the Facility Use Permit may not be changed without the advance written consent of the Managing Agency.

(6) An event may be re-scheduled if the Managing Agency determines that an event will conflict with a governmental function, free speech activity or state sponsored activity.

(a) The Managing Agency may revoke any issued permit if this rule R23-19, any applicable law, or any provision of the permit is being violated. The permit may also be revoked if the safety or health of any person is threatened.

(b) The permittee may cancel the permit and receive a refund of fees, less any incurred costs to the state or managing agency, and any deposits if written notice of cancellation is received by the Managing Agency at least 48 hours prior to the scheduled event. Failure to timely cancel the event will result in the forfeiture of any deposit and fees.

R23-19-6. Commercial Solicitation Policy.

(1) In general, commercial solicitation is prohibited.

(2) Nothing in this rule shall be interpreted as to infringe upon anyone's constitutional right of freedom of speech and freedom of association.

(3) In addition to the definitions in R23-19-3 above, the following definitions shall also apply to this Rule R23-19-6:

(a) "Commercial Solicitation(s)" means any commercial activity conducted for the purpose of advertising, promoting, fund-raising, buying or selling any product or service, encouraging membership in any group, association or organization, or the marketing of commercial activities by distributing handbills, leaflets, circulars, advertising or dispersing printed materials for commercial purposes.

(b) "Commercial Solicitation" for the purpose of this rule does not include free speech activities as defined in rule R23-20, Utah Administrative Code.

(c) "Commercial Solicitation" for the purpose of this rule does not include filming or photographic activities, but such activities shall be subject to rule R23-19 et seq.

(d) "Commercial Solicitation" for the purpose of this rule does not include solicitation by the state or federal government; solicitation related to the business of the state, solicitation related to the procurement responsibilities of the state, solicitation allowed as a matter of right under applicable federal or state law; or solicitation made pursuant to a contract or lease with the state.

(4) Commercial Solicitation Allowed under a Facility Use Permit.

(a) Commercial solicitation, not prohibited by R23-19-6(5) below, may be allowed in conjunction with the issuance of a facility use permit under rule R23-19 and such commercial solicitation must comply with the facility use rules of R23-19-1 et seq.

(b) All materials allowed shall be displayed only on bulletin boards or in areas that have been approved in advance by the Managing Agency.

(c) The issuance of a facility use permit shall not be construed as state endorsement of the solicitor's product, service, charity or event.

(d) Soliciting activities are subject to all littering laws and regulations.

(5) Prohibited Commercial Solicitation. The following commercial solicitation activities are prohibited and no facility use permit shall be issued for such:

(a) Door-to-door commercial solicitation of items, services or donations.

(b) Commercial solicitation to persons in vehicles or by leaving any commercial solicitation materials on vehicles or parking lots.

(c) Any sale of food or beverage products that would be in any violation of any contract entered into by the State or the Managing Agency.

R23-19-7. Waivers.

(1) The Managing Agency may waive, in writing, the requirements of any provision of this Rule R23-19 upon being presented with compelling reasons that the waiver will substantially benefit the public of the state of Utah and that the facilities, grounds and persons will be appropriately protected. Conditions may be placed on any approved waiver to assure the appropriate protection of facilities, grounds and person. An appeal of a denial of a request for such waiver may be filed and processed similarly to the denial of a Facility Use Permit as described in R23-19-5.

(2) Costs and fees shall be waived for state sponsored activities. However, state agencies will be required to pay the costs and fees identified in the Schedule of Costs and Fees when the activity is not required for the conducting of state business, such as after-hour social events, employee recognition events, and holiday parties. Costs and fees will not be waived for commercial, private and commercial solicitation activities.

(3) Notwithstanding the waiver provisions of this rule, the following may not be waived by the Managing Agency: R23-19-4(2), (4), (5) (8), (9), (10), (11), (15), (16), (18), (19), (20) and (21) as well as R23-19-6.

R23-19-8. Political Signs.

Political signs, except for hand-carried signs during permitted events under a Facility Use Permit, are prohibited on all State of Utah owned properties except as allowed under a Freedom of Speech Activity or as protected under the State of Utah or United States Constitutions.

Rule R23-19-8(1) shall not apply to Utah Department of Transportation right-of-ways, properties of the State and Institutional Trust Lands Administration or properties of Higher Education, any of which may have its own laws or rules applicable to political signs.

KEY: public buildings, facilities use, space heaters

Date of Enactment or Last Substantive Amendment: ~~December 4, 2008~~ **2014**

Notice of Continuation: **May 3, 2012**

Authorizing, and Implemented or Interpreted Law: **63A-5-103; 63A-5-204**

**Administrative Services, Facilities
Construction and Management
R23-22**

**General Procedures for Acquisition and
Selling of Real Property**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 38618
FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the repeal and reenactment is because the Division of Facilities Construction and Management (DFCM) is updating this rule to make it easier to understand and clearer to read. The changes to this rule will make the procedures for the acquisition and selling of real property better regulated and will enhance the regulations.

SUMMARY OF THE RULE OR CHANGE: There are no substantive changes in this rule, since DFCM is simply making the rule clearer and easier to understand.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-5-401 and Subsection 63A-5-103(1)(e) and Subsection 63A-5-103(1)(e)(iii)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will potentially be a cost savings to the state because more people will be involved in the disposition process of the state's surplus real property, and that will help the state receive the best value for its surplus real property, since this rule requires more oversight and control over the process.

◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply states the general procedures of DFCM for the acquisition and selling of real property.

◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply states the general procedures of DFCM for the acquisition and selling of real property.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply states the general procedures of DFCM for the acquisition and selling of real property.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply states the general procedures of DFCM for the acquisition and selling of real property.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses, because this rule simply states the general procedures of DFCM for the acquisition and selling of real property.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov
- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cglead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Joshua Haines, Director

R23. Administrative Services, Facilities Construction and Management.

~~[R23-22. General Procedures for Acquisition and Selling of Real Property.~~

~~**R23-22-1. Purpose.**~~

~~— This rule defines the procedures of the Division of Facilities Construction and Management for acquisition and selling of real property.~~

~~**R23-22-2. Authority.**~~

~~(1) This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management (hereinafter referred to as the "Division").~~

~~(2) This rule is also authorized and intended to implement the requirements of Section 63A-5-401, as well as Subsection 63A-5-103(1)(e)(iii).~~

~~**R23-22-3. Policy.**~~

~~It is the general policy of the Board that, except as otherwise allowed by the Utah Code, the Division shall buy, sell or exchange real property in accordance with this Rule to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale or exchange.~~

R23-22-4. Scope of This Rule.

~~This Rule shall apply to all purchases, sales, donations and exchanges of DFCM, as applicable in this Rule, except as otherwise allowed by the Utah Code. The requirements of this Rule shall also not apply to a contract or other written agreement prior to May 5, 2008; or to any contract or to any purchase, sale or exchange of real property where the value is determined to be less than \$100,000 as estimated by DFCM.~~

R23-22-5. Requirements for Purchase or Exchanges of Real Property.

~~DFCM shall comply with the following in regard to the purchase or exchange of real property that is subject to this Rule:~~

~~(1) DFCM must find that all necessary approvals have been obtained from State and other applicable authorities. DFCM will assist other State agencies in obtaining these approvals when it is deemed by DFCM to be in the interest of the State.~~

~~(2) DFCM shall coordinate as required any necessary financing requirements through the State Building Ownership Authority, or other relevant bonding authority, as authorized by the Legislature.~~

~~(3) DFCM shall assist other State agencies in accordance with DFCM's governing statutes, through financial analysis and other appropriate means, in selecting the appropriate or particular real property to be purchased and/or exchanged.~~

~~(4) DFCM shall, in accordance with DFCM's governing statutes, negotiate, draft and execute the applicable Real Estate Contract with due consideration to the State agency's comments. The State agency may be required by DFCM to be a signatory to the Contract.~~

~~(5) DFCM shall obtain and review the following documents when such is determined by DFCM to be customary in the industry for the size and type of transaction or if required by another provision of this Rule or State law:~~

- ~~a. title insurance commitment;~~
- ~~b. an environmental assessment;~~
- ~~c. an engineering assessment;~~
- ~~d. a code review;~~
- ~~e. an appraisal;~~
- ~~f. an analysis of past maintenance and operational expenses, when available and relevant;~~
- ~~g. the situs, zoning and planning information;~~
- ~~h. an ALTA land survey;~~
- ~~i. an historic property assessment under Section 9-8-404; and~~
- ~~j. other requirements determined necessary by DFCM, this Rule or State law.~~

~~(6) DFCM shall review, approve and execute when in the interest of the State, closing documents as prepared by the selected title company.~~

~~(7) DFCM may use boiler plate documents approved as to form by the Utah Attorney General or shall consult with the Utah Attorney General regarding provisions of the sale or significant changes to the boiler plate documents approved as to the form by the Utah Attorney General.~~

~~(8) DFCM shall endeavor to monitor the distribution of closing documents.~~

R23-22-6. Additional Requirements Regarding R23-22-5(5).

~~DFCM shall comply with the provisions below. None of the provisions below shall restrict the Director from requiring or not requiring any of the following if in the Director's opinion such is advantageous to the State or if such is required or allowed by State law:~~

~~(1) Title insurance commitment. The following applies to real property that may become State property by purchase, donation or exchange: DFCM shall obtain an Owner's Policy of Title Insurance for real property valued by DFCM at \$500,000 or above. For real property valued by DFCM at less than \$500,000, DFCM shall obtain a title report and may obtain an Owner's Policy of Title Insurance if, in the judgment of DFCM, title insurance is advantageous to the State.~~

~~(2) Phase I Environmental Assessment or Greater. The following applies to real property that may become State property by purchase, donation or exchange: A Phase I or greater Environmental Assessment may be required by DFCM prior to a purchase or exchange of real property when the property considered to become State property has a use and/or occupancy history which in the opinion of DFCM indicates the possibility of environmental issues that would materially affect the DFCM's purchase of the property or the State agency's use of the property.~~

~~(3) Engineering Assessment. The following applies to real property that may become State property by purchase, donation or exchange: For all improved real property valued by DFCM at \$250,000 or above, DFCM shall obtain an engineering assessment of mechanical systems and structural integrity of improvements located on the property. An engineering assessment may be waived by the DFCM Director if an engineering assessment has already been performed within the past 12 months or if the land is unimproved. The State may perform an engineering assessment for real property valued at less than \$250,000 if, in the judgment of the Director, such an assessment is advantageous to the State.~~

~~(4) Code and Requirements Review. DFCM shall review the real property that may potentially become State property through purchase, donation or exchange to ascertain its suitability under all applicable codes and requirements, including any applicable provisions of State law.~~

~~(5) Appraisal. For real property that may potentially become State property through purchase or exchange, the State shall arrive at a fair market valuation of the property prior to purchase that is agreeable to the seller and the State. The fair market value determination used by DFCM in the negotiation shall be based upon an appraisal completed by an appraiser that specializes in the type of the subject real property and is a state-certified general appraiser under Section 61-2B-2 or by a State of Utah licensed MAI appraiser who also has such a certificate, except as follows:~~

- ~~(a) When this rule is not applicable under its scope;~~
- ~~(b) When State law otherwise provides that DFCM does not have to use fair market value; or~~
- ~~(c) When the Director has determined by a writing filed with DFCM, that the cost of obtaining the appraisal is not justified in the economic interest of the State of Utah.~~

~~(6) Past maintenance and operational expenses. DFCM shall endeavor to obtain, past maintenance and operational expense histories attached to any real property that may be acquired by the~~

State, including real property that is acquired by purchase, donation or exchange, unless it is determined by the Director that the obtaining of such records is not justified in the economic interest of the State of Utah.

(7) ~~Situs, zoning and planning information. DFCM shall endeavor to obtain preexisting situs, zoning and planning information regarding the real property that may be acquired by purchase, donation or exchange when required by State law, or if the Director determines that the obtaining of such information is advantageous to the State.~~

(8) ~~ALTA land survey. For all real property acquired by DFCM through purchase, donation or exchange, and the property to become State property is valued by DFCM at \$250,000 or above, DFCM shall obtain an ALTA/ACSM Land Title Survey, current revision, of the subject property. An ALTA survey shall not be required if an ALTA survey has already been performed within the past 12 months unless otherwise determined by the Director. The State may perform an ALTA survey for real property valued less than \$250,000 if the Director determines that such a survey is in the interest of the State.~~

R23-22-7. Requirements for the Disposition of Real Property by DFCM.

(1) ~~Determination of disposition of real property.~~

(a) ~~Notwithstanding, any other provision of this Rule R23-22, any real property that is of historical significance to the State of Utah shall not be disposed by the Division, regardless of the value amount of the property, unless approval has been obtained by the Legislative Management Committee of the Utah Legislature.~~

(i) ~~"Historical significance" for the purposes of this Rule R23-22 includes real property, including any structures, statues or other improvements on the real property, that is listed on the National Register of Historic Places or the State Register.~~

(ii) ~~The Division, after consultation with the State Historic Preservation Officer, shall make a recommendation to the Board as to whether a property proposed to be declared as surplus property, is historically significant based on the definition of "historically significant" in this Rule. The Board, after considering the recommendation of the Division as well as any other interested persons or entities, shall determine whether or not the property is historically significant.~~

(iii) ~~A copy of the determination regarding Historical Significance shall be sent to the State Historic Preservation Officer as well as the Chair and Vice-Chair of the Legislative Management Committee, any of which may within ten (10) working days of the receipt of the determination by the Board, decide that the issue should be considered by the Legislative Management Committee and that the Division shall not proceed with the disposition of the property until the Legislative Management Committee approves the disposition.~~

(b) ~~If the Board has not determined that the real property is historically significant, then the Building Board may declare the real property to be surplus under the procedures described in this Rule.~~

(i) ~~Thereafter, if the appraised value of the real property is estimated by the Director to be \$500,000 or below, then the Board may authorize the Division to dispose of the real property in accordance with the provisions of this Rule.~~

(ii) ~~If the appraised value as estimated by the Director is above \$500,000, then the Board shall refer consideration of the sale of the real property to the Legislative Management Committee.~~

(c) ~~Nothing in the rule shall prohibit the Director from proceeding with easements, lot line and other minor, incidental adjustments with other State entities or other public/private persons or entities, as long as the Director reasonably determines that such property is not historically significant after consultation with the State Historic Preservation Officer, that the adjustment is in the public interest, and that the value of the adjustment as determined by the Director is less than \$100,000.~~

(2) ~~Determination of surplus property. If the real property is determined to not be historically significant under this rule and in addition to the policy of Section R23-22-3, it is the policy of this Board to efficiently and economically dispose of real property that is determined by DFCM or the State to be surplus in accordance with State law. In accordance with State law, DFCM may recommend to the Board that certain real property be declared as surplus. The Board shall consider the following factors in the determination of declaring the property to be surplus:~~

(a) ~~the input of the Division;~~

(b) ~~the input of State agencies;~~

(c) ~~any other input received from concerned persons or entities; and~~

(d) ~~the appraised value of the property.~~

(3) ~~Detailed disposition procedures. After the appropriate determination is made that the real property is surplus, and it is determined that the property is not historically significant under this rule, then DFCM shall endeavor to sell the surplus real property on the open market, unless such property is to be conveyed to another State agency or public entity in accordance with Utah law. If there is such a sale, it shall be as follows:~~

(a) ~~DFCM shall confirm that all necessary approvals have been sought for the declaration of surplus property.~~

(b) ~~Unless otherwise allowed by State law, DFCM shall obtain at least fair market value for the real property to be sold. This shall be accomplished by the following:~~

(i) ~~DFCM shall determine a fair market valuation of the property prior to the offer for sale. The fair market value determination used by DFCM in offer for sale shall be based upon an appraisal completed by an appraiser that specializes in the type of the subject real property and is a state-certified general appraiser under Section 61-2B-2, or by a Utah licensed MAI appraiser who also has such a certificate, except as follows:~~

(A) ~~When this rule is not applicable under its scope;~~

(B) ~~When State law otherwise provides that DFCM does not have to use fair market value; or~~

(C) ~~When the Director has determined by a writing filed with DFCM, that the cost of obtaining the appraisal is not justified in the economic interest of the State of Utah.~~

(e) ~~DFCM shall establish a listing price based on the appraisal obtained under this Rule or, if there is no appraisal based on the above, based upon DFCM's knowledge of prevailing market conditions and other circumstances customarily used in the industry for such sales.~~

(d) ~~DFCM shall advertise the property for sale in such a manner that is commercially reasonable in the discretion of the Director. DFCM may set a time deadline for the submission of bids~~

for the real property based upon the economic conditions at the time of the sale.

(e) DFCM shall endeavor to enter into a contract for sale to the highest reasonable bidder, unless the DFCM Director files a written justification statement as to why a lower bidder is more advantageous to the State or if there is a sole bidder, that such bid is unreasonable. If after a reasonable timeline set by the Director of public advertisement, no acceptable bid is submitted, then DFCM may sell the property through a private negotiated sale, provided that any sale below the fair market value initially established by DFCM for the subject property is accompanied by a written justification statement filed by the Director and a copy of which is provided to the Board prior to execution of the contract for sale.

(f) DFCM shall, in accordance with DFCM's governing statutes, negotiate, draft and execute the applicable Real Estate Contract, with due consideration to the comments of the affected State agency. The affected State agency may be required by DFCM to be a signatory to the Contract.

(g) DFCM shall review, approve, and execute when appropriate, closing documents as prepared by the selected title company.

(h) DFCM may use boiler plate documents approved as to form by the Utah Attorney General or shall consult with the Utah Attorney General regarding provisions of the sale or significant changes to the boiler plate documents approved as to the form by the Utah Attorney General.

(i) DFCM shall endeavor to monitor the distribution of the closing documents.]

R23-22. General Procedures for Acquisition and Selling of Real Property.

R23-22-1. Purpose.

This rule defines the procedures of the Division of Facilities Construction and Management for acquisition and selling of real property.

R23-22-2. Authority.

(1) This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management (hereinafter referred to as "DFCM"). All actions under this rule that refer to the DFCM shall be undertaken by the Director of DFCM or the Director's duly authorized designee.

(2) This rule is also authorized and intended to implement the requirements of Section 63A-5-401, as well as Subsection 63A-5-103(1)(e)(iii).

R23-22-3. Policy.

It is the general policy of the Board that, except as otherwise allowed by the Utah Code, the DFCM shall buy, sell or exchange real property in accordance with this Rule to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale or exchange.

R23-22-4. Scope of This Rule.

(1) This Rule shall apply to all purchases, sales, donations and exchanges of DFCM except as otherwise allowed by the Utah Code. The requirements of this Rule shall also not apply to a contract or other written agreement prior to May 5, 2008.

(2) This Rule contains a waiver provision in Rule R23-22-8 that is consistent with Section 63A-5-401.

(3) Nothing in the rule shall prohibit DFCM from proceeding with easements, lot line and other minor, incidental adjustments with other State entities or other public/private persons or entities, as long as DFCM reasonably determines that such property is not historically significant after consultation with the State Historic Preservation Officer, that the transaction is in the public interest, and that the value of the transaction, as reasonably determined by DFCM, is less than \$100,000.

R23-22-5. Requirements for Purchase, Accepting a Donation, or Exchanges of Real Property.

Unless waived under Rule R23-22-8, DFCM shall comply with the following in regard to the purchase, accepting a donation, or exchange of real property that is subject to this Rule:

(1) Selection Process. In accordance with State law, DFCM shall either perform the selection process or assist the state agency with the selection process. The selection process must comply with applicable State laws and rules.

(2) Financing Requirements. As authorized by the Utah Legislature, DFCM shall assist, as appropriate with financing requirements, including, but not limited to, coordinating financing requirements through the State Building Ownership Authority, or other authorized bonding authority.

(3) Document Preparation and Approvals.

In accordance with State law, DFCM shall negotiate, draft and execute the applicable Real Estate Contract and transaction documents with due consideration to the State agency's comments. The State agency may be required by DFCM to be a signatory to the Contract. Legal documents shall either be on a form approved by the Utah Attorney General or submitted for approval to the Utah Attorney General. The same requirements shall apply to closing documents prepared by the title company.

(4) Substantive Requirements. Unless a provision below is waived under Rule R23-22-8, DFCM shall obtain and review the following:

(a) Title Insurance. DFCM shall obtain an Owner's Policy of Title Insurance for real property with an estimated value by DFCM at \$200,000 or above. For real property with an estimated value by DFCM of less than \$200,000, DFCM shall obtain a title report and may obtain an Owner's Policy of Title Insurance if, in the judgment of DFCM, title insurance is advantageous to the State.

(b) Environmental Assessment. A Phase I environmental Assessment or higher level environmental assessment is required.

(c) Engineering Assessment. DFCM shall obtain an engineering assessment of mechanical systems and structural integrity of improvements located on the property.

(d) Code Review. DFCM shall review the real property to ascertain its suitability under all applicable codes, laws, regulations and requirements.

(e) Appraisal. Except for transactions where State law does not require a certain value to be established, the value used by DFCM in the negotiation shall be based upon an appraisal completed by an appraiser that is a state-certified general appraiser under Section 61-2B-2 and a State of Utah licensed MAI appraiser.

(f) Maintenance and Operation History. DFCM shall obtain, if reasonably available, an analysis of past maintenance and operational expenses.

(g) Land Use Information. DFCM shall obtain, if reasonably available, the plat map, zoning and planning information.

(h) Survey. DFCM shall obtain an ALTA/ACSM Land Title Survey, current revision, of the subject property. An ALTA survey shall not be required if an ALTA survey has already been performed within the past 12 months unless otherwise determined by DFCM;

(i) Historic Assessment. DFCM shall undertake an historic property assessment under Section 9-8-404; and

(j) Other. DFCM shall also comply with other requirements determined necessary by law, rule, regulation or by DFCM.

R23-22-6. Determination of Surplus Real Property.

(1) In accordance with State law, DFCM may recommend that certain real property be declared as surplus.

(2) If DFCM estimates that the value of the real property is less than \$100,000, then DFCM need only notify the Executive Director of the Department of Administrative Services prior to any declaration of surplus or disposition of the real property. DFCM shall also consult with the State Historic Preservation Office prior to any such declaration or disposition if the property is historically significant.

(3) If DFCM estimates that the value of the real property is \$100,000 or more, then the DFCM shall notify the Director of the Department of Administrative Services as well as the staff of the Building Board, as well as receive approval from the Building Board prior to any declaration of surplus or disposition of the real property. The Utah State Building may declare the property surplus after considering the following:

(a) the recommendation and any comments by the Division;

(b) the input from state agencies and institutions, including, but not limited to, whether any state agency or institution has a need for the subject property;

(c) any input from concerned persons or entities;

(d) the appraised value of the property; and

(e) whether the property is historically significant. The property shall be considered historically significant if the real property, structures, statues or other improvements on the real property, is listed on the National Register of Historic Places or the State Register, or if the Board determines that it is historically significant after considering input from the State Historic Preservation Officer and others that have relevant input at the Board meeting.

(4) If the Utah Legislature directs that the DFCM sell the property, then it shall be deemed as declared surplus under this Rule without the need for any Board approval.

R23-22-7 Detailed Disposition Procedures.

After the appropriate determination is made that the real property is surplus, DFCM shall endeavor to sell the surplus real

property on the open market, unless such property is to be conveyed to another State agency or public entity in accordance with applicable law. The sale shall be processed as follows:

(1) Approvals. DFCM shall confirm that all necessary approvals have been sought for the declaration of surplus property.

(2) Appraisal. Except for transaction where State law does not require a certain value be established or when the Director of DFCM estimates that the value of the property is less than \$100,000, the value used by DFCM in the sale shall be based upon an appraisal completed by an appraiser that is a State of Utah certified general appraiser under Title 61, Chapter 2g, of the Utah Code and is a State of Utah licensed MAI appraiser.

(3) Listing Price. DFCM shall establish a listing price based on the appraisal or, if no appraisal is required, based upon DFCM's knowledge of prevailing market conditions and other circumstances customarily used in the industry for such sales.

(4) Advertise. DFCM shall advertise the property for sale in such a manner that is commercially reasonable in the discretion of the DFCM. DFCM may set a time deadline for the submission of bids.

(5) Award of Contract. DFCM shall endeavor to enter into a contract with the bidder that provides the best value to the State of Utah taking into account the price, other terms and factors related to the sale. If the contract is with a person that does not have the highest bidding price, then DFCM shall file a written justification statement describing the circumstances in which the selected bidder represents the best value to the State of Utah.

(6) Document Preparation and Approvals. In accordance with State law, DFCM shall negotiate, draft and execute the applicable Real Estate Contract or transaction documents with due consideration to the State agency's comments. The State agency may be required by DFCM to be a signatory to the Contract. Legal documents shall either be on a form approved by the Utah Attorney General or submitted for approval to the Utah Attorney General. The same requirements shall apply to closing documents prepared by the title company.

R23-22-8. Waiver for Requirements, Other Than R23-22-6.

(1) The requirements under Rule R23-22-6 may not be waived.

(2) To the extent allowed by law, any provision of this Rule R23-22, other than Rule R23-22-6, may be waived by the DFCM Director when the adherence to the provision of the rule is not economically efficient or other special circumstances are documented which indicate that the enforcement of the rule would not be in the public interest.

KEY: ~~[real estate, historical significance, property transactions]~~ **procedures, selling, surplus, real property**
Date of Enactment or Last Substantive Amendment: ~~[July 8, 2010]~~ **2014**

Notice of Continuation: February 20, 2013

Authorizing, and Implemented or Interpreted Law: 63A-5-103; 63A-5-401

Administrative Services, Facilities
Construction and Management

R23-23

Health Reform -- Health Insurance
Coverage in State Contracts --
Implementation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38615

FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to match recent legislation (H.B. 141 from the 2014 General Legislative Session) and to update some statutory references.

SUMMARY OF THE RULE OR CHANGE: The reason for the amendments are to match recent legislation to change the employee eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire. It also changes it from 90 to 60 days. There are also some statutory references that need to be updated as well.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-5-205 and Subsection 63A-5-103(1)(e)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state budget will not be affected since these amendments simply clarify the rule to match recent legislation for Section 63A-5-205, and updates some statutory references.

◆ **LOCAL GOVERNMENTS:** The local government's budget will not be affected since these amendments simply clarify the rule to match recent legislation for Section 63A-5-205, and updates some statutory references.

◆ **SMALL BUSINESSES:** The budget for small businesses will not be affected since these amendments simply clarify the rule to match recent legislation for Section 63A-5-205, and updates some statutory references.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other persons budget will be affected since these amendments simply clarify the rule to match recent legislation for Section 63A-5-205, and updates some statutory references.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person since these amendments simply clarify the rule to match recent legislation for Section 63A-5-205, and updates some statutory references.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
There is no fiscal impact on businesses.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov
- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Joshua Haines, Director

R23. Administrative Services, Facilities Construction and Management.

R23-23. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.

R23-23-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63A-5-205.

R23-23-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management as well as Section 63A-5-205 which requires this rule related to health insurance provisions in certain design and/or construction contracts.

R23-23-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63A-5-205.

(2) In addition:

(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(b) "Director" means the Director of the Division, including, unless otherwise stated, the Director's duly authorized designee.

(c) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(d) "Employee(s)" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

- (i) works at least 30 hours per calendar week; and
- (ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following [90]60 days from the date of hire.
- (e) "State" means the State of Utah.

R23-23-4. Applicability of Rule.

(1) Except as provided in Subsection R23-23-4(2) below, this Rule R23-23 applies to all design or construction contracts entered into by the Division or the Board on or after July 1, 2009, and

- (a) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or greater; and
- (b) applies to a subcontractor if the subcontract is in the amount of \$750,000 or greater.

(2) This Rule R23-23 does not apply if:

- (a) the application of this Rule R23-23 jeopardizes the receipt of federal funds;
- (b) the contract is a sole source contract; or
- (c) the contract is an emergency procurement.

(3) This Rule R23-23 does not apply to a change order as defined in Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R23-23-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection (1) is guilty of an infraction.

R23-23-5. Contractor to Comply with Section 63A-5-205.

All contractors and subcontractors that are subject to the requirements of Section 63A-5-205 shall comply with all the requirements, penalties and liabilities of Section 63A-5-205.

R23-23-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.

(1) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this rule or Section 63A-5-205:

- (a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6a, [~~Part 8, Legal and Contractual Remedies~~]Utah Procurement Code; and
- (b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

R23-23-7. Requirements and Procedures a Contractor Must Follow.

A contractor (including consultants and designers) must comply with the following requirements and procedures in order to demonstrate compliance with Section 63A-5-205.

(1) Demonstrating Compliance with Health Insurance Requirements. The following requirements must be met by a contractor (including consultants, designers and others under contract with the Division) that is subject to the requirements of this Rule no later than the time the contract is entered into or renewed:

- (a) demonstrate compliance by a written certification to the Director that the contractor has and will maintain for the duration of

the contract an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents; and

(b) The contractor shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors (including subconsultants) at any tier that is subject to the requirements of this Rule.

(2) Recertification. The Director shall have the right to request a recertification by the contractor by submitting a written request to the contractor, and the contractor shall so comply with the written request within ten (10) working days of receipt of the written request; however, in no case may the contractor be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsection 63A-5-205(1)(e) and defined in Section 26-40-115 is met by the contractor if the contractor provides the Director with a written statement of actuarial equivalency from either the Utah Insurance Department; an actuary selected by the contractor or the contractor's insurer; or an underwriter who is responsible for developing the employer group's premium rates.

For purposes of this Rule R23-23-7(3), actuarially equivalency is achieved by meeting or exceeding the requirements of Section 26-40-115 which are also delineated on the DFCM website at [~~http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf~~]http://dfcm.utah.gov/downloads/1const/Health_Insurance_Benchmark.pdf.

(4) The health insurance must be available upon the first day of the calendar month following [ninety]sixty ([90]60) days from the date of hire.

(5) Architect and Engineer Compliance Process. Architects and engineers that are subject to this Rule must demonstrate compliance with this Rule in any annual submittal under Section 63G-6-702. During the procurement process and no later than the execution of the contract with the architect or engineer, the architect or engineer shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(6) General (Prime) Contractors Compliance Process. Contractors that are subject to this Rule must demonstrate compliance with this Rule for their own firm and any applicable subcontractors, in any pre-qualification process that may be used for the procurement. At the time of execution of the contract, the contractor shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(7) Notwithstanding any prequalification process, any contract subject to this Rule shall contain a provision requiring compliance with this Rule from the time of execution and throughout the duration of the contract.

(8) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under this Rule conducted by the Board or the Division shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by Board or Division. The penalties that may be imposed by the Board or the Division if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of this Rule R23-23, may include:

- (i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the first violation, regardless of which tier the contractor or

subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-[8]204 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c)(i) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of this rule shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection R23-23-7(8)(c)(i) as provided in Subsection 63A-5-205(3)(g)(ii).

R23-23-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.

Nothing in this Rule shall be construed as to create any contractual relationship whatsoever between the State of Utah, the Board, or the Division with any subcontractor or subconsultant at any tier.

KEY: health insurance, contractors, contracts, contract requirements

Date of Enactment or Last Substantive Amendment: ~~July 11, 2011~~ 2014

Authorizing, and Implemented or Interpreted Law: 63A-5-103(1)(e); 63A-5-205

Education, Administration
R277-462
Comprehensive Counseling and
Guidance Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38621

FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-462 is amended to provide necessary program changes, new accreditation standards, legislative action, and funding changes.

SUMMARY OF THE RULE OR CHANGE: Amendments include: 1) updates in terminology of AdvancEd Accreditation from Northwest Accreditation; 2) adding key phrase of "college and career ready dropout prevention"; 3) updates on Comprehensive Counseling and Guidance Program on-site review process; 4) updates on funding and funding formula; 5) deadlines for LEAs on ratio reports; and 6) plan for College and Career Ready (individual planning) outline.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to Rule R277-462 provide changes in terminology, grammatical changes, and more specific direction for students/parents/counselor meetings, and that a minimal amount of comprehensive guidance funding may be used for statewide coordination and monitoring of comprehensive guidance programs, which likely will not result in a cost or savings to state government.

◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-462 provide grammatical and terminology changes and more specific monitoring information to local education agencies (LEAs) that receive comprehensive guidance funds which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments to Rule R277-462 provide grammatical and terminology changes and more specific monitoring information to LEAs that receive comprehensive guidance funds which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The amendments to Rule R277-462 provide grammatical and terminology changes and more specific monitoring information to LEAs that receive comprehensive guidance funds. Individuals are not charged for the comprehensive guidance program or service.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-462 provide grammatical and terminology changes and more specific monitoring information to LEAs that receive comprehensive guidance funds 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 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

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

R277. Education, Administration.

R277-462. Comprehensive Counseling and Guidance Program.

R277-462-1. Definitions.

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

B. "Comprehensive Counseling and Guidance Program" or "Program" means the organization of resources to meet the priority needs of students and inform and involve parents or guardians through four delivery system components:

(1) school guidance curriculum which means providing guidance content to all students in a systematic way;

(2) individual student planning which means individualized education and career planning, including student ~~[educational and occupational]~~ college and career planning with all students;

(3) responsive services and dropout prevention component designed to meet the immediate concerns of certain students; and

(4) system support component which addresses management of the Program and the needs of the school system itself.

C. "Comprehensive Counseling and Guidance Steering and Advisory Committee" means representatives designated by the USOE comprised of school district counseling supervisors, school district career and technical education directors, PTA, the school counselor professional association, practicing school counselors, and others designated by the USOE.

D. "Counselor to student ratio" means licensed school counselors full time equivalent (FTE), or percentage thereof, who by license and assignment are identified as school counselors for secondary students on October 1 of each year compared to the secondary student enrollment on October 1 of each year.

E. "Direct services" means time spent on the school guidance curriculum, individual student planning, including SEOP/Plan for College and Career Readiness, and responsive services/dropout prevention activities meeting students' identified needs as discerned by students, school personnel and parents or guardians consistent with ~~[school district and charter school]~~ LEA policy.

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

~~[F]G.~~ "School counselor" means an educator licensed as a school counselor in the state of Utah consistent with R277-506 and assigned to provide counseling ~~[services] and information to students to make appropriate educational and career choices.~~

~~[G]H.~~ "Secondary school" means a school providing services to students in grades 7-12.

~~[H]I.~~ "Secondary student" means a student in grades 7-12.

~~[I]J.~~ "SEOP/Plan for College and Career Readiness" means a student education occupation plan. An SEOP/Plan for College and Career Readiness is a developmentally organized intervention process that includes:

(1) a written plan, updated annually, for a secondary student's (grades ~~[9]7-12~~, ~~at a minimum~~) education and occupational preparation;

(2) all Board, local board and local charter board graduation requirements;

(3) evidence of parent or guardian, student, and school representative involvement annually;

(4) attainment of approved workplace skill competencies, including job placement when appropriate; and

(5) identification of post secondary goals and approved sequence of courses.

~~[J]K.~~ "Student achievement" means academic performance, career development, multi cultural/global citizenship, personal/social development, continued student engagement in learning, attendance, SEOP/Plan for College and Career Readiness outcomes and other measures of adequate yearly progress.

~~[K]L.~~ "USOE" means the Utah State Office of Education.

~~[L]M.~~ "Utah Career and Technical Education Consortium" means representatives of nine Career and Technical Education Regional Planning Areas.

~~[M]N.~~ "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which an ~~[school district or charter school]~~ LEA is eligible.

R277-462-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-1a-106(2)(b) which directs local boards to develop policies for the implementation of student ~~[education plans (SEP) or]~~ SEOP[s]/Plan for College and Career Readiness, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule establishes standards and procedures for entities applying for funds appropriated for Comprehensive Counseling and Guidance Programs administered by the Board.

C. This rule establishes counselor to student ratios as a requirement for all secondary schools.

D. This rule establishes provisions for ~~[school districts and charter schools]~~ LEAs not meeting the minimum counselor to student ratios.

E. This rule directs that ~~[local school district, charter school]~~ LEA and building level policies and practices shall free licensed school counselors for appropriate identified activities with secondary students. ~~[School counselors shall not devote significant time to non-school counseling activities, including test coordination and assessment and other activities inconsistent with the Program.]~~

R277-462-3. Comprehensive Counseling and Guidance Program Approval and Qualifying Criteria.

A. Comprehensive Counseling and Guidance disbursement criteria:

(1) In order to qualify for Comprehensive Counseling and Guidance Program funds, secondary schools shall implement SEOP/Plan for College and Career Readiness policies and practices, consistent with Section 53A-1a-106(2)(b), local board or charter school governing board policies, and the school improvement plans developed for [Northwest]AdvancED Accreditation and required under Section 53A-1a-108.5.

(2) Consistent with the Utah Model for Comprehensive Counseling and Guidance: K-12 Programs, the USOE shall designate to each [school district and charter school]LEA secondary school, [which]that has a USOE-approved school counseling program[shall receive], a WPU base for the first 400 students as determined by the October 1 enrollment of the previous fiscal year[; and]. The USOE shall also designate a per student allotment, as funds are available, for each additional student beyond 400, capping at a maximum 1200 students, if the local Program maintains Program criteria and ratios required in R277-462-5.

(3) The USOE shall give [P]priority for funding[shall be given] to grades nine through twelve for career and technical education programs including the Comprehensive Counseling and Guidance Program and any remaining funds[shall be allocated] to grades seven and eight for the schools which meet Comprehensive Counseling and Guidance Program standards. The USOE shall distribute [F]funds directed to grades seven and eight[shall be distributed] according to the formula under R277-462-3A(2) following the distribution of funds for grades nine through twelve.

(4) The [charter school or school district]USOE shall integrate the LEA Comprehensive Counseling and Guidance Program [shall be integrated]into the mission of the schools [and be] consistently with the [Northwest]AdvancED Accreditation process as defined in R277-41[3]0, Accreditation of [Secondary Schools, Alternative or Special Purpose]Schools. School counselors shall provide evidence that the Comprehensive Counseling and Guidance Program contributes to student achievement included in the local school improvement plan.

(5) Secondary schools shall qualify for Comprehensive Counseling and Guidance Program funds through participation in a regular schedule of on-site reviews by the USOE Comprehensive Counseling and Guidance Program specialist in the formal process and team members determined by the [school district or the charter school]LEA's authorizing agency during the interim review process. The USOE shall [Scheduling of]schedule the on-site review process[shall be coordinated with the Northwest Accreditation process] for secondary schools as defined in R277-41[3]0 [and]which shall [at a minimum,] take place at a minimum every six years with three year interim reviews, in a format determined by the [school district or charter school]LEA authorizing agency. Successful on-site reviews of the Comprehensive Counseling and Guidance Program shall indicate a balance of activities consistent with Program models and goals in individual student planning, guidance curriculum, responsive services and system support.

(6) If a charter school requires assistance from a school district in conducting the charter school's on-site review, the charter school shall [compensate the school district in a reasonable amount

agreed upon between the school district and the charter school]negotiate that payment.

~~[(7) Consistent with Section 53A-17a-113(5), of the monies allocated to Comprehensive Counseling and Guidance Programs, \$1,000,000 in grants shall be awarded to school districts and charter schools that:~~

- ~~(a) provide an equal amount of matching funds; and~~
- ~~(b) do not supplant other funds used for Comprehensive Counseling and Guidance Programs.]~~

[(8)Z] The USOE shall distribute Comprehensive Counseling and Guidance Program funds[shall be distributed] to [school districts and charter schools]LEAs for secondary schools that have completed a regular schedule of on-site reviews and that meet all of the following criteria:

(a) Approval of the Comprehensive Counseling and Guidance Program by the local board of education or charter school governing board and on-going communication with the local or governing board regarding Program goals and outcomes supported by data;

(b) Regular participation of guidance team members in USOE sponsored Comprehensive Counseling and Guidance training;

(c) Adequate resources and support for guidance facilities, material, equipment, clerical support, and school improvement processes;

(d) Evidence that eighty-five percent of aggregate counselors' time is devoted to DIRECT service to students through a balanced program of individual planning, school guidance curriculum, and responsive services consistent with the results of the school needs data;

(e) Communication, collaboration, and coordination within the feeder system regarding the Comprehensive Counseling and Guidance Program;

(f) School-wide student/parent/teacher needs assessment data for the Comprehensive Counseling and Guidance Program gathered and analyzed at least every three years;

(g) Structures and processes to ensure effective Program management including advisory/steering committees functioning effectively, school counselors working as Program leaders, and the Comprehensive Counseling and Guidance Program contributing to school improvement teams;

(h) Available responsive services to address the immediate concerns and identified needs of students through an education-oriented and programmatic approach; services should compliment and coordinate with existing school programs, families, and school and community resources;

(i) Delivery to students of a developmental and sequential school guidance curriculum in harmony with content standards identified in the Utah model for the Comprehensive Counseling and Guidance Program. A school/LEA shall set priorities for Guidance curriculum [is prioritized according to]consistent with the results of the school needs assessment process;

(j) Assistance for students in career development, including awareness and exploration, job seeking and finding skills, and post high school placement;

(k) Facilitation by school counselors of [Student Education Occupation Planning (SEOP)]Plan for College and Career Readiness, both as a process and a product;

(l) Involvement of parents/guardians in all available Comprehensive Counseling and Guidance Program steering/advisory committees; and

(m) Program elements that are designed to recognize and address the needs of diverse students.

B. All ~~[school districts and local charter]~~LEA governing boards that receive Comprehensive Counseling and Guidance Program funds shall provide written certification that all Program standards are met by each school consistent with USOE cycles[;] and using USOE forms.

(1) All ~~[schools and charter schools]~~LEAs receiving Comprehensive Counseling and Guidance Program funds shall provide school-based data projects demonstrating program or intervention effectiveness as required by the USOE.

(2) School counselors shall not devote significant time to non-school counseling activities, including test coordination and assessment, and other activities inconsistent with the Program.

R277-462-4. Student Education Occupation Planning in a Plan for College and Career Readiness.

A. ~~[School district and charter school s]~~Secondary schools that receive Comprehensive Counseling and Guidance funds shall complete a written SEOP[s]/Plan for College and Career Readiness for all students.

B. Parents/guardians shall sign [P]plans~~[shall be signed by parents/guardians].~~

C. Students shall complete [F]four year plans ~~[shall be completed for students prior to]~~at the beginning of their ~~[ninth]seventh~~ grade year[s].

D. Students' schools shall maintain [P]plans~~[shall be maintained by the student's school].~~

E. Students' course registration and class changes shall be consistent with their written SEOP[s]/Plan for College and Career Readiness.

F. Schools shall implement students' [The-]SEOP/Plan for College and Career Readiness process~~[shall be carried out]~~ consistent with the policies and goals of the ~~[school districts' or charter schools]~~LEAs' Comprehensive Counseling and Guidance Program models. The student, student's parent/guardian and school personnel shall cooperatively develop the SEOP/Plan for College and Career Readiness during the first two years in which the student is enrolled in grades 7-12 in the LEA. The implementation for the SEOP/Plan for College and Career Readiness shall include the following conferences:

(1) 7th and 8th grades: minimally one individual and one group conference during the two years;

(2) 9th and 10th grades: minimally one individual conference and one group conference during the two years;

(3) 11th and 12th grades: minimally one individual conference and one group conference during the two years; and

(4) other meetings, as necessary.

R277-462-5. School Counselor to Student Ratios.

A. All ~~[school districts and charter schools]~~LEAs shall certify to the USOE by October 1 annually:

(1) the full time equivalent licensed school counselors employed and assigned to each school;

(2) that secondary school counselor to secondary student ratios at the ~~[school district or charter school]~~LEA level are one (counselor) to 350 (students) or better; and

(3) that variations requiring less than a .25 full time equivalent licensed school counselor shall be permitted at the school level.

B. ~~[May]~~June 1 annually, ~~[school districts and charter schools]~~LEAs not meeting the ratio required under R277-462-5A(2), shall submit to the Board a plan to be approved for meeting established ratios in a reasonable time frame to continue to receive Comprehensive Counseling and Guidance Program and Minimum School Program funding.

C. ~~[School districts and charter schools]~~LEAs that do not satisfy required counselor to student ratios shall receive reasonable notice and reasonable time periods and opportunities to explain and remedy the failure to comply.

D. As additional funds for Comprehensive Counseling and Guidance Programs become available, the Board may require LEAs to have lower counselor to student ratios~~[may be required following Board approval and adequate]~~, following notice to ~~[schools districts and charter schools]~~LEAs.

R277-462-6. Use of Comprehensive Counseling and Guidance Program Funds.

A. ~~[School districts and charter schools]~~LEAs shall satisfy all provisions of R277-462 including established counselor to student ratios, in order to receive Comprehensive Counseling and Guidance Program funds.

B. LEAs shall use [F]funds ~~[shall be used-]~~for students in grades 7-12.

C. LEAs may use [F]funds ~~[may be used-]~~to provide a school guidance curriculum.

D. LEAs may use [F]funds ~~[may be used-]~~to provide student activities that support the SEOP/Plan for College and Career Readiness process.

E. LEAs may use [F]funds ~~[may be used-]~~for personnel costs including clerical positions that support the SEOP/Plan for College and Career Readiness process.

F. LEAs may use [F]funds ~~[may be used-]~~for Career Center equipment or materials such as computers, media equipment, computer software, occupational information, SEOP/Plan for College and Career Readiness folders or educational information.

G. LEAs may use [F]funds ~~[may be used-]~~for professional development for personnel involved in the Comprehensive Counseling and Guidance Program.

H. LEAs may use [F]funds ~~[may be used-]~~for the expenses of extended days or years which are required to run the Program.

I. LEAs may use [F]funds ~~[may be used-]~~for classroom guidance curriculum materials~~[for use in classrooms]~~.

J. LEAs may use [F]funds ~~[may be used at a minimum]~~to pay for at least one secondary school counselor, per school, per year ~~[to pay-]~~for membership in the American School Counselor Association (ASCA) to facilitate accessing research and resources for effective Program implementation and effective student interventions and outcomes.

K. LEAs shall not use funds to supplant current or existing personnel or programs.

L. The USOE may use no more than two percent of the total Comprehensive Counseling and Guidance Program funding to provide SEOP/Plan for College and Career Readiness development and Program management.

R277-462-7. Variances, Accountability and Reporting.

A. New schools that are created from schools that have [~~Northwest~~AdvancED accreditation and USOE Comprehensive Counseling and Guidance Program approval may qualify for Comprehensive Counseling and Guidance Program funding under this rule in the schools' first year of operation.

B. [~~Charter schools and other new school district~~]New LEA schools not meeting the requirements of R277-462-5A may receive Comprehensive Counseling and Guidance Program funding following two years of planning, training and Program implementation.

C. USOE Data Gathering

(1) The USOE shall gather data annually in October from [~~school districts and charter schools~~]LEAs regarding the number and assignments of school counselors.

(2) The USOE shall use [F]the data [shall be used]to determine [secondary school district and charter school]LEA compliance with this rule, including required ratios.

D. The USOE shall monitor the Program statewide and prepare an annual report for the Legislature and the Board including data and compliance information.

E. [~~School districts or charter schools~~]LEAs shall certify on an annual basis that previously qualified schools continue to meet the Program criteria and provide the USOE with data and information on the Program upon request.

KEY: public education, counselors

Date of Enactment or Last Substantive Amendment: [May 8, 2009]2014

Notice of Continuation: June 10, 2014

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-15-201; 53A-17a-131.8

Education, Administration

R277-463

Class Size Average and Pupil-Teacher Ratio Reporting

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38622

FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-463 is amended to update terminology.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-463 change "'ESL' means English as a Second Language" to "'EL' means English Learner" and update definitions for consistency with other Utah State Board of Education administrative rules.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1-301 and Section 53A-3-602.5 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The amendments to Rule R277-463 update terminology which likely will not result in a cost or savings to state government.

♦ LOCAL GOVERNMENTS: The amendments to Rule R277-463 update terminology which likely will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: The amendments to Rule R277-463 update terminology 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 Rule R277-463 update terminology 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 Rule R277-463 update terminology 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 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

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

R277. Education, Administration.**R277-463. Class Size Average and Pupil-Teacher Ratio Reporting.****R277-463-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Course" means the subject matter taught to students.
- (1) Elementary courses are designated by grade level.
- (2) Secondary courses are determined by course content.
- C. "E[S]L" means English [~~as a Second~~
~~Language]~~Learner.
- D. "Individual class" means a group of students organized for instruction and assigned to one or more teachers or other staff members for a designated time period. A class may include students from multiple grades or may include students taking multiple courses and still shall be considered a single class for purposes of class size reporting. An individual class shall be determined from course data submitted to the USOE using a combination of course elements such as CACTUS identification number, teacher of record, class period, term of student enrollment, and course cycle.
- E. "LEA" means a local education agency, including local school boards/public school district or charter school.
- F. "Pupil" means a student enrolled in a public school as of October 1 of the reported school year.
- G. "Teacher" for purposes of this rule means a full-time equivalent licensed educator, such as a regular classroom teacher, a school-based specialist, and a special education teacher.
- H. "USOE" means the Utah State Office of Education.

R277-463-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, Section 53A-1-301 which directs the Board to report average class sizes and pupil-teacher ratios, Section 53A-3-602.5 which directs the Board to establish rules for uniform class size reporting, 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 uniform class size and pupil-teacher ratio reporting procedures, including definitions and codes.

R277-463-3. Class Size Average for Elementary Classes.

A. LEAs shall report student level course data providing sufficient course information to determine the number of students in individual classes. Classes with students in multiple grades shall be calculated as one class. Extended day classes in which one portion of the class arrives early and the other portion stays late will be calculated as one class.

B. Average class size shall be calculated by grade. Special education, E[S]L, online, and other non-traditional classes shall be excluded from class size average calculations.

C. State- and district-level class sizes shall be derived from the median of school-level class sizes.

R277-463-4. Class Size Average for Secondary Classes.

A. LEAs shall report student level course data providing sufficient course information to determine the number of students in individual classes. Classes including students enrolled in multiple courses shall be calculated as one class.

B. Average class size shall be calculated for core language arts, mathematics, and science courses. Special education, E[S]L, online, and other non-traditional classes will be excluded from class size averages.

C. State- and district-level class sizes shall be derived from taking the median of school-level class sizes.

R277-463-5. Pupil-Teacher Ratio Calculation.

A. Pupil-teacher ratios shall be calculated by school. The pupil-teacher ratio for each school shall be calculated by dividing the number of enrolled pupils by the number of full-time equivalent teachers assigned to the school.

B. District-level ratios shall be derived by taking the median of school-level ratios.

C. State-level ratios for charter schools and traditional schools shall be derived from taking the median of school-level [~~ratios]~~data.

R277-463-6. Reporting Format and Timeline.

School, district and state-level ratios and class size averages shall be reported to the public as required under Section 53A-1-301.

KEY: public schools, enrollment reporting, class size average reporting, pupil-teacher ratio reporting

Date of Enactment or Last Substantive Amendment: [~~August 9, 2010]~~2014

Notice of Continuation: June 10, 2014

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-301; 53A-3-602.5; 53A-1-401(3)

Education, Administration
R277-470
Charter Schools - General Provisions

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 38623
FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-470 is amended to provide additional flexibility for use of mentoring program funds, and make terminology changes.

SUMMARY OF THE RULE OR CHANGE: The amendments change "chartering entities" to "charter school authorizers" throughout the rule, remove requirement for the State Charter School Board to annually review the distribution and requirements of start-up grant funds, and revise the mentoring program to allow for an RFP process to award Mentoring Program funds to a qualified individual or organization to provide mentoring in the school's identified areas of need.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to Rule R277-470 require the State Charter School Board to use an RFP application process to allocate mentoring funds to qualified individuals or organizations to meet identified mentoring needs. Although using the RFP process, the Charter School staff at the Utah State Office of Education may have additional responsibilities, it will likely not result in additional costs because costs will be absorbed within the state budget by existing staff.

◆ **LOCAL GOVERNMENTS:** The amendments to this rule provide more flexibility for use of mentoring funds and terminology changes which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments to this rule provide more flexibility for use of mentoring funds and terminology changes 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 more flexibility for use of mentoring funds and terminology changes 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 more flexibility for use of mentoring funds and terminology changes 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 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

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

R277. Education, Administration.

R277-470. Charter Schools - General Provisions.

R277-470-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "~~[Chartering entities]~~Charter school authorizers" means entities that authorize a charter school under Section 53A-1a-501.3(2).
- C. "Charter schools" means schools acknowledged as charter schools by ~~[chartering entities]~~charter school authorizers under Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505.
- D. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school.
- E. "ESEA" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.
- F. "Expansion" means a proposed increase of students or adding grade level(s) in an operating charter school at a single location.
- G. "Mentor," for purposes of the mentoring program, means an individual or organization with ~~[experience as a charter school governing board member, employee, advisor, or a public educator with an area of]~~expertise or demonstrated competence, willing to advise charter schools, approved by the State Charter School Board to participate in the mentoring program.
- H. "Mentoring program," for purposes of this rule, means the State Charter School Board mentoring program.
- I. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area. The parent school and all satellites shall be considered a single local education agency (LEA) for purposes of public school funding and reporting.
- J. "State Charter School Board" means the board designated in Section 53A-1a-501.5.
- K. "USOE" means the Utah State Office of Education.
- L. "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. "Utah eTranscript and Record Exchange (UTREx)" means a system that allows individual detailed student records to be exchanged electronically between public education local education agencies (LEAs) and the USOE, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

R277-470-2. 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, Section 53A-1a-513 which directs the Board to distribute funds for charter school students directly to the charter school, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to provide directions to charter schools for federal funds and startup and implementation

funding. The rule also provides criteria for a charter school mentoring program and additional charter school-specific directives.

R277-470-3. Maximum Authorized Charter School Students.

A. Local school boards and institutions of higher education may approve charter schools by notifying the Board by October 1 of the state fiscal year one year prior to opening of proposed charter schools, including authorized numbers of students and other information as required in Sections 53A-1a-515 and 53A-1a-521.

B. The Board, in consultation with the State Charter School Board and ~~[chartering entities]~~ charter school authorizers, may approve schools, expansions and satellite charter schools for the total number of students authorized under Sections 53A-1a-502.5 and 53A-1a-501.9.

C. The number of students requested from all ~~[chartering entities]~~ charter school authorizers shall be considered as students are allocated and approved by the Board.

R277-470-4. Charter Schools and ESEA Funds.

A. Charter schools that desire to receive ESEA funds shall comply with the requirements of R277-470-4.

B. To obtain its allocation of ESEA formula funds, a charter school shall complete all appropriate sections of the Utah Consolidated Application (UCA) and identify its economically disadvantaged students in the October UTREx submission.

C. If the school does not operate a federal school lunch program, the school:

(1) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or

(2) may use the Charter School Declaration of Household Income form provided by the USOE for this purpose.

D. A school which does not use the form shall maintain equivalent documentation in its records, which may be subject to audit.

R277-470-5. Charter School Start-up and Implementation Grants.

A. Charter schools that desire to receive State Charter School Board start-up and implementation grant funds shall comply with the requirements of R277-470-5.

B. To receive a State Charter School Board start-up or implementation grant, a charter school shall be eligible and meet the requirements consistent with Section 53A-1a-507. New schools and satellite schools are eligible; school expansions are not eligible.

C. Eligible charter schools shall complete an application and may be awarded a grant for no more than 36 months.

D. Only schools that have not received state start-up or implementation grant funds in prior years are eligible.

E. The State Charter School Board shall determine [A] amounts and conditions [of] for distribution of state start-up or implementation grant funds [shall be determined annually in conjunction with the State Charter School Board's new charter approval process].

F. Grant funds may only be used for allowable expenditures as provided by the State Charter School Board.

G. Grant recipients shall participate in monitoring activities.

~~_____H.]~~ Grant[ee] recipients shall provide monitoring information to the USOE, as directed.

[H.] Charter schools shall repay grant funds to the State Charter School Board if recipients change to non-charter status within ten years of receiving grant funds. An exception may be made for schools that convert status due to either federal or state law requirements for academic purposes.

R277-470-6. Charter School Mentoring Program.

A. ~~[Board-approved or existing charter schools may choose to participate in the mentoring program]~~ The State Charter School Board shall identify critical mentoring needs of charter schools and, through an RFP application process, allocate mentoring funds to one or more qualified individuals or organizations to meet identified needs.

B. ~~[Charter schools choosing to participate in the mentoring program shall submit an application to the USOE, consistent with USOE timelines]~~ Mentoring program participants shall provide information to the USOE as requested.

C. ~~[Subject to the availability of funds, participating charter schools shall be eligible for reimbursement of approved expenditures through the mentoring program if the charter school submits an approved reimbursement form.]~~

~~_____D. A mentor shall submit an application to the State Charter School Board to participate in the mentoring program that identifies areas of expertise and demonstrated competencies.~~

~~_____E.]~~ The State Charter School Board shall:

- (1) receive an annual program report from ~~[the USOE]~~ participating mentors and charter schools; and
- (2) evaluate the mentoring program annually.

R277-470-7. Charter School Parental Involvement.

A. Charter schools shall encourage and provide opportunities for parental involvement in management decisions at the school level.

B. Charter schools that elect to receive School LAND Trust funds shall have a committee consistent with R277-477-3A.

R277-470-8. Transportation.

A. Charter schools are not eligible for to-and-from school transportation funds.

B. A charter school that provides transportation to students shall comply with Utah law Section 53-8-211.

C. A school district may provide transportation for charter school students on a space-available basis on approved routes.

D. School districts may provide transportation or transportation information to [C] charter school students and their parents who participate in transportation by the school district as guests [shall receive notice of applicable district transportation policies and] Charter schools/charter school students may forfeit with no recourse the privilege of transportation for violation of the policies.

R277-470-9. Miscellaneous Provisions.

A. The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety or welfare of students consistent with Section 53A-1a-510(3).

(1) Individuals making reports about threats shall ~~be directed to~~ report suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with Sections 62A-4a-403 and 53A-11-605(3)(a).

(2) Additionally, individuals may report threats to the health, safety or welfare of students to the charter school governing board.

(a) reports shall be made in writing;

(b) reports shall be timely;

(c) anonymous reports shall not be reviewed further.

(3) Charter school governing boards shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.

(4) Charter school governing boards shall act promptly to investigate disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.

B. The Board shall have authority for final approval of all charter schools that receive minimum school program funds. All charter schools shall be subject to accountability standards established by the Board and to monitoring and auditing by the Board.

KEY: education, charter schools

Date of Enactment or Last Substantive Amendment: [February 7, 2014

Notice of Continuation: August 2, 2013

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1a-515; 53A-1a-505; 53A-1a-513; 53A-1-401(3); 53A-1a-510; 53A-1a-519; 53A-1a-501.5; 53A-1-301; 53A-1a-502.5; 53-8-211; 62A-4a-403; 53A-11-605; 53A-1a-522; 53A-1a-521; 53A-1a-501.3; 53A-1a-513.5; 53A-1a-501.9

Education, Administration **R277-472**

Charter School Student Enrollment and Transfers and School District Capacity Information

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38624

FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-472 is amended to clarify the time frame by which a charter school student must be enrolled in the student's school district of residence after a parent makes a formal application of admission, and to make grammatical changes.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-472 require school districts to enroll transferring charter school students within two weeks of a formal parent request.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-1a-506.5(2)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments provide a time frame by which a traditional school must enroll a charter school student in the student's school district of residence which likely will not result in a cost or savings to state government.

◆ **LOCAL GOVERNMENTS:** The amendments provide a time frame by which a traditional school must enroll a charter school student in the student's school district of residence which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments provide a time frame by which a traditional school must enroll a charter school student in the student's school district of residence 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 a time frame by which a traditional school must enroll a charter school student in the student's school district of residence 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 a time frame by which a traditional school must enroll a charter school student in the student's school district of residence 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 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

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

R277. Education, Administration.

R277-472. Charter School Student Enrollment and Transfers and School District Capacity Information.

R277-472-1. Definitions.

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

B. "Below capacity at the elementary and secondary level" making the grade level available for transfer students from charter schools outside of the window provided for in Section 53A-1a-506.5(3) is established if the grade level or program is less than 100 percent of the district, school, or grade level average.

(1) A special program is "below capacity" or available for transfer students from charter schools if the number of assigned students is less than the designated number of students determined by valid, research-based, or federally established standards.

(2) An entire elementary or secondary school is "below capacity" if the district determines that the average class size, using calculations of classes and courses in R277-472-3, is less than 100 percent of the district elementary or secondary average class size.

C. "Elementary (K-6) class size" means the number of students with a primary assignment to a specific teacher.

(1) An extended day class in which a portion of the class arrives early and the other portion stays late shall be counted as one class.

(2) Elementary class size shall include all special education students who participate in all or part of the school day excluding those students assigned to self-contained special education classes.

D. "Secondary (7-12) class size" means the secondary school's calculation for each language arts, mathematics, and science course that is typically taught multiple times in the school day, such as 8th grade English, Algebra 1, Earth Systems.

R277-472-2. 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, Section 53A-1a-506.5(2) which directs the Board to make rules for students transferring between charter schools and district schools and enrolling and withdrawing from charter schools, 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 provide procedures for students transferring between district public schools and charter schools; to define capacity in district public schools to allow for transfers into district schools from charter schools; to provide notice to parents and students of schools that have space available.

R277-472-3. Class Size Calculations.

A. Elementary class size: Each school district (or school as determined by the school district) shall calculate an average class size for each grade level. ~~[This calculation shall be derived]~~ Schools shall derive this calculation from the total number of students in a

given grade divided by the number of full time licensed teachers assigned to that grade.

(1) ~~Schools shall not count [S]students~~ assigned to multiple grade level classes (and their respectively assigned teachers) ~~[shall not be counted]~~ in determining average class size for a grade level.

(2) ~~Schools shall calculate [E]elementary~~ classes that group students in programs other than by grade level, such as gifted and talented or English ~~[Language-]Learner~~ programs, ~~[shall be calculated]~~ as a class if students participate for the entire instructional day.

(a) ~~If schools count~~ students ~~that~~ participate in special programs for part of the school day, ~~[they must be]~~ schools shall count[ed] the students as part of their age-appropriate grade level (together with respective teachers) for purposes of this calculation.

(b) If multiple classes of special programs exist (including self-contained special education classes), a school shall determine an average class size for special programs ~~[must be determined]~~ consistent with state, federal and program standards.

B. Elementary school size: Each school district (or school) shall calculate a school-wide average class size by dividing the total full time teachers assigned to direct teaching situations by the total number of students receiving instruction.

(1) ~~Schools shall not include [S]self-contained special education students and teachers [shall not be included]~~ in this calculation.

(2) ~~Schools shall include [A]all other special education students and teachers[shall be included]~~.

C. Secondary average class size: Each school district (or secondary school as determined by the district) shall calculate an average class size for each language arts, mathematics and science course that is taught multiple times during a typical school day by dividing the total number of full time teachers assigned to direct teaching situations by the total number of students enrolled.

(1) ~~Schools shall not include [S]self-contained special education students and teachers [shall not be included]~~ in this calculation.

(2) ~~Schools shall include [A]all special education students, other than full-time self-contained students, [shall be included]~~ in the calculation.

D. District average: Each school district shall calculate the district-wide average class size for each grade level, each elementary program that enrolls students across grade levels and for each language arts, mathematics, and science course.

(1) ~~School districts shall derive [F]the calculation [shall be determined]~~ by dividing the total number of full time teachers (FTEs) assigned to direct teaching situations by the total number of fully enrolled students.

(2) ~~School districts shall derive [A]all calculations [shall be made]~~ using October 1 enrollment and employment data.

E. In a school district with only one elementary or secondary school, or only one class of any subject or grade level, school districts may calculate the average class size ~~[may be calculated]~~ for an entire school or the entire school district by averaging all the classes in the school or the school district. The school district may then determine that any class size less than the school district or school average class size is below capacity.

R277-472-4. School District School Capacity Information.

A. School districts shall provide and post the following information to facilitate transfer of students on school district or school websites:

- (1) Elementary schools within the school district that are below capacity and available for transfer students;
- (2) Grade levels and special programs within elementary schools that are below capacity and available for transfer students;
- (3) Secondary schools that are below capacity and available for transfer students based on calculated capacity of language arts, science and mathematics; and
- (4) Special programs within secondary schools that are below capacity and available for transfer students.

B. Below capacity standards for individual schools, grade levels, courses or programs do not apply if a school has documentation that the school community council in a public meeting has designated more than one-half of a school's school LAND trust annual allotment to reduce class size in a specific school, grade level, program or course.

R277-472-5. Application Procedures for Students Entering and Exiting Charter Schools.

A. Each charter school shall post on its website information and procedures required under Section 53A-1a-506.5(2).

B. Each charter school shall develop and post admissions procedures for the charter school including:

- (1) Lottery dates and procedures;
- (2) Admission forms;
- (3) School calendar;
- (4) Non-discrimination assurances;
- (5) A clear explanation, including timelines required in the law and provided in individual charter school policies, of student transfer procedures from a charter school to another charter school or to a district school;
- (6) A readily accessible transfer form; and
- (7) Assurance and parent signature that student has been admitted to only one public school.

R277-472-6. Enrollment of Transferring Charter School Students in District Schools.

A. A school district shall enroll as soon as possible, but no later than two weeks after specific formal parental request, a student who is a resident of a school district, who desires to transfer from a charter school to the resident school after June 30 and who submits enrollment information consistent with all school district students in a district school that is below capacity.

~~[C]~~**B.** Schools may limit [S]students who are transferring from a charter school to a district school after June 30 for the upcoming school year ~~[are limited]~~to schools, grade levels, programs and courses that have space available or are below capacity at the district schools.

~~[B]~~**C.** A school district shall not require enrollment procedures or forms from students moving from a charter school to a district school that differ in any way from enrollment procedures/forms required for district students if the charter school students are leaving a charter school after the final grade level offered by the charter school.

D. Parents/Students who are enrolled at charter schools and are seeking enrollment at district schools should check with the school district office (or school principal if designated by the school district) for official current capacity information about schools, grade levels, programs or courses before leaving a charter school and forfeiting a charter school enrollment right.

E. ~~[A change in]~~If a school changes the location of services for a student with disabilities, the new location may ~~[not result in]~~only be considered a change of placement as determined by the student's IEP and consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400, Part B.

F. Consistent with Section 53A-11-904(3), schools may deny enrollment to students ~~[may be denied enrollment]~~in a public school if they have been expelled from another public school.

G. Schools may deny [S]students' ~~[may be denied]~~ enrollment in a public school if they leave a public school with disciplinary procedures pending at the previous Utah public school until previous allegations have been resolved.

H. Charter schools and district schools shall notify each other of student enrollment consistent with Section 53A-1a-506.5(4).

KEY: charter schools, students, transfers

Date of Enactment or Last Substantive Amendment: [August 9, 2010]2014

Notice of Continuation: June 10, 2014

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1a-506.5(2); 53A-1-401(3)

Education, Administration
R277-480-4
 Charter School Revolving Account
 Application and Conditions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38625

FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R277-480-4 is amended to change the conditions under which a revolving loan is calculated so that a charter school can maximize the amount of its loan.

SUMMARY OF THE RULE OR CHANGE: The amendments to Section R277-480-4 change the date for calculation of student enrollment from the prior year October 1 enrollment to the most recent October 1 enrollment.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-1a-522(2)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The amendments provide changes to the conditions in which a loan is calculated which likely will not result in a cost or savings to state government.
- ◆ **LOCAL GOVERNMENTS:** The amendments provide changes to the conditions under which a revolving loan is calculated which likely will not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** The amendments provide changes to the conditions under which a revolving loan is calculated 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 to the conditions under which a revolving loan is calculated 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 conditions under which a revolving loan is calculated 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 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

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

**R277. Education, Administration.
R277-480. Charter School Revolving Account.
R277-480-4. Charter School Revolving Account Application and Conditions.**

A. The Charter School Revolving Account Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Section 53A-1a-522, including urgent facility need criteria.

B. The Charter School Revolving Account Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful, including considerations of Section 53A-1a-522(5), in making final recommendations to the Superintendent, the State Charter School Board and the Board.

C. The Charter School Revolving Account Committee shall accept [A]applications for loans [shall be accepted] on an ongoing basis, subject to eligibility criteria and availability of funds.

(1) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(2) The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Charter School Revolving Account Committee and repayment schedule of the loan designated by the Charter School Revolving Account Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53A-1a-522 and the purpose of the approved charter;

(d) agrees to any and all inspections, audits or financial reviews ordered by the Charter School Revolving Account Committee or the Board; and

(e) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

D. The Charter School Revolving Account Committee shall establish terms and conditions for loan repayment, consistent with Section 53A-1a-522. Terms shall include:

(1) A tiered schedule of loan fund distribution:

(a) 50 percent (up to \$150,000) disbursed no more than 12 months prior to August 15 in the school's first year of operations;

(b) 25 percent (up to \$75,000) disbursed no more than six months prior to August 15 in the school's first year of operation;

(c) the balance of loan funds disbursed no more than three months prior to August 15 in the school's first year of operations.

(2) The loan amount to a charter school board awarded under Section 53A-1a-522 shall not exceed:

(a) \$1,000 per pupil based on ~~[prior year]~~ the most recent October 1 enrollment count for operational schools; or

(b) \$1,000 per pupil based on approved enrollment capacity of the first year of operation for pre-operational schools; or

(c) \$300,000 of the total of all current loan awards by the Board to a charter school board.

**KEY: charter schools, revolving account
Date of Enactment or Last Substantive Amendment: ~~[December 27, 2011]~~2014
Notice of Continuation: June 10, 2014
Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1a-522(b); 53A-1-401(3)**

Education, Administration
R277-602-3
 Parent/Guardian Responsibilities

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 38626
 FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R277-602-3 is amended to reflect changes resulting from S.B. 240, Carson Smith Scholarship Amendments, 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: The amendments to Section R277-602-3 provide language that refers to the Utah Code citation for application deadline requirements for the Carson Smith Scholarship Program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1a-707 and Subsection 53A-1-401(3) and Subsection 53A-1a-706(5)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The amendments provide language that refers to the Utah Code citation which likely will not result in a cost or savings to state government.
- ◆ LOCAL GOVERNMENTS: The amendments provide language that refers to the Utah Code citation which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: The amendments provide language that refers to the Utah Code citation 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 that refers to the Utah Code citation 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 that refers to the Utah Code citation 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 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

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

R277. Education, Administration.

R277-602. Special Needs Scholarships - Funding and Procedures.

R277-602-3. Parent/Guardian Responsibilities.

A. If the student is enrolled in a public school or was enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application, available from the USOE or online, to the school district or charter school within which the parent/guardian resides.

(1) The parent shall complete all required information on the application and submit the following documentation with the application form, consistent with the timeline provided in Section 53A-1a-704(4):

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age before September 2 of the year of enrollment, consistent with Section 53A-3-402(6);

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-602-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705;

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.

B. If the student was not enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application to the school district in which the private school is geographically located (school district responsible for child find under IDEA, Sec. 612(a)(3)).

(1) The parent shall complete all required information on the application and submit the following documentation with application form:

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age, before September 2 of the year of enrollment;

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-602-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705.

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) The parent shall participate in an assessment team meeting to determine if a student would qualify for special education services and the level of services for which the student would be eligible if enrolled in a public school.

C. Payment provisions - Upon review and receipt of documentation that verifies a student's admission to, or continuing enrollment and attendance at, a private school, the Board shall make scholarship payments quarterly in equal amounts in each school year in which a scholarship is in force.

D. A special needs scholarship shall be effective for three years subject to renewal under Section 53A-1a-704(6).

E. The parent shall, consistent with Section 53A-1a-706(8), endorse the warrant received by the private school from the USOE no more than 15 school days after the private school's receipt of the warrant.

F. The parent shall notify the Board in writing within five days if the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student or the student misses more than 10 consecutive days at which point the Board may modify the payment to the private school consistent with R277-419-1J.

G. The parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Board.

H. The parent shall notify the Board in writing by March 1 annually to indicate the student's continued enrollment.

KEY: special needs students, scholarships

Date of Enactment or Last Substantive Amendment: [~~August 7, 2013~~]**2014**

Notice of Continuation: June 10, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1a-706(5)(b); 53A-3-410(6)(i)(c); 53A-1a-707; 53A-1-401(3)

Education, Administration

R277-710

**Intergenerational Poverty Interventions
in Public Schools**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38627

FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-710 is created to provide guidance, eligibility criteria, minimum application criteria and timelines to local education agencies (LEAs) to provide out-of-school educational services to assist students affected by intergenerational poverty in achieving academic success.

SUMMARY OF THE RULE OR CHANGE: Rule R277-710 provides definitions, criteria for grant application and process, program requirements, and Utah State Office of Education (USOE) oversight and reporting requirements.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments provide criteria for the Intergenerational Poverty Intervention Program. USOE staff may have additional responsibilities implementing the program which likely will not result in a cost or savings to state government because costs will be absorbed within existing state budgets by existing staff.

◆ **LOCAL GOVERNMENTS:** The amendments provide criteria for the Intergenerational Poverty Intervention Program which likely will not result in a cost or savings to local government (LEAs) because funding for the program is appropriated by the Legislature.

◆ **SMALL BUSINESSES:** The amendments provide criteria for the Intergenerational Poverty Intervention 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 criteria for the Intergenerational Poverty Intervention 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 criteria for the Intergenerational Poverty Intervention 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 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

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

R277. Education, Administration.

R277-710. Intergenerational Poverty Interventions in Public Schools.

R277-710-1. Definitions.

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

B. "Eligible student" means a student who is classified as a child affected by intergenerational poverty in grades K-12 of the public school system.

C. "Intergenerational poverty (IGP)" means poverty in which two or more successive generations of a family continue in the cycle of poverty and government dependence. Intergenerational poverty does not include situational poverty as defined in Section 35A-9-102.

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

E. "Program" means the Intergenerational Poverty Interventions Grant Program that provides educational services outside of the regular school day (afterschool program).

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

R277-710-2. 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 Section 53A-17a-171(4) which directs the Board to accept proposals and award grants under the Program.

B. The purpose of this rule is to distribute funds to LEAs to provide out-of-school educational services that assist students affected by intergenerational poverty in achieving academic success.

C. This rule provides eligibility criteria, provides minimum application criteria and timelines, and provides for USOE oversight and reporting.

R277-710-3. Grant Eligibility.

A. Only local education agencies (LEAs) are eligible to apply for funds under this program. LEAs, in designing their program services, may collaborate with community-based organizations that provide quality afterschool programs.

B. The Board shall give priority to applicants that have a significant number or percentage of students affected by intergenerational poverty.

C. These funds are intended to provide supplemental services beyond what is already available through state and local funding.

(1) For LEAs with schools that already have afterschool programs, the funds may be used to augment the amount or intensity of services to benefit students affected by IGP. Existing

after school program applicants may apply for grants in the range of \$30,000 to \$50,000 per school year.

(2) For LEAs with schools that do not have existing afterschool programs, the funds may be used to establish quality afterschool programs. New after school program applicants may apply for grants in the range of \$100,000-\$150,000 per school year.

D. LEAs participating in this program serving students in grades K-6 may be eligible to apply for additional federal afterschool funding through the Department of Workforce Services.

R277-710-4. Program Requirements.

Successful applicants shall design programs that include the following minimum components:

A. a definition of the level of administrative support and leadership at the LEA to effectively implement, monitor, and evaluate the program.

B. an explanation of how the LEA will provide adequate supervision and support to successfully implement or increase programs at the school level.

C. a summary of a needs assessment conducted by the LEA to determine the academic needs and interests of participating students and their families.

D. the identification of intended outcomes of the program and how these outcomes will be measured.

E. an explanation of how the LEA/school will provide services to improve the academic achievement of children affected by intergenerational poverty.

F. a commitment to assess program quality and effectiveness and make changes as needed.

G. an outline of the scope of services (days of the week, number of hours, and number of weeks).

H. an explanation of the LEA's strategy for coordinating with and engaging the Department of Workforce Services to provide services for the LEA's eligible students.

I. an explanation of how the LEA will work with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts to provide services to the LEA's eligible students.

J. the identification of IGP eligible students (categorized by age), and schools in which the LEA plans to develop programs with the grant money.

K. an annual program budget and identification of the estimated cost per student.

L. Establishment and maintenance of data systems that inform program decisions and annual reporting requirements.

R277-710-5. Application Process.

A. The USOE shall solicit competitive grants from LEAs, score the grants and make funding recommendations to the Board.

B. LEAs may apply for this grant through the Utah Consolidated Application (UCA).

C. Timeline:

(1) Application deadline for the 2014-15 school year is June 16, 2014.

(2) The USOE shall convene a panel of application reviewers that demonstrate no conflicts of interest. The panel members shall score applications and the panel shall make recommendations for funding to the Board.

(3) Application review for the 2014-15 school year shall be completed by June 23, 2014.

(4) The USOE shall provide recommendations of successful grant recipients to the Board no later than July 1, 2014.

D. The Board shall notify successful applicants no later than August 5, 2014.

E. The USOE, in future years, subject to continuing appropriations, may adjust the timeline to allow LEAs more time to propose programs and complete applications.

R277-710-6. USOE Oversight and Reporting Requirements.

A. The USOE shall provide adequate oversight in the administration of the IGP program to include:

(1) conducting the annual application process and awarding funds;

(2) monitoring program implementation; and

(3) gathering and reporting required data.

B. To effectively administer the IGP program, the USOE shall reserve up to five percent of the IGP appropriation for administrative and evaluation purposes.

C. LEAs that receive grant money pursuant to this section shall annually provide to the Board information that is necessary for the Board's report to the Legislative Education Interim Committee and the Utah Intergenerational Welfare Reform Commission as required by Section 53A-17a-171(7).

D. The annual report required under Section 53A-17a-171(7) shall include:

(1) the progress of LEA programs in expending grant money;

(2) the progress of LEA programs in improving the academic achievement of children affected by intergenerational poverty; and

(3) the LEA's coordination efforts with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts.

KEY: public schools, poverty, intervention

Date of Enactment or Last Substantive Amendment: 2014

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

Education, Administration

R277-719

Standards for Selling Foods Outside of the Reimbursable Meal in Schools

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38628

FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-719 is amended to bring the rule into alignment with updated regulations provided by the U.S.

Secretary of Agriculture for all foods sold in local education agencies (LEAs).

SUMMARY OF THE RULE OR CHANGE: Amendments to Rule R277-719 remove definitions that are no longer in the application and provide new language on competitive food standards; add new requirements on the sale of competitive foods in schools; provide new sections on fund-raising using food/beverages and LEA wellness policies; and provide requirements for schools not participating in the National School Lunch/Breakfast programs to adopt written policies and require designation of an individual to provide documentation during audits to show compliance with this rule.

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 amendments provide criteria consistent with updated regulations provided by the U.S. Secretary of Agriculture which likely will not result in a cost or savings to state government.

♦ LOCAL GOVERNMENTS: The amendments provide criteria consistent with updated regulations provided by the U.S. Secretary of Agriculture which likely will not result in a cost or savings to local government (LEAs) because the program is funded by the Legislature.

♦ SMALL BUSINESSES: The amendments provide criteria consistent with updated regulations provided by the U.S. Secretary of Agriculture 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 criteria consistent with updated regulations provided by the U.S. Secretary of Agriculture 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 criteria consistent with updated regulations provided by the U.S. Secretary of Agriculture 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 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

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

R277. Education, Administration.**R277-719. Standards for Selling Foods Outside of the Reimbursable Meal in Schools.****R277-719-1. Definitions.**

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

B. ~~"[Foods of minimal nutritional value]~~Competitive foods" as provided in 7 CFR 210, ~~[Appendix B, are:]~~means all food and beverages, other than meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act, 42 U.S.C., and the Child Nutrition Act of 1966, available for sale to students on the school campus during the school day.

~~_____ (1) Soda Water-A class of beverages made by absorbing carbon dioxide in potable water. The amount of carbon dioxide used is not less than that which will be absorbed by the beverage at a pressure of one atmosphere and at a temperature of 60 degrees F. It either contains no alcohol or only such alcohol, not in excess of 0.5 percent by weight of the finished beverage, as is contributed by the flavoring ingredient used. No product shall be excluded from this definition because it contains artificial sweeteners or discrete nutrients added to the food such as vitamins, minerals and protein;~~

~~_____ (2) Water Ices-As defined by 21 CFR 135.160 Food and Drug Administration Regulations except that water ices which contain fruit or fruit juices are not included in this definition;~~

~~_____ (3) Chewing Gum-Flavored products from natural or synthetic gums and other ingredients which form an insoluble mass for chewing;~~

~~_____ (4) Certain Candies-Processed foods made predominantly from sweeteners or artificial sweeteners with a variety of minor ingredients which characterize the following types:~~

~~_____ (a) Hard Candy-A product made predominantly from sugar (sucrose) and corn syrup which may be flavored and colored, is characterized by a hard, brittle texture, and includes such items as sour balls, fruit balls, candy sticks, lollipops, starlight mints, after dinner mints, sugar wafers, rock candy, cinnamon candies, breath mints, jaw breakers and cough drops;~~

~~_____ (b) Jellies and Gums-A mixture of carbohydrates which are combined to form a stable gelatinous system of jelly-like character, and are generally flavored and colored, and include gum drops, jelly beans, jellied and fruit flavored slices;~~

~~_____ (c) Marshmallow Candies-An aerated confection composed as sugar, corn syrup, invert sugar, 20 percent water and gelatin or egg white to which flavors and colors may be added;~~

~~_____ (d) Fondant-A product consisting of microscopic-sized sugar crystals which are separated by thin film of sugar and/or invert sugar in solution such as candy corn, soft mints;~~

~~_____ (e) Licorice-A product made predominantly from sugar and corn syrup which is flavored with an extract made from the licorice root;~~

~~_____ (f) Spun Candy-A product that is made from sugar that has been boiled at high temperature and spun at a high speed in a special machine; and~~

~~_____ (g) Candy Coated Popcorn-Popcorn which is coated with a mixture made predominantly from sugar and corn syrup.~~

] C. "Eating area," for purposes of this rule, means the place where the reimbursable meal is served or eaten. In some schools, this may include the entire campus.

D. "LEA" means a local education agency, including local school boards/public school district or charter school.

E. "Nutrition Standards" are defined in 7 CFR 210.11 and are hereby incorporated by reference.

F. "Reimbursable meal" means a meal which meets the requirements of 7 CFR 210, 211, 215, 220 or 225 which are incorporated by reference and can be claimed for payment.

G. "School day" means the period from the midnight before, to 30 minutes after the end of the official school day.

H. "School campus" means all areas of the property under the jurisdiction of the school that are accessible to students during the school day.

[D]I. "Unit" means per container, package or amount served.

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

[E]K. "Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages.

R277-719-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-19-201(1) which allows the Board to set standards relating to the use of school lunch revenues, and Section 53A-1-402(1)(e) which requires the Board to establish rules concerning school productivity and cost effectiveness measures and federal programs.

B. The purpose of this rule is to outline requirements for ~~[school district and charter school]~~LEA policies regarding foods sold outside of the reimbursable meal service.

R277-719-3. ~~[District and School]~~LEA Policies Regarding Vending Machines.

A. Each ~~[school district and charter school]~~LEA shall develop and implement a policy for schools that choose to provide vending machines.

B. The policy shall include:

(1) a requirement that all agreements for vending machines be in writing in a contract form approved by the local board of education or charter school governing board;

(2) accepted uses of vending machine income; and

(3) generally accepted accounting procedures, including periodic reports to the ~~[district]~~LEA of vending machine receipts and expenditures.

R277-719-4. ~~[District and School]~~LEA Policies Regarding ~~[Other]~~Competitive Food Sales on Campus.

~~_____ A. Each charter school and school district shall adopt a written policy for the sale of all foods that are not part of the reimbursable lunch, breakfast or after-school snack programs (i.e., vending, a la carte or other food sales). The policy shall apply to all foods sold anywhere on school grounds during the school day when school is in session in all areas of the school accessible to students.~~

~~_____ B. The policy may:~~

~~_____ (1) prohibit the sale of foods of minimal nutritional value.~~

~~_____ (2) limit all foods to no more than 300 calories per unit.~~

~~_____ (3) prohibit foods:~~

~~_____ (a) that are more than 35 percent total fat (not including nuts, seeds, non-fat and low-fat dairy);~~

~~_____ (b) in which more than 10 percent of the total calories come from saturated fat (not including nuts, seeds, non-fat and low-fat dairy);~~

~~_____ (c) that contain any trans fats;~~

~~_____ (d) that list "caffeine" as an ingredient;~~

~~_____ (e) in which more than 35 percent of the product is sugar by weight (not including 100 percent fruit or vegetable juice with no added sugars; fruits; vegetables; nonfat or low-fat milk or yogurt); or~~

~~_____ (f) with a sodium content greater than 200 mg per portion (not including 100 percent fruit or vegetable juice; fruits; vegetables; nonfat or low-fat milk, yogurt or cheese).~~

~~_____ (4) limit beverage size to no more than 20 ounces, excluding water.~~

~~_____ A. These nutrition standards apply to the sale of competitive food in all schools offering programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 on the school campus during the school day.~~

~~_____ B. The profits from competitive foods shall accrue either to a non-profit school account or to the non-profit school food service account. Profits from competitive foods may not accrue to the benefit of a for-profit account or entity.~~

~~_____ C. If the competitive food(s) were purchased using food service funds, the cost of the item shall be reimbursed to the food service account.~~

~~_____ D. A competitive food item that is sold by an LEA or an employee or agent shall meet all the competitive food nutrient standards as outlined in 7 CFR 210.11. LEAs may use a Smart Snacks calculator, available online, to verify that food sold meets competitive food standards.~~

~~_____ E. Foods which are exempt from the nutrition standards are listed in 7 CFR 210.11(c) - (m).~~

R277-719-5. Fundraising Using Food/Beverages.

~~_____ A. These fundraising standards apply to school fundraising using food or beverages in all schools offering programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 on the school campus during the school day.~~

~~_____ B. Competitive food and beverage items sold during the school day shall meet nutrition standards for competitive foods. A special exemption is allowed for the sale of food or beverages that do not meet the competitive food standards for the purpose of conducting infrequent school-sponsored fundraisers.~~

~~_____ C. LEAs may hold specifically exempted fundraisers no more than three times per year per site, with each fundraiser lasting no longer than five consecutive school days.~~

~~_____ (1) The superintendent or principal of the LEA or school shall designate an individual to maintain records of fundraisers at which foods and beverages that do not meet competitive food standards are sold.~~

~~_____ (2) Career and Technical Education programs may make written requests for fundraisers, in addition to the three allowed in R277-519-5C, to the USOE Child Nutrition Program Director.~~

R277-719-6. LEA Wellness Policies.

~~_____ A. Wellness policy requirements apply in all schools offering programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 on the school campus during the school day.~~

~~_____ B. Each LEA participating in the National School Lunch Program or the School Breakfast Program shall establish a local school wellness policy for all schools under their jurisdiction. The written policy shall, at a minimum, include all the elements required in 7 CFR 210.30.~~

R277-719-[5]7. Miscellaneous Provisions.

~~_____ A. Schools not participating in the National School Lunch/Breakfast programs shall adopt a written policy for the sale of all foods that are not part of the meal service including vending, a la carte or other food sales. The policy shall apply to all foods sold anywhere on school grounds during the school day when school is in session in all areas of the school accessible to students.~~

~~_____ B. The policies may use the definitions for competitive foods and wellness policies from 7 CFR 210.11 and 210.30.~~

~~_____ [A]C. The provisions of this rule shall become effective no later than [July 2, 2008]August 8, 2014.[or when existing contracts expire.~~

~~_____ B. School districts/charter schools shall provide to the USOE by January 12, 2009 a copy of the school district's/charter school's policy required under R277-719-4A.~~

~~_____ C. The Board shall review the information received by charter schools/school districts no later than 60 days after the receipt of information and make available a report of findings and conclusions.]~~

~~_____ D. The superintendent or principal of the LEA or school shall designate an individual who shall provide documentation during audits to show compliance with this rule.~~

KEY: schools, foods, nutrition, vending machines

Date of Enactment or Last Substantive Amendment: [February 7, 2008]2014

Notice of Continuation: March 12, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-19-201(1); 53A-1-402(1)(e)

Environmental Quality, Air Quality R307-342-3 Exemptions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38583

FILED: 06/05/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Some Department of Defense (DOD) specifications for adhesives and sealants may not meet the requirements in the existing rule. Because several sources throughout the state must use DOD military specifications for adhesive and sealants used in much of their products sold to the United States Armed Forces, an exemption for DOD contractors should be added to the rule.

SUMMARY OF THE RULE OR CHANGE: The proposed rule change exempts DOD contractors from the requirements of the rule.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Because there are no changes that affect the state, there are no anticipated costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Because there are no changes that affect local government, there are no anticipated costs or savings.

◆ **SMALL BUSINESSES:** Small businesses that are DOD contractors might save a little by being exempt from the VOC content limit requirements of the rule; however, because products with lower VOC content are generally competitively priced, any savings would be minimal.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because the proposed changes do not affect persons other than small businesses, businesses, or local government entities, there are no anticipated costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule change is to add an exemption for DOD contractors. This could potentially create some savings for affected persons; however, because products with lower VOC content are competitively priced, those savings should be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule change is to add an exemption for DOD contractors. This could potentially create some savings for businesses; however, because products with lower VOC content are competitively priced, those savings should be minimal.

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

ENVIRONMENTAL QUALITY
AIR QUALITY

FOURTH FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116-3085

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 09/04/2014

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.**R307-342. Adhesives and Sealants.****R307-342-3. Exemptions.**

(1) The requirements of R307-342 do not apply to the following:

(a) Adhesives, sealants, adhesive primers or sealant primers being tested or evaluated in any research and development, quality assurance or analytical laboratory;

(b) Adhesives and sealants that contain less than 20 grams of VOC per liter of adhesive or sealant, less water and exempt solvents, as applied;

(c) Cyanoacrylate adhesives;

(d) Adhesives, sealants, adhesive primers or sealant primers that are sold or supplied by the manufacturer or supplier in containers with a net volume of 16 fluid ounces or less or that have a net weight of one pound or less, except plastic cement welding adhesives and contact adhesives;

(e) Contact adhesives that are sold or supplied by the manufacturer or supplier in containers with a net volume of one gallon or less;

(f) Aerosol adhesives and primers dispensed from aerosol spray cans; or

(g) Polyester bonding putties to assemble fiberglass parts at fiberglass boat manufacturing facilities and at other reinforced plastic composite manufacturing facilities.

(2) The requirements of R307-342 do not apply to the use of adhesives, sealants, adhesive primers, sealant primers, surface preparation and cleanup solvents in the following operations:

(a) Tire repair operations, provided the label of the adhesive states "for tire repair only;"

(b) In the production, rework, repair, or maintenance of aerospace vehicles and components, and undersea-based weapon systems;

(c) In the manufacture of medical equipment;

(d) Operations that are exclusively covered by Department of Defense military technical [data]specifications and standards and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces.

(e) Plaque laminating operations in which adhesives are used to bond clear, polyester acetate laminate to wood with lamination equipment installed prior to July 1, 1992.

(3) The requirements of R307-342 do not apply to commercial and industrial operations if the total VOC emissions from all adhesives, sealants, adhesive primers and sealant primers used at the source are less than 200 pounds per calendar year.

(4) Adhesive products and sealant products shipped, supplied or sold exclusively outside of the areas specified in R307-342-2 are exempt from the requirements of this rule.

(5) R307-342 shall not apply to any adhesive, sealant, adhesive primer or sealant primer products manufactured for shipment and use outside of the counties specified R307-342-2 as long as the manufacturer or distributor can demonstrate both that the product is intended for shipment and use outside of the applicable counties and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the product is not distributed to the applicable counties.

(6) R307-342 shall not apply to the use of any adhesives, sealants, adhesive primers, sealant primers, cleanup solvents and surface preparation solvents, provided the total volume of noncomplying adhesives, sealants, primers, cleanup and surface preparation solvents applied facility-wide does not exceed 55 gallons per rolling 12-month period.

(7) Commercial and industrial operations claiming exemption pursuant to R307-342-3 shall record and maintain operational records sufficient to demonstrate compliance.

KEY: air pollution, adhesives, sealants, primers
Date of Enactment or Last Substantive Amendment: ~~August 1, 2013~~ 2014
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(a)

Environmental Quality, Air Quality
R307-501
Oil and Gas Industry: General Provisions

NOTICE OF PROPOSED RULE

(New Rule)
 DAR FILE NO.: 38579
 FILED: 06/05/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In 2012, the State of Utah entered into EPA's Ozone Advance Program with the goal to proactively lower ozone values in the Uinta Basin. Ozone is created by photochemical reaction, and the main precursors are volatile organic compounds (VOC) and (NOx). In the Uinta Basin, oil and gas production accounts for 97% of anthropogenic VOC emissions. This proposed rule is one of four that the Air Quality Board has proposed as the first phase to combat high ozone levels by lowering VOC emissions.

SUMMARY OF THE RULE OR CHANGE: This proposed rule establishes general requirements for prevention of emissions and use of good air pollution control practices for all oil and gas exploration, production, transmission and distribution operations; well production facilities; natural gas compressor stations; and natural gas processing plants.

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

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** There are no requirements in this rule that will result in an increase or savings to the state budget.
 ♦ **LOCAL GOVERNMENTS:** Because there are no requirements in this rule for local government, there are no anticipated costs or savings.
 ♦ **SMALL BUSINESSES:** The sources that this rule applies to are typically large businesses; therefore, there are no anticipated costs or savings to small businesses.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because there are no requirements for persons other than small businesses, businesses, or local government entities, there are no anticipated costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule provides more specific language for the oil and gas industry regarding existing requirements that equipment must be maintained and operated according to manufacturers specifications. There are no additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule provides more specific language for the oil and gas industry regarding existing requirements that equipment must be maintained and operated according to manufacturers specifications. This rule should have no fiscal impact on businesses.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 09/04/2014

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality.

R307-501. Oil and Gas Industry: General Provisions.

R307-501-1. Purpose.

R307-501 establishes general requirements for prevention of emissions and use of good air pollution control practices for all oil and gas exploration and production operations, well production facilities, natural gas compressor stations, and natural gas processing plants.

R307-501-2. Definitions.

(1) The definitions in 40 CFR 60, Subpart OOOO Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution, which is incorporated by reference in R307-210 apply to R307-501.

(2) "Well production facility" means all equipment at a single stationary source directly associated with one or more oil wells or gas wells. This equipment includes, but is not limited to, equipment used for storage, separation, treating, dehydration, artificial lift, combustion, compression, pumping, metering, monitoring, and flowline.

R307-501-3. Applicability.

(1) R307-501 applies to all oil and gas exploration, production, distribution, and transmission operations; well production facilities; natural gas compressor stations; and natural gas processing plants in Utah.

(2) R307-501 does not apply to oil refineries.

R307-501-4. General Provisions.

(1) General requirements for prevention of emissions and use of good air pollution control practices.

(a) All intermediate hydrocarbon liquids collection, storage, processing and handling operations, regardless of size, shall be designed, operated and maintained so as to minimize emission of volatile organic compounds to the atmosphere to the extent reasonably practicable.

(b) At all times, including periods of start-up, shutdown, and malfunction, the installation and air pollution control equipment shall be maintained and operated in a manner consistent with good air pollution control practices for minimizing emissions.

(c) Determination of whether or not acceptable operating and maintenance procedures are being used will be based on information available to the director, which may include, but is not limited to, monitoring results, infrared camera images, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(2) General requirements for air pollution control equipment.

(a) All air pollution control equipment shall be operated and maintained pursuant to the manufacturing specifications or equivalent to the extent practicable and consistent with technological limitations and good engineering and maintenance practices.

(b) The owner or operator shall keep manufacturer specifications or equivalent on file.

(c) In addition, all such air pollution control equipment shall be adequately designed and sized to achieve the control efficiency rates established in rules or in approval orders issued under R307-401 and to handle reasonably foreseeable fluctuations in emissions of VOCs during normal operations. Fluctuations in emissions that occur when the separator dumps into the tank are reasonably foreseeable.

KEY: air pollution, oil, gas.

Date of Enactment or Last Substantive Amendment: 2014

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

Environmental Quality, Air Quality
R307-502
 Oil and Gas Industry: Pneumatic
 Controllers

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38580

FILED: 06/05/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In 2012, the State of Utah entered into EPA's Ozone Advance Program with the goal to proactively lower ozone values in the Uinta Basin. Ozone is created by photochemical reaction, and the main precursors are volatile organic compounds (VOC) and (NOx). In the Uinta Basin, oil and gas production accounts for 97% of anthropogenic VOC emissions. This proposed rule is one of four that the Air Quality Board has proposed as the first phase to combat high ozone levels by lowering VOC emissions. Pneumatic controllers powered by pressurized natural gas are used in the oil and gas industry. In the past, high-bleed devices that vent natural gas to the atmosphere were commonly used. The recent oil and gas New Source Performance Standard (NSPS) OOOO requires the use of low-bleed controllers in most circumstances. Rule R307-502 would require the replacement of existing high-bleed devices with low-bleed devices so that all pneumatic controllers in the state would meet the NSPS standard. Implementation of this rule is estimated to reduce VOC emissions by 3,716 tons/year in the 5-county area included in the WRAP Phase III inventory for oil and gas (Duchesne, Uintah, Carbon, Emery, and Grand Counties).

SUMMARY OF THE RULE OR CHANGE: Rule R307-502 would require the replacement of existing high-bleed devices with low-bleed devices so that all pneumatic controllers in the state would meet the NSPS standard. The draft rule phases in the requirement over several years. High-bleed pneumatic devices in Duchesne and Uintah Counties must be replaced

by 12/01/2015 to provide reductions prior to the 2015/16 winter ozone season. High-bleed pneumatic devices in the rest of the state must be replaced prior to 04/01/2017 to provide reductions prior to the 2017 summer ozone season.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Because there are no new requirements to the state, there are no anticipated costs or savings.
- ◆ LOCAL GOVERNMENTS: Because there are no new requirements for local government, there are no anticipated costs or savings.
- ◆ SMALL BUSINESSES: Because the requirements of this rule apply to businesses with more than 50 employees, there are no anticipated costs for small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no new requirements for persons other than small businesses, businesses, or local government entities; therefore, there are no anticipated costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: While there is an initial cost to replace these controllers, there is also a benefit to the operators as the natural gas is recaptured and can be sold as product. EPA's Natural Gas Star Program estimates a cost of \$2,104 to replace an existing high-bleed controller. More recently, Colorado estimated initial costs of \$1,420 to replace each high-bleed pneumatic controller. At current natural gas prices the new devices will pay for themselves in about 1-1/2 to 2 years and will then continue to provide on-going savings to the company.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While there is an initial cost to replace these controllers, there is also a benefit to the operators as the natural gas is recaptured and can be sold as product. EPA's Natural Gas Star Program estimates a cost of \$2,104 to replace an existing high-bleed controller. More recently, Colorado estimated initial costs of \$1,420 to replace each high-bleed pneumatic controller. At current natural gas prices the new devices will pay for themselves in about 1 1/2 to 2 years and will then continue to provide on-going savings to the company.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 09/04/2014

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality.

R307-502. Oil and Gas Industry: Pneumatic Controllers.

R307-502-1. Purpose.

(1) The purpose of R307-502 is to reduce emissions of volatile organic compounds from pneumatic controllers that are associated with oil and gas operations.

(2) The rule requires existing pneumatic controllers to meet the standards established for new controllers in 40 CFR Part 60, Subpart OOOO.

R307-502-2. Definitions.

(1) The definitions in 40 CFR 60, Subpart OOOO Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution, which is incorporated by reference in R307-210 apply to R307-502.

(2) "Existing pneumatic controller" means a pneumatic controller affected facility as described in 40 CFR 60.5365(d)(1) through (3) that was constructed, modified, or reconstructed prior to October 15, 2013.

R307-502-3. Applicability.

R307-502 applies to the owner or operator of any existing pneumatic controller in Utah.

R307-502-4. Retrofit Requirements.

(1) Effective December 1, 2015, all existing pneumatic controllers in Duchesne County or Uintah County shall meet the standards established for pneumatic controller affected facilities that are constructed, modified or reconstructed on or after October 15, 2013, as specified in 40 CFR 60, Subpart OOOO Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

(2) Effective April 1, 2017 all existing pneumatic controllers in Utah shall meet the standards established for pneumatic controller affected facilities that are constructed, modified or reconstructed on or after October 15, 2013 as specified in 40 CFR 60, Subpart OOOO Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

R307-502-5. Documentation Required.

The owner or operator shall identify all existing pneumatic controller facilities that were replaced or retrofitted to meet the requirements of R307-502-4 in the annual report required under 40 CFR 60.5420.

KEY: air pollution, oil, gas, pneumatic controllers
Date of Enactment or Last Substantive Amendment: 2014
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)
(a)

Environmental Quality, Air Quality
R307-503
Oil and Gas Industry: Flares

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38581

FILED: 06/05/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In 2012, the State of Utah entered into EPA's Ozone Advance Program with the goal to proactively lower ozone values in the Uinta Basin. Ozone is created by photochemical reaction, and the main precursors are volatile organic compounds (VOC) and (NOx). In the Uinta Basin, oil and gas production accounts for 97% of anthropogenic VOC emissions. This proposed rule is one of four that the Air Quality Board has proposed as the first phase to combat high ozone levels by lowering VOC emissions. New or modified oil and gas well production sites are required to capture and control VOC emissions, and the typical control device is a flare. Utah's proposed General Approval Order (GAO) for a Crude Oil and Natural Gas Well Site and/or Tank Battery requires the VOC control device to reduce VOC emissions by 98%. The proposed GAO requires continuous compliance with this control efficiency standard. Because many well production sites are unmanned, if the wind or a surge of gas blows out the pilot light, it is possible for the combustion device to cease working for an extended period of time until personnel visit the site and relight the pilot light. During its recent rulemaking effort, Colorado estimated that pilot lights were not functioning about 3% of the time, leading to significant uncontrolled VOC emissions.

SUMMARY OF THE RULE OR CHANGE: Rule R307-503 would require all new flares to be equipped with a self-igniter to relight the pilot light if the flame is extinguished. The rule would also require all existing flares in Duchesne and Uintah Counties to be retrofitted with self-igniters by 12/01/2015 to provide reductions prior to the 2015/16 winter ozone season. Flares in the rest of the state must be replaced prior to 04/01/2017 to provide reductions prior to the 2017 summer ozone season.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no new requirements for the State of Utah; therefore, there are no anticipated costs or savings to the state budget.

♦ LOCAL GOVERNMENTS: Because there are no new requirements for local government, there are no anticipated costs or savings.

♦ SMALL BUSINESSES: The requirements of this rule typically apply to businesses with more than 50 employees; therefore, there are no anticipated costs or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule does not have any new requirements for persons other than small businesses, businesses, or local government entities; therefore, there are no anticipated costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Colorado estimated a cost of \$2,348 to retrofit an existing flare with an auto igniter, with an annualized cost of \$475. The overall cost effectiveness of the retrofit was \$302/ton of VOC reduced.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Colorado estimated a cost of \$2,348 to retrofit an existing flare with an auto igniter, with an annualized cost of \$475. The overall cost effectiveness of the retrofit was \$302/ton of VOC reduced.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 09/04/2014

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality.

R307-503. Oil and Gas Industry: Flares.

R307-503-1. Purpose.

R307-503 establishes conditions to ensure that combustion devices used in the oil and gas industry are operated effectively.

R307-503-2. Definitions.

"Auto igniter" means a device which will automatically attempt to relight the pilot flame in the combustion chamber of a control device in order to combust volatile organic compound emissions.

R307-503-3. Applicability.

(1) R307-503 applies to all oil and gas exploration and production operations, well sites, natural gas compressor stations, and natural gas processing plants in Utah.

(2) R307-503 does not apply to oil refineries.

R307-503-4. Auto-Igniters.

(1) All open or enclosed flares used to control emissions of volatile organic compounds shall be equipped with and operate an auto-igniter as follows:

(a) All open or enclosed flares installed on or after November 1, 2014, shall be equipped with an operational auto-igniter upon installation of the flare.

(b) All open or enclosed flares installed before November 1, 2014, in Duchesne County or Uintah County shall be equipped with an operational auto-igniter by December 1, 2015, or after the next flare planned shutdown, whichever comes first.

(c) All open or enclosed flares installed before November 1, 2014, in all other areas of Utah shall be equipped with an operational auto-igniter by April 1, 2017, or after the next flare planned shutdown, whichever comes first.

R307-503-5. Recordkeeping.

The owner or operator shall maintain records demonstrating the date of installation and manufacturer specifications for each auto-igniter required under R307-503-3.

KEY: air pollution, oil, gas, flares

Date of Enactment or Last Substantive Amendment: 2014

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

**Environmental Quality, Air Quality
R307-504
Oil and Gas Industry: Tank Truck
Loading**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38582

FILED: 06/05/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In 2012, the State of Utah entered into EPA's Ozone Advance Program with the goal to proactively lower ozone values in the Uinta Basin. Ozone is created by photochemical reaction, and the main precursors are volatile organic compounds (VOC) and (NOx). In the Uinta Basin, oil

and gas production accounts for 97% of anthropogenic VOC emissions. This proposed rule is one of four that the Air Quality Board has proposed as the first phase to combat high ozone levels by lowering VOC emissions. The proposed General Approval Order for a Crude Oil and Natural Gas Well Site and/or Tank Battery contains a requirement that all tanker trucks loading on-site use either bottom filling or submerged filling to reduce VOC emissions created by splashing of liquids when loading oil, condensate, or produced water. Rule R307-504 would expand this requirement to all existing operations. The Division of Air Quality estimates that this change could reduce VOC emissions due to tank truck loading by about 59% (1,017 tons/year in the Uinta Basin in 2015).

SUMMARY OF THE RULE OR CHANGE: After 01/01/2015, tank trucks used for intermediate hydrocarbon liquid or produced water will be required to load using bottom filling or submerged fill pipe. The proposed rule applies to any person who loads or permits the loading of any intermediate hydrocarbon liquid or produced water at a well production facility.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There are no new requirements for the State of Utah; therefore, there are no anticipated costs or savings.

◆ LOCAL GOVERNMENTS: There are no new requirements for local governments; therefore, there are no anticipated costs or savings.

◆ SMALL BUSINESSES: It is anticipated that this rule only applies to businesses with more than 50 employees; therefore, there are no anticipated costs or savings.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because this rule does not have any new requirements for persons other than small businesses, businesses, or local government entities, there are no anticipated costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In practice, many trucks are already equipped to meet the requirements of this proposed rule. Top loading trucks can be inexpensively retrofitted by installing a pipe at the inlet to ensure that liquids are loaded using submerged fill inserted of splash loading, so that compliance costs for affected persons should be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

In practice, many trucks are already equipped to meet the requirements of this proposed rule. Top loading trucks can be inexpensively retrofitted by installing a pipe at the inlet to ensure that liquids are loaded using submerged fill inserted of splash loading, so that the fiscal impact of this rule on businesses should be minimal.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 09/04/2014

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality.

R307-504. Oil and Gas Industry: Tank Truck Loading.

R307-504-1. Purpose.

R307-504 establishes control requirements for the loading of liquids containing volatile organic compounds at oil or gas well sites.

R307-504-2. Definitions.

(1) The definitions in 40 CFR 60, Subpart OOOO Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution that is incorporated by reference in R307-210 apply to R307-504.

(2) "Bottom Filling" means the filling of a tank through an inlet at or near the bottom of the tank designed to have the opening covered by the liquid after the pipe normally used to withdraw liquid can no longer withdraw any liquid.

(3) "Submerged Fill Pipe" means any fill pipe with a discharge opening which is entirely submerged when the liquid level is six inches above the bottom of the tank and the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

(4) "Well production facility" means all equipment at a single stationary source directly associated with one or more oil wells or gas wells.

R307-504-3. Applicability.

R307-504 applies to any person who loads or permits the loading of any intermediate hydrocarbon liquid or produced water at a well production facility after January 1, 2015.

R307-504-4. Tank Truck Loading Requirements.

Tank trucks used for intermediate hydrocarbon liquid or produced water shall be loaded using bottom filling or a submerged fill pipe.

KEY: air pollution, oil, gas

Date of Enactment or Last Substantive Amendment: 2014

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

**Environmental Quality, Solid and
Hazardous Waste
R315-1-1
Definitions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38609

FILED: 06/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes are needed in this rule to be consistent with changes made in Section R315-2-4. (DAR NOTE: The proposed amendment to Section R315-2-4 is under DAR No. 38610 in this issue, July 1, 2014, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Section R315-1-1 is modified to add the definition of "No free liquids" and "Solvent-contaminated wipe". The new definitions are related to changes in Section R315-2-4.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The costs for the state budget will not change since the rule change does not change the requirements or administration of the hazardous waste management program.

♦ **LOCAL GOVERNMENTS:** Rule change is to definitions and does not have any cost or savings to local governments.

♦ **SMALL BUSINESSES:** Rule change is to definitions and does not have any cost or savings to small business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Rule change is to definitions and does not have any cost or savings to persons, business or government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Rule change is to definitions and does not have any cost or savings to persons, business or government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rule change is to definitions and does not have any cost or savings to persons, business or government.

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
◆ Tina Mercer by phone at 801-536-0259, by FAX at 801-536-0222, or by Internet E-mail at tmm Mercer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2014

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.

R315-1. Utah Hazardous Waste Definitions and References.

R315-1-1. Definitions.

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

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

(1) Substitute "Director of the Division of Solid and Hazardous Waste" for "Regional Administrator" or "Administrator," except in the following cases:

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

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

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

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

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

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

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

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

(2) "Director" or "State Director" means the Director of the Division of Solid and Hazardous Waste, and

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

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

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

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

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

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

(4) "Hazard class" means:

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

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

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

(6) "No free liquids" as used in R315-2-4(a)(23) and R315-2-4(b)(16), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, and that there is no free liquid in the container holding the wipes.

~~(6)~~(7) "POHC's" means principle organic hazardous constituents.

~~(7)~~(8) "Permittee" means any person who has received an approval of a hazardous waste operation plan under 19-6-108 and R315-3 or a Federal RCRA permit for a treatment, storage, or disposal facility.

~~(8)~~(9) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in R315-2-9, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in R315-2-9. If the precipitation run-off has been in contact with a waste listed in R315-2-10 or R315-2-11, then it

qualifies as "precipitation run-off" when the water has been excluded under R315-2-16. Water containing any leachate does not qualify as "precipitation run-off".

(10) "Solvent-contaminated wipe" means:

(1) A wipe that, after use or after cleaning up a spill, either:

(i) Contains one or more of the F001 through F005 solvents found in R315-2-10(e), which incorporates by reference 40 CFR 261.31 or the corresponding P- or U- listed solvents found in R315-2-11, which incorporates by reference 40 CFR 261.33;

(ii) Exhibits a hazardous characteristic found in R315-2-9(a) when that characteristic results from a solvent found in R315-2-10, which incorporates by reference 40 CFR part 261; and/or

(iii) Exhibits only the hazardous waste characteristic of ignitability found in R315-2-9(d) due to the presence of one or more solvents that are not listed in R315-2-10 which incorporates by reference 40 CFR part 261.

(2) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at R315-2-4(a)(23) and R315-2-4(b)(16).

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

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

(13) "Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

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

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

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

(2) "Area of contamination" means a hazardous waste management unit or an area where a release has occurred. The

boundary is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

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

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

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

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

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

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

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

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

R315-1-2. References.

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

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

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

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

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment: [~~April 25, 2013~~2014]

Notice of Continuation: July 13, 2011

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

**Environmental Quality, Solid and
Hazardous Waste
R315-2-4
Exclusions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38610

FILED: 06/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule are needed because of changes to the corresponding federal rule.

SUMMARY OF THE RULE OR CHANGE: Changes to Section R315-2-4 will allow a generator of rags and wipes that have been contaminated with solvents that would cause these materials to be defined as a hazardous waste to dispose of the rags and wipes in lined non-hazardous solid waste landfills. The rule specifies the conditions under which the disposal of these wastes can take place. The rule also allows for and sets conditions under which the material can be sent to a laundry for cleaning. The changes to the federal rule that allow for non-hazardous waste disposal and laundering as options for management of these contaminated wastes are less stringent than the federal rule that existed before the change. Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) provides for delegation of the hazardous waste program to states to administer in lieu of the U.S. Environmental Protection Agency (EPA). In order to receive authorization from EPA for the hazardous waste program, states must have and demonstrate equivalent legal authorities and regulations to those of the federal government for the management of hazardous waste. As the change in federal requirements is less stringent, Utah is not required to adopt the change to maintain delegation of the hazardous waste program. However, Utah Code Annotated Section 19-6-106 requires that rules of the hazardous waste program be no more stringent than federal rule. Adoption of the changes to Section R315-2-4 will make Utah rules equivalent to federal rules.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The costs for administration of the hazardous waste program will not change since the rule change does not change the way in which the hazardous waste program is administered. There could be a cost savings for any state agency that generates contaminated rags and wipes and chooses to dispose of the wipes as a non-hazardous waste or send them to a laundry.

♦ **LOCAL GOVERNMENTS:** Any local government that generates contaminated rags and wipes and chooses to dispose of the wipes as a non-hazardous waste or send them to a laundry could realize a cost savings. The savings will depend on the amounts generated.

♦ **SMALL BUSINESSES:** Any small business that generates contaminated rags and wipes and chooses to dispose of the wipes as a non-hazardous waste or send them to a laundry could realize a cost savings. The savings will depend on the amounts generated.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Anyone that generates contaminated rags and wipes and chooses to dispose of the wipes as a non-hazardous waste or send them to a laundry could realize a cost savings. The savings will depend on the amounts generated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule could result in a cost savings for anyone that generates contaminated wipes and chooses to dispose of the wipes as a non-hazardous waste or send them to a laundry. The savings will depend on the amounts generated but could be in the range of \$200 to \$275 per barrel of wipes generated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule could result in a cost savings for anyone that generates contaminated wipes and chooses to dispose of the wipes as a non-hazardous waste or send them to a laundry. The savings will depend on the amounts generated but could be in the range of \$200 to \$275 per barrel of wipes generated.

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

♦ Tina Mercer by phone at 801-536-0259, by FAX at 801-536-0222, or by Internet E-mail at tmmrcer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2014

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.

R315-2. General Requirements - Identification and Listing of Hazardous Waste.

R315-2-4. Exclusions.

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

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

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

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

(3) Irrigation return flows.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911 - including distillation, catalytic cracking, fractionation, gasification (as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10), or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the

same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in R315-2-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under R315-2-4. Residuals generated from processing or recycling materials excluded under this paragraph (a)(12)(i), where such materials as generated would have otherwise met a listing under R315-2-10, R315-2-11, R315-2-24, and R315-2-26, are designated as F037 listed wastes when disposed of or intended for disposal.

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

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

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

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

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

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

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

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

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

(ii) The spent material is not accumulated speculatively;

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

suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

.....

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

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

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

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

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

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

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

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

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

(22) Used cathode ray tubes (CRTs)

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

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

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

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

(23) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning onsite or at the point of being transported off-site for cleaning, the solvent-contaminated wipes must contain no free liquids as defined in section 260.10 of this chapter.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed

according to the applicable regulations found in R315-1 through R315-101;

(v) Generators must maintain at their site the following documentation:

(A) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180-day accumulation time limit in R315-2-4(a)(23)(ii) is being met;

(C) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning;

(vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

(b) SOLID WASTES WHICH ARE NOT HAZARDOUS WASTES.

The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, such as refuse-derived fuel or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if the facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) The facility does not accept hazardous wastes and the owner or operator of the facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the facility.

(2) Solid wastes generated by any of the following and which are returned to the soil as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6) The following additional solid wastes:

(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in sections R315-2-10 or R315-2-11 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively, or nearly exclusively, and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A),(B), and (C) of this section, so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome blue trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome blue shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair/pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO₂ pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112 for facilities that burn or process hazardous waste.

(i) For purposes of R315-2-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning;

precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of R315-2-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production ;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

(H) Calcium sulfate wastewater treatment plant sludge from

primary copper processing;

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

(L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under R315-2-4(b) if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic (TC) of R315-2-9(g), Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action requirements under R311-202, which incorporates by reference 40 CFR 280.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in R315-2-9(e) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum

marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and the Division of Solid and Hazardous Waste, Dept. of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(14) Non-terne plated used oil filters that are not mixed with wastes listed in R315-2-10(e) and (f) and R315-2-11, which incorporate by reference 40 CFR 261 Subpart D, if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph R315-2-4(b) (15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under R317-8 of the Utah Water Quality Rules.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K 178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to

discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(16) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes must contain no free liquids as defined in R315-1-1(e)(6).

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in R315-1 through R315-101;

(v) Generators must maintain at their site the following documentation:

(A) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180 day accumulation time limit in R315-4-(b)(16)(ii) is being met;

(C) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(vi) The solvent-contaminated wipes are sent for disposal

(A) To a municipal solid waste landfill:

(1) regulated under R315-301 through R315-320

(2) is a Class I or V Landfill; and

(3) has a composite liner;

(B) or to a hazardous waste landfill regulated under R315-1 through R315-101; or

(C) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under R315-7, R315-8 or R315-14-7, which incorporates by reference 266 subpart H.

(c) HAZARDOUS WASTES WHICH ARE EXEMPTED FROM CERTAIN RULES.

A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing

process unit or an associated non-waste-treatment-manufacturing unit is not subject to these regulations or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of products or raw materials.

(d) SAMPLES

(1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or compositions, is not subject to any requirements of these rules when:

- (i) The sample is being transported to a laboratory for the purpose of testing;
- (ii) The sample is being transported back to the sample collector after testing;
- (iii) The sample is being stored by the sample collector before transport to a laboratory for testing;
- (iv) The sample is being stored in a laboratory before testing;
- (v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
- (vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose, for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary.

(2) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

- (i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or
- (ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:
 - (A) Assure that the following information accompanies the sample:
 - (1) The sample collector's name, mailing address, and telephone number;
 - (2) The laboratory's name, mailing address, and telephone number;
 - (3) The quantity of the sample;
 - (4) The date of shipment; and
 - (5) A description of the sample.
 - (B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

(e) TREATABILITY STUDY SAMPLES.

(1) Except as provided in paragraph (e)(2) of this Section, a person who generates or collects samples for the purpose of conducting treatability studies as defined in section R315-1-1, which incorporates by reference the definitions of 40 CFR 260.10, are not subject to any requirement of R315-2, R315-5, and R315-6, or to the notification requirements of Section 3010 of RCRA, nor are these samples included in the quantity determinations of R315-2-5, which

incorporates by reference the requirements concerning conditionally exempt small quantity generators of 40 CFR 261.5 and R315-5-3.34, which incorporates by reference the requirements concerning waste accumulation time for generators of 40 CFR 262.34(d) when:

- (i) the sample is being collected and prepared for transportation by the generator or sample collector;
- (ii) the sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or
- (iii) the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

- (i) The generator or sample collector uses, in "treatability studies," no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;
- (ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) the sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met;

(A) the transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) if the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

- (1) the name, mailing address, and telephone number of the originator of the sample;
- (2) the name, address, and telephone number of the facility that will perform the treatability study;
- (3) the quantity of the sample;
- (4) the date of shipment; and
- (5) a description of the sample, including its EPA Hazardous Waste Number.

(iv) the sample is shipped to a laboratory or testing facility which is exempt under R315-2-4(f) (40 CFR 261.4(f)) or has an appropriate RCRA permit or interim status;

(v) the generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

- (A) copies of the shipping documents;
- (B) a copy of the contract with the facility conducting the treatability study;
- (C) documentation showing:
 - (1) the amount of waste shipped under this exemption;
 - (2) the name, address, and EPA identification number of the laboratory or testing facility that received the waste;
 - (3) the date the shipment was made; and
 - (4) whether or not unused samples and residues were returned to the generator.

(vi) the generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

(3) The Director may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Director may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e) (2) (i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, e.g., batch versus continuous, size of the unit undergoing testing, particularly in relation to scale-up considerations, the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and time frames allowed in paragraph (e)(3) (i) and (ii) of this section are subject to all the provisions in paragraphs (e) (1) and (e)(2) (iii) through (vi) of this section. The generator or sample collector must apply to the Director and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Director considers necessary.

(f) **SAMPLES UNDERGOING TREATABILITY STUDIES AT LABORATORIES AND TESTING FACILITIES.**

Samples undergoing treatability studies and the laboratory or testing facility that conducts these treatability studies, to the extent these facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of this rule, R315-3 through R315-8, and R315-13, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f)(1) through (11)

of this Section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Director in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

(i) the name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) the date the shipment was received;

(iii) the quantity of waste accepted;

(iv) the quantity of "as received" waste in storage each day;

(v) the date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) the date the treatability study was concluded; and

(vii) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Director by March 15 of each year that estimates the number of studies and the

amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) the name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) the types, by process, of treatability studies conducted;

(iii) the names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;

(iv) the total quantity of waste in storage each day;

(v) the quantity and types of waste subjected to treatability studies;

(vi) when each treatability study was conducted; and

(vii) the final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under R315-2-3 and, if so, are subject to R315-2 through R315-8, and R315-13, unless the residues and unused samples are returned to the sample originator under the exemption of paragraph (e) of this section.

(11) The facility notifies the Director by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) **DREDGED MATERIAL THAT IS NOT A HAZARDOUS WASTE.**

Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or the Utah State Division of Water Quality;

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs R315-2-4(g)(2)(i) and (ii), as provided for in Corps regulations.

KEY: hazardous waste, administrative procedures

Date of Enactment or Last Substantive Amendment: [~~April 25, 2013~~]**2014**

Notice of Continuation: July 13, 2011

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-106; 63G-4-201 through 205; 63G-4-503

**Environmental Quality, Solid and
Hazardous Waste
R315-15
Standards for the Management of Used
Oil**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38611

FILED: 06/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division is proposing changes to the used oil rule, Rule R315-15, of the Utah Administrative Code. The proposed changes will make the rule clearer, consistent with current legislation and improve readability.

SUMMARY OF THE RULE OR CHANGE: The majority of the proposed changes clarifies existing language and incorporates changes in corresponding federal regulations. Changes include updated PCB standards, containment requirements, and filter regulations. Changes were also made to clarify the standards applicable to burners of on-specification and off-specification used oil. Provisions regarding used oil handler certificates were also clarified.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds 40 CFR 761 Subpart S, published by Government Printing Office, 07/01/2013
- ◆ Adds 40 CFR 761.20, published by Government Printing Office, 07/01/2013

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The cost to the state budget will not change because the proposed changes do not change the requirements of or administration of the used oil program.

◆ **LOCAL GOVERNMENTS:** The cost to local governments will not change because the proposed changes do not change the requirements of or administration of the used oil program.

◆ **SMALL BUSINESSES:** Secondary containment standards for ancillary piping may result in increased costs for some permitted facilities but that cost should be offset in the long run by reduced cleanup and closure costs. Current permitted facilities already comply with these proposed changes. In addition, some savings may be gained by permitted facilities by allowing flexibility in the secondary containment design. Most small businesses are only slightly affected by these proposed rule changes because most changes relate to permitted facilities. The regulated community provided input in the development of these proposed changes. Minor costs may be incurred by some used oil transporters to increase the size of the lettering on labels on their vehicles, but most already comply with the proposed changes. Rail loading requirements for permitted used oil transporters would only affect about ten or fewer companies and most of these are already required to follow these industry standards in their permits. Many of the used oil spills by permitted transporters documented during the last 20 years have occurred during rail loading, so transporters may actually lower their costs through minimizing cleanups at unpermitted rail sites.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed changes for permit renewal will result in increased costs for current permittees. Some of the cost would be offset by savings due to reduction in the number of permit modifications.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Estimated one-time cost of less than a \$100 to upgrade signs on vehicles. The cost of permit renewal may be as high as \$2,000 which will occur once every 10 years. Costs associated with other parts of the rule change will be offset by savings in cleanup costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Estimated one-time cost of less than a \$100 to upgrade signs on vehicles. The cost of permit renewal may be as high as \$2,000 which will occur once every 10 years. Costs associated with other parts of the rule change will be offset by savings in cleanup 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:

◆ Deborah Ng by phone at 801-536-0218, by FAX at 801-536-0222, or by Internet E-mail at dng@utah.gov
◆ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov
◆ Tina Mercer by phone at 801-536-0259, by FAX at 801-536-0222, or by Internet E-mail at tmm Mercer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2014

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 ~~which~~ that are subject to regulation as used oil under ~~[Section]~~R315-15. This section also identifies some materials that are not subject to regulation as used oil under ~~[Rule]~~R315-15, and indicates whether these materials may be ~~subject to regulation~~ a[s] hazardous waste as defined under ~~[Rules]~~R315-~~[1]~~2~~[through R315-14, and R315-50]~~.

(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 ~~[Section]~~R315-15-1.2, the requirements of ~~[Rule]~~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 ~~[Section]~~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~~[that is]~~ listed in ~~[Section]~~R315-2-10 are subject to regulation as hazardous waste under ~~[Rules]~~R315-~~[1]~~2~~[through R315-14, and R315-50]~~, rather than as used oil under ~~[Rule]~~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 ~~[Section]~~R315-2-10. A [P]erson[s] 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 ~~[Section]~~R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII~~[-SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.]~~

(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 ~~[Subsection]~~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 [M]ixture[s] of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in ~~[Section]~~R315-2-9 and a mixtures of used oil and hazardous waste that is listed in ~~[Section]~~R315-2-10 solely because it exhibits one or more of the characteristics of hazardous waste identified in ~~[Section]~~R315-2-9 are subject to:

(i) Except as provided in ~~[Subsection]~~R315-15-1(b)(2)(iii), regulation as hazardous waste under ~~[Rules]~~R315-1 through R315-14, and R315-50 rather than as used oil under ~~[Rule]~~R315-15, if the resultant mixture exhibits any characteristics of hazardous waste identified in ~~[Section]~~R315-2-9; or

(ii) Except as specified in ~~[Subsection]~~R315-15-1.1(b)(2)(iii), regulation as used oil under ~~[Rule]~~R315-15, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under ~~[Section]~~R315-2-9.

(iii) Regulation as used oil under ~~[Rule]~~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 ~~[Subsection]~~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 ~~[Section]~~ R315-2-5, which incorporates by reference 40 CFR 261.5, are subject to regulation as used oil under ~~[Rule]~~ R315-15.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in ~~[paragraph]~~ R315-15-1.1(c)(2) ~~[of this section]~~, 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 ~~[Rule]~~ R315-15, and

(ii) If applicable, are subject to the hazardous waste regulations ~~[of Rules]~~ R315-1 through R315-14, ~~[and]~~ 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 ~~[Rule]~~ 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 ~~[Rule]~~ R315-15.

(d) Mixtures of used oil with products.

(1) Except as provided in ~~[paragraph]~~ (d)(2) ~~[of this section]~~, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under ~~[Rule]~~ 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 ~~[Rule]~~ R315-15 ~~[one]~~ after the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of ~~[Section]~~ 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 ~~[Rule]~~ R315-15, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of ~~[Rules]~~ R315-1 through R315-14 ~~;~~ and R315-50 as provided in ~~[Subsection]~~ 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 ~~[Rule]~~ R315-15.

(3) Except as provided in ~~R315-15.1.1~~ ~~[paragraph]~~ (e)(4) ~~[of this section]~~, 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 ~~[Rule]~~ R315-15, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations ~~[of Rules]~~ 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 ~~[Rule]~~ 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 ~~[which]~~ that have

eliminated the discharge of wastewater, ~~[contaminated with de minimis quantities of used oil]~~ 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 ~~[Rule]~~ R315-15. The used oil is subject to the requirements of ~~[Rule]~~ 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 ~~[Rule]~~ 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 ~~[Rule]~~ 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 ~~[Rule]~~ R315-15.

(4) Except as provided in ~~[paragraph]~~ R315-15-1.1 (g)(5) ~~[of this section]~~, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of ~~[Rule]~~ R315-15 only if the used oil meets the specification of ~~[Section]~~ R315-15-1.2. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of ~~[Rule]~~ 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 ~~[Rule]~~ R315-15. This exemption does not extend to used oil ~~[which]~~ 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 ~~[Rule]~~ 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 ~~[Rule]~~ R315-15, marketers and burners of used oil who market used oil containing ~~[any quantifiable level of]~~ 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 ~~[officer]~~ employee ~~[or representative of the Department or the Board may]~~ of the Director, may, at any reasonable time and upon presentation of ~~[appropriate]~~ credentials, ~~[and upon providing the opportunity to have a~~

representative of the owner, operator, or agent in charge to be present, enter upon and inspect any property, premise, or place on or at which used oil is generated, transported, stored, treated or disposed of, and may have access to and the right to copy any records relating to used oil, and inspect, audit, or sample [for purpose of ascertaining the compliance with Rule R315-15.] The employee [These persons referred to in this section] may also make record of the inspection by photographic, electronic, audio, video, or any other reasonable means. [inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person 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. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.]

(k) Violations, Orders, and Hearings. If the [Executive Secretary] Director has reason to believe a person is in violation of any provision of [Rule] R315-15, procedural requirements for compliance [or cessation] shall follow [Section] 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 [Rule] R315-15 until [unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1.]

(a) It has been demonstrated not to exceed any allowable levels of the constituents and properties shown in Table 1;

(b) [Once used oil that is to be burned for energy recovery has been shown not to exceed any specification and t] The person making that claim complies with [Sections] R315-15-7.3, R315-15-7.4, and [Subsection] R315-15-7.5(b)[;] and

(c) The used oil is delivered to a used oil burner. [the used oil is no longer subject to Section R315-15-6.]

TABLE 1
USED OIL NOT EXCEEDING ANY ALLOWABLE [SPECIFICATION] LEVEL IS NOT SUBJECT TO R315-15-6 WHEN BURNED FOR ENERGY RECOVERY(1)

Constituent/property	Allowable level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100 degrees F minimum
Total halogens	4,000 ppm maximum(2)

(1) The [specification] allowable levels in Table 1 do[es] not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste. [;] §[s]ee [Subsection] R315-15-1.1(b).

(2) Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption [provided under] described in [Subsection] R315-15-1.1(b)(1). Such used oil is subject to [Section] R315-14-7 [; which incorporates by reference 40 CFR 266 Subpart H], rather than [Rule] R315-15 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the marketing and burning of used oil containing any quantifiable level (2 ppm) of PCBs are found in [imposed by] 40 CFR 761.20(e), 2013 edition, incorporated by

reference, and R315-15-18. Prohibition of PCB oil dilution is described in 40 CFR 279.10 and 40 CFR 761.2(e).

1.3 PROHIBITIONS

Except as authorized by the [Board] 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 [prohibition]. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under [Rule] 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 [Subsection] 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 [Board] Director; or

(2) Any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under [Rule] 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 [Subsection] R315-15-6.2(a).

1.5 DISPOSAL OF DE MINIMIS USED OIL

(a) [Section] R315-15-1.3 does not apply to release of de minimis quantities of used oil identified under [Subsection] 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 [possible all oil has been] removed from the item or substance; and

(2) No free flowing oil remains in the item or substance.

1.6 DISPOSAL OF USED OIL FILTERS

(a) Disposal of Used Oil Filters. A person may dispose of a nonterme 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 [that meets the exclusion of Subsection R315-2-4(b)(14) and is not mixed with hazardous waste defined by Rule R315-2.]

(b) "Gravity hot-drained" means drained for not less than 12 hours near operating temperature but above 60 degrees Fahrenheit. A nonterme 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 ~~[Rule]~~R315-15 are found in: R315-1.7(b) through (j); and R315-1-1.~~[incorporated by reference in Section R315-1-1.]~~

(b) ~~The [definition of the] term "de minimis[" quantities of used oil" [as used in Rule R315-15] defined in [has the same meaning as in Subsection -]Utah 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) ~~[The definition of the term -]"[f]inancial responsibility" [as used in Rule R315-15] 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 dielectric 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.

R315-15-2. Standards for Used Oil Generators.

2.1 APPLICABILITY

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, ~~[Section]~~R315-15-2 applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(1) Household "do-it-yourselfer" used oil generators. Household "do-it-yourselfer" used oil generators are not subject to regulation under ~~[Rule]~~R315-15, except for the prohibitions of ~~[Section]~~R315-15-1.3 and cleanup requirements of R315-15-9.

(2) Vessels. Vessels at sea or at port are not subject to ~~[Section]~~R315-15-2. For purposes of ~~[Section]~~R315-15-2, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the used oil[waste] in compliance with ~~[Section]~~R315-15-2 once the used oil is transported ashore. The co-generators may decide among themselves which party will fulfill the requirements of ~~[Section]~~R315-15-2.

(3) Diesel fuel. Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to ~~[Rule]~~R315-15 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of ~~[Section]~~R315-15-2.

(4) Farmers. Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of ~~[Rule]~~R315-15, except for the prohibitions of ~~[Section]~~R315-15-1.3 and cleanup requirements of R315-15-9.

(b) Other applicable provisions. Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of ~~[Rule]~~R315-15 as indicated in ~~[paragraphs -]R315-15.2.1(b)(1) through (5) [of this section]:~~

(i) Generators who transport used oil, except under the self-transport provisions of ~~[Subsections -]R315-15-2.5(a) and (b), shall also comply with [Section -]R315-15-4.~~

(2)(i) Except as provided in ~~[paragraph -]R315-15-2.1(b)(2) (ii)[-of this section], generators who process or re-refine used oil must also comply with [Section -]R315-15-5.~~

(ii) Generators who perform the following activities are not processors, provided that the used oil is generated on[-]site and is not being sent off[-]site to a burner of on- or off-specification used oil fuel.

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(B) Separating used oil from wastewater generated on[-]site to make the wastewater acceptable for discharge or reuse ~~[pursuant -]in accordance with [to] section 402 or section 307(b) of the Clean Water Act or other applicable Federal or state regulations governing the management or discharge of wastewater;~~

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive used oil to the extent possible ~~[pursuant -]in accordance with [to-Subsection -]R315-15-1.1(c); or~~

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater in accordance with [pursuant to Section -]R315-15-2.4.

(3) Generators who burn off-specification used oil for energy recovery, ~~[except under the on-site space heater provisions of Section R315-15-2.4, -]shall also comply with [Section -]R315-15-6.~~

(4) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first ~~certify~~claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in ~~Section~~ R315-15-1.2 shall also comply with ~~Section~~ R315-15-7.

(5) Generators who dispose of used oil shall also comply with ~~Section~~ R315-15-8.

2.2 HAZARDOUS WASTE MIXING

(a) Mixtures of used oil and hazardous waste shall be managed in accordance with ~~Subsection~~ R315-15-1.1(b).

(b) The rebuttable presumption for used oil found in ~~of Subsection~~ R315-15-1.1(b)(1)(ii) applies to used oil managed by generators. Under this~~the~~ rebuttable presumption~~for used oil of Subsection R315-15-1.1(b)(1)(ii)]~~, used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and thus shall be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oil or ~~[f]luids containing chlorinated paraffins, if they are processed through a tolling agreement to reclaim the metalworking oils or fluids, and certain used oils removed from refrigeration units described in R315-15-1.1(b)(1)(ii) (B).~~

2.3 USED OIL STORAGE

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR ~~[part]~~ 112, in addition to the requirements of ~~Section~~ R315-15-2. Used oil generators are also subject to the standards and requirements of ~~Rules~~ R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste~~;~~. In~~in~~ addition, used oil generators are subject to the requirements of ~~Section~~ R315-15-2.

(a) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under ~~Rule~~ R315-7 or R315-8.

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects or deterioration; and

(2) Not leaking~~[(no visible leaks)]~~.

(3) Tanks and containers for storage of used oil must be closed during storage except when adding or removing used oil.

(4) Tanks and containers storage areas shall be managed to prevent releases of used oil to the environment.

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities shall be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities shall be labeled or marked clearly with the words "Used Oil."

(d) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, a generator shall comply with Section R315-15-9.

2.4 ON-SITE BURNING

On-site burners shall comply with R315-15-6 and, if applicable, shall obtain an Air Quality permit.

(a) Generators may burn used oil in used oil-fired space heaters without a used oil permit provided that:

~~(a)1~~ The heater burns only used oil that the owner or operator generates;

~~(b)2~~ The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour;

~~(e)3~~ The combustion gases from the heater are vented to the outside ambient air;

~~(d)4~~ The generator has knowledge that the used oil has not been mixed with hazardous waste; and~~[If registered as a Used Oil Collection Center as authorized in Section R315-15-3, the generator may burn used oil received from household do-it-yourselfer generators or farmers described in Subsection R315-15-2.1(a)(4); and]~~

~~(e)5~~ The used oil is being legitimately burned~~[recycled]~~ to utilize its energy content.

(b) Used Oil Collection Center(UOCC). If it is registered as a Used Oil Collection Center as authorized in R315-15-3, the UOCC may burn used oil in used oil fired space heaters without a used oil permit under the provision described in R315-15-2.4(a) provided that the used oil is received from household do-it-yourselfer generators or farmers described in R315-15-2.1(a)(4) or the used oil is received from other generators and has been certified to meet the used oil fuel specifications of R315-15-1.2 by a registered used oil marketer in accordance with R315-15-7.

2.5 OFF-SITE SHIPMENTS

Except as provided in ~~[paragraphs]~~ R315-15-2.5(a) through (c)~~[of this section]~~, a generator[s] shall ensure that its~~their~~ used oil is transported only by a transporter[s] who ~~has~~~~ve~~ obtained a Utah used oil transporter permit and has a current used oil handler certificate issued by the Director and an EPA identification number[s].

(a) Self-transportation of small amounts to approved collection centers. A~~[G]~~generator[s] may transport, without an EPA identification number, a used oil transporter permit, or a current used oil handler certificate, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to a used oil collection center that is registered or permitted to manage used oil.

(b) Self-transportation of small amounts to aggregation points owned by the generator. A~~[G]~~generator[s] may transport, without an EPA identification number, a used oil transporter permit, or used oil handler certificate, used oil that is generated at the generator's site to an aggregation point provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to an aggregation point that is owned, operated, or both~~[and/or operated]~~ by the same generator.

(c) Tolling arrangements. Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number, a used oil transporter permit, or a current used oil handler certificate if the used oil is reclaimed under a contractual agreement under ~~[pursuant to]~~ which reclaimed oil is returned by the processor/re-refiner to the generator for use as a lubricant, cutting oil,

or coolant. The contract, known as a "tolling arrangement," shall indicate:

- (1) The type of used oil and the frequency of shipments;
- (2) That the vehicle used to transport the used oil to the processing/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and
- (3) That reclaimed oil will be returned to the generator.

R315-15-3. Standards for Used Oil Collection Centers and Aggregation Points.

3.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS TYPES A and B

(a) Applicability. ~~R315-15-3.1~~~~[This section]~~ applies to owners or operators of ~~[all do-it-yourselfer (DIYer)]~~ Type A and B used oil collection centers~~[-]~~:

~~(1) Type A used oil collection center. Type A and B [A DIYer used oil collection center] is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers (DIYers) in quantities not exceeding five gallons per visit.~~

~~(2) Type B used oil collection center. Type B used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from farmers as required by R315-15-2.1(a)(4) in quantities not exceeding 55 gallons per visit from farmers and not exceeding five gallons per visit from household do-it-yourselfers.~~

~~(b) Type A or B [DIYer] used oil collection center requirements. Owners or operators of Type A or B [all DIYer] used oil collection centers shall:~~

~~(1) [e]Comply with the generator standards in [Section-] R315-15-2.~~

~~(2) Be registered with the Division of Solid and Hazardous Waste to manage used oil as a used oil collection center as required by R315-15-13.1; and~~

~~(3) Keep records of used oil collected by the collection center. This does not include used oil generated on site from maintenance and servicing operations. These records shall be kept for a minimum of three years and shall contain the following information:~~

~~(i) Name and address of generator or if unavailable, a written description of how the used oil was received;~~

~~(ii) Quantity of used oil received;~~

~~(iii) Date the used oil is received; and~~

~~(iv) Volume of used oil picked up by a permitted transporter and the transporter's name and EPA identification number, [and the record keeping requirements of Subsections R315-15-3.2(b)(3)(i) through (iv)].~~

~~(4) A Type A or B used oil collection center shall not accept used oil from generators other than those specified in R315-15-3.1(1) and (2).~~

~~(c) Reimbursements. Type A or B used oil collection centers are classified as DIYer used oil collection centers and may be reimbursed as described in R315-15-14.~~

3.2 [GENERATOR—]USED OIL COLLECTION CENTERS - Types C and D

(a) Applicability. ~~[This section]~~ R315-15-3.2 applies to owners or operators of Type C and D ~~[generator]~~ used oil collection centers.~~[-]~~

~~(1) Type C [A generator] used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under [Section-]R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of [Subsection-]R315-15-2.5(a). Type C used oil collection [Used-generator-oil-collection-]centers may also accept used oil from household do-it-yourselfers and farmers described in [Subsection-]R315-15-2.1(a)(4)~~[- if registered to do so].~~~~

~~(2) A Type D used oil collection center is any site or facility that only accepts/aggregates and stores used oil collected from used oil generators regulated under R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of R315-15-2.5(a). Type D used oil collection centers do not qualify for reimbursement.~~

~~(b) [Generator-][u]Used oil collection center Type C and D requirements. Owners or operators of [all-generator-]Types C and D used oil collection centers shall:~~

~~(1) Comply with the generator standards in [Section-]R315-15-2;~~

~~(2) Be registered with the Division of Solid and Hazardous Waste to manage used oil; and~~

~~(3) Keep records of used oil received from off-site sources and ~~[picked-up/]~~transported from the collection center. This does not include used oil generated on[-]site from maintenance and servicing operations. These records shall be kept for a minimum of three years and shall contain the following information:~~

~~(i) Name and address of generator[-] or, if unavailable, a written description of how the used oil was received;[-]~~

~~(ii) Quantity of used oil received;~~

~~(iii) Date the used oil is received; and~~

~~(iv) Volumes of used oil collected ~~[picked-up-]~~by a permitted transporter and the transporter's name and federal EPA identification number.~~

~~(c) Reimbursements. Type C used oil collection centers may be reimbursed as described in R315-15-14 for household do-it-yourselfer and used oil generated by farmers as defined in R315-15-3.1. Other generator used oil does not meet the reimbursement criteria as do-it-yourselfer used oil and does not qualify for reimbursement.~~

3.3 USED OIL AGGREGATION POINTS OWNED BY THE GENERATOR

(a) Applicability. ~~R315-15-3.3~~ ~~[This section-]~~ applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, ~~[and/]~~or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of ~~[no more than]~~ 55 gallons or less under the provisions of ~~[Subsection-]R315-15-2.5(b)~~. Used oil aggregation points may also accept used oil from household do-it-yourselfers as long as they register as do-it-yourselfer collection centers, as described in ~~[Section-]R315-15-13.1~~, and comply with do-it-yourselfer collection center standards in ~~[Section-]R315-15-3.1~~. Used oil aggregation points that accept used oil from other generators ~~[must-]~~shall register as collection centers, as described in ~~[Section-]R315-15-13.2~~, and comply with collection center standards in ~~[Section-]R315-15-3.2~~.

(b) Used oil aggregation point requirements. Owners or operators of all used oil aggregation points shall comply with the generator standards in ~~[Section-]R315-15-2~~.

R315-15-4. Standards for Used Oil Transporter and Transfer Facilities.

4.1 APPLICABILITY

(a) General. ~~R315-15-4 applies to all used oil transporters, [E]except as provided in [paragraphs] R315-15-4.1(a)(1) through [(a)] (4)[of this section, Section R315-15-4 applies to all used oil transporters]. [Used oil transporters are p]Persons who transport used oil, persons who collect used oil from more than one generator and transport the collected used oil, and owners and operators of used oil transfer facilities are used oil transporters. Except as provided by [Subsection] R315-15-13.4(f), used oil transporters or operators of used oil transfer facilities shall obtain a permit from the [~~Executive Secretary~~] Director prior to accepting any used oil for transportation or transfer. The application for a permit shall include the information required by [Section] R315-15-13.4. Used oil transporters and operators of used oil transfer facilities shall obtain and maintain a used oil handler certificate in accordance with R315-15-13.8.~~

(1) [~~Section] R315-15-4 does not apply to on-site transportation.~~

(2) [~~Section] R315-15-4 does not apply to generators who transport shipments of used oil tota[+]ing 55 gallons or less from the generator to a used oil collection center as specified in Subsection R315-15-2.5(a).~~

(3) [~~Section] R315-15-4 does not apply to generators who transport shipments of used oil tota[+]ing 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in [Subsection] R315-15-2.5(b).~~

(4) [~~Section] R315-15-4 does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of [Rule] R315-15. Except as provided in [paragraphs] R315-15-4.1(a)(1) through (a)(3)[of this section], [Section] R315-15-4 does, [however,] apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.~~

(b) Imports and exports. Transporters [~~who import used oil from abroad or export used oil outside of the United States~~] are subject to the requirements of [Section] R315-15-4 from the time the used oil enters and until the time it exits Utah.

(c) [~~Trucks~~] Vehicles used to transport hazardous waste. Unless [~~trucks~~] vehicles previously used to transport hazardous waste are emptied as described in [Section] R315-2-7 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of [Subsection] R315-15-1.1(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.

(d) Vehicles used to transport PCB-contaminated material. Unless vehicles previously used to transport PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S, (2013 edition, incorporated by reference), prior to transporting used oil, the used oil is considered to have been mixed with PCB-contaminated material and shall be managed as PCB-contaminated material in accordance with R315-15-18 and 40 CFR 761.

(e) Tanks, containers, and piping that contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to transferring used oil, the

used oil is considered to have been mixed with PCB-contaminated material in accordance with R315-15-18 and 40 CFR 761 Subpart S.

([d]f) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of [~~Rule] R315-15 as indicated in [paragraphs] R315-15-4.1 ([d]f)(1) through (5)[of this section]:~~

(1) Transporters who generate used oil shall also comply with [~~Section] R315-15-2;~~

(2) Transporters who process or re-refine used oil, except as provided in [~~Section] R315-15-4.2, shall also comply with [Section] R315-15-5;~~

(3) Transporters who burn off-specification used oil for energy recovery shall also comply with [~~Section] R315-15-6;~~

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in [~~Section] R315-15-1.2 shall also comply with [Section] R315-15-7; and~~

(5) Transporters who dispose of used oil shall also comply with [~~Section] R315-15-8.~~

4.2 RESTRICTIONS ON TRANSPORTERS WHO ARE NOT ALSO PROCESSORS OR RE-REFINERS

(a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in [~~paragraph] R315-15-4.2(b)[of this section], used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in [Section] R315-15-5.~~

(b) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation, e.g., settling and water separation, but that are not designed to produce, or make more amenable for production of, used oil derived products unless they also comply with the processor/re-refiner requirements in [~~Section] R315-15-5.~~

(c) Transporters of used oil that is removed from oil[-] bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in [~~Section] R315-15-5.~~

4.3 NOTIFICATION

(a) Identification numbers. Used oil transporters who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the [~~Executive Secretary] Director of his used oil activity by submitting either:~~

(1) A completed EPA Form 8700-12 [~~To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170;~~] or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

- (i) Transporter company name;
- (ii) Owner of the transporter company;
- (iii) Mailing address for the transporter;
- (iv) Name and telephone number for the transporter point of contact;

(v) Type of transport activity, i.e., transport only, transport and transfer facility, transfer facility only;

(vi) Location of all transfer facilities at which used oil is stored; and

(vii) Name and telephone number for a contact at each transfer facility.

4.4 USED OIL TRANSPORTATION

(a) Deliveries. A used oil transporter shall deliver all used oil received to:

(1) Another used oil transporter, provided that the transporter has obtained an EPA identification number~~[-]~~, transporter permit number, and current used oil handler certificate issued by the Director;

(2) A used oil processing/re-refining facility ~~[which] that~~ has obtained an EPA identification number~~[-]~~, processing/refining permit, and current used oil handler certificate issued by the Director;

(3) An off-specification used oil burner facility ~~[which] that~~ has obtained an EPA identification number~~[-]~~, off-specification used oil burner permit, and current used oil handler certificate issued by the Director; ~~or~~

(4) A used oil transfer facility that has obtained an EPA identification number, transfer facility permit, and current used oil handler certificate issued by the Director; or

~~(4) 5~~ An on-specification used oil burner facility.

(b) DOT Requirements. Used oil transporters shall comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 shall comply with all applicable regulations in 49 CFR 171 through 180.

(c) Used oil discharges. In the event of a used oil discharge, a transporter shall comply with ~~[Section] R315-15-9~~.

(d) The words "Used Oil" shall be clearly visible, in letters at least two inches high, on all vehicles transporting bulk used oil.

4.5 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of ~~[Subsection] R315-15-1.1(b)(1)(ii)~~, the used oil transporter shall determine whether the total halogen content of used oil being transported or stored at a transfer facility is ~~above or~~ below 1,000 ppm.

(b) The transporter shall make this determination by:

(1) Testing the used oil; or

(2) Applying and documenting generator knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in ~~[Section] R315-2-10~~. The owner or operator may rebut the 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: SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in ~~[Subsection] 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.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if 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.

(d) Record retention. Records of analyses conducted or information used to comply with ~~[paragraphs] R315-15-4.5(a), (b), and (c) [of this section]~~ shall be maintained by the transporter for at least three years.

4.6 USED OIL STORAGE AT TRANSFER FACILITIES

Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures, in accordance with 40 CFR 112, in addition to the requirements of ~~[Section] R315-15-4~~. Used oil transporters are also subject to the standards of ~~[Title] R311~~, which incorporates by reference 40 CFR 280, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of ~~[Section] R315-15-4~~.

(a) Applicability. ~~[This section] R315-15-4~~ applies to used oil transfer facilities. Used oil transfer facilities are transportation~~[-]~~ related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to the processor/re-refiner requirements ~~[as]~~ found in ~~[Section] R315-15-5~~.

(b) Storage units. Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under ~~[Rule] R315-7 or R315-8~~.

(c) Condition of units. Containers and aboveground tanks and tank systems, including their associated pipes and valves, used to store used oil at transfer facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking~~[-]~~ ~~(no visible leaks)~~.

(3) Tanks and containers for storage of used oil must be closed during storage except when adding or removing used oil.

(4) Tanks and container storage areas shall have a containment system that is designed and operated in accordance with R315-8-9.

(d) Secondary containment. Containers~~[-]~~ and ~~[existing]~~ aboveground tanks~~[-]~~, and new aboveground tanks used to store used oil at transfer facilities, including their pipe connections and valves, shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of~~[-]~~ at a minimum:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dikes, berms, or retaining walls except areas where existing portions of existing aboveground tanks meet the ground.

(iii) An equivalent secondary containment system approved by the Director.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) The secondary system shall be of sufficient extent to prevent any used oil releases from tanks and containers in R315-15-4.6(b), from migrating out of the system to the soil, groundwater, or surface water.

(4) Water, used oil, or other liquids shall be removed from secondary containment, including sumps, within 24 hours of discovery.

(5) Used oil shall not be stored or allowed to accumulate in sumps and similar water containment structures at the facility. Any used oil in such sumps beyond a surface sheen shall be removed within 24 hours of discovery.

(6) Transporters loading to or from rail tanker cars shall also comply with secondary containment requirements of R315-15-4.10.

(e) Labels.

(1) Containers and aboveground tanks used to store used oil at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(f) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of [Section] R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, the owner/operator of a transfer facility shall comply with [Section] R315-15-9.

4.7 TRACKING

(a) Acceptance. Used oil transporters and transfer facilities shall keep a written record of each used oil shipment accepted for transport. These records shall take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Written [R]records for each shipment shall include:

(1) The name and address of the generator, transporter, transfer facility, burner, or processor/re-refiner who provided the used oil for transport;

(2) The EPA identification number, if applicable, of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(3) Documentation demonstrating the transporter has met the halogen determination requirements of R315-15-4.5 and, where applicable, the PCB testing requirements of R315-15-18;

~~(3)~~(4) The quantity of used oil accepted;

~~(4)~~(5) The date of acceptance; and

~~(5)~~(6)(i) Except as provided in [paragraph] R315-15-4.7(a) ~~(ii) of this section~~, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, transfer facility, burner, or processor/re-refiner who provided the used oil for transport.

(ii) Intermediate rail transporters are not required to sign the record of acceptance.

(b) Deliveries. Used oil transporters and transfer facilities shall keep a written record of each shipment of used oil that is delivered to another used oil transporter, a transfer facility, ~~or to a used oil~~ burner, processor/re-refiner, or disposal facility. Records of each delivery shall include:

(1) The name and address of the receiving facility or transporter;

(2) The EPA identification number of the receiving facility or transporter;

(3) The quantity of used oil delivered;

(4) The date of delivery; and

(5)(i) Except as provided in ~~[paragraph] R315-15-4.7(a)~~ ~~(ii) of this section~~, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(ii) Intermediate rail transporters are not required to sign the record of delivery.

(c) Exports of used oil. Used oil transporters shall maintain the records described in ~~[paragraphs] R315-15-4.7(b)(1) through (b)(4)~~ ~~[of this section]~~ for each shipment of used oil exported ~~[to any] outside of Utah [foreign country].~~

(d) Record retention. The records described in ~~[paragraphs] R315-15-4.7(a), (b), and (c)~~ ~~[of this section]~~ shall be maintained for at least three years at a specified facility approved by the Director.

(e) Reporting. ~~[A u]Used oil transporter['] and transfer facilit[y]ies shall report annually by March 1 to the [Executive Secretary]Director[-by March 1 of each year].~~ The report shall be consistent with the requirements of ~~[Subsection] R315-15-13.4(d).~~

4.8 MANAGEMENT OF RESIDUES

Transporters who generate residues from the storage or transport of used oil shall manage the residues as specified in ~~[Subsection] R315-15-1.1(e).~~

4.9 ACCEPTANCE OF OFF-SITE USED OIL

Used oil transporters and transfer facilities accepting used oil from off-site shall ensure that the transporters delivering the used oil have obtained a current used oil transporter permit and an EPA identification number.

4.10 TRANSFER OF USED OIL TO OR FROM RAIL CARS

(a) Spill prevention. Facilities or transporters loading or unloading used oil from rail cars shall:

(1) Use spill pans beneath rail cars being loaded or unloaded with used oil. These spill pans shall be placed inside and outside of the track below the rail car loading port in such a way as to capture releases that might occur during the loading and unloading operations;

(2) Securely park used oil transportation trucks on a loading pad during the loading and unloading of used oil between those trucks and the rail tanker car. The loading pad shall be constructed of asphalt or concrete, or an equivalent system approved by the Director, and shall be sloped or bermed in such a way as to contain used oil spills;

(3) Be loaded and unloaded through a valve or port located on top of the rail car unless otherwise approved by the Director; and

(4) Transporter personnel shall actively monitor the transfer during the entire loading and unloading process.

(b) Storage at rail loading and unloading facilities. If, during the normal course of transportation, used oil remains at the loading and unloading facility for more than 24 hours but less than 35 days, the facility is subject to regulation as a used oil transfer facility as defined in R315-15-4.6 and is required to apply for a permit as a used oil transfer facility as defined in R315-15-13.4. A transfer facility that stores used oil for more than 35 days is subject to the processor/re-refiner requirements as defined in R315-15-5.

R315-15-5. Standards for Used Oil Processors and Re-Refiners.**5.1 APPLICABILITY**

(a) The requirements of ~~[Section]~~R315-15-5 apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of ~~[Section]~~R315-15-5 do not apply to:

(1) Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in ~~[Section]~~R315-15-4.2; or

(2) Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in ~~[Subsection]~~R315-15-6.2(b).

(b) Other applicable provisions. Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of ~~[Rule]~~R315-15 as indicated in ~~[paragraphs]~~R315-15-5.1(b)(1) through (b)(5)~~]~~ ~~of this section~~.

(1) Processors/re-refiners who generate used oil shall also comply with ~~[Section]~~R315-15-2.

(2) Processors/re-refiners who transport used oil shall also comply with ~~[Section]~~R315-15-4.

(3) ~~[Except as provided in paragraphs (b)(3)(i) and (b)(3)(ii) of this section, processors/re-refiners who burn off-specification used oil for energy recovery shall also comply with Section R315-15-6.]~~ Processor/re-refiners who burn~~ing~~ off-specification used oil for energy recovery shall also comply with R315-15-6 except where~~[under the following conditions are not subject to Section R315-15-6]:~~

(i) The used oil is only burned in an on-site space heater that meets the requirements of ~~[Section]~~R315-15-2.4; or

(ii) The used oil is only burned for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(4) Processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in ~~[Section]~~R315-15-1.2 shall also comply with ~~[Section]~~R315-15-7.

(5) Processors/re-refiners who dispose of used oil shall also comply with ~~[Section]~~R315-15-8.

(6) Tanks, containers, and piping that contained hazardous waste. Unless tanks, containers, and piping that previously contained hazardous waste are emptied as described in R315-2-7 prior to storing or transferring used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste and used oil mixture is determined not to be hazardous waste.

(7) Tanks, containers, and piping that previously contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to storing or transferring of used oil, the used oil is considered to have been mixed with the PCB-contaminated material and shall be managed in accordance with R315-15-18 and 40 CFR 761 Subpart S, as applicable.

(c) Processors/re-refiners shall obtain a permit from the ~~[Executive Secretary]~~Director prior to processing or re-refining used oil. An application for a permit shall contain the information required by ~~[Section]~~R315-15-13.5.

5.2 NOTIFICATION

(a) Identification numbers. Used oil processors/re-refiners who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the ~~[Executive Secretary]~~Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12~~[- To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170]; or~~

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Processor or re-refiner company name;

(ii) Owner of the processor or re-refiner company;

(iii) Mailing address for the processor or re-refiner;

(iv) Name and telephone number for the processor or re-refiner point of contact;

(v) Type of used oil activity, i.e., process only, process and re-refine;

(vi) Location of the processor or re-refiner facility.

5.3 GENERAL FACILITY STANDARDS

(a) Preparedness and prevention. Owners and operators of used oil processor/re-refiner facilities shall comply with the following requirements:

(1) Maintenance and operation of facility. Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, ~~or~~ surface water, or groundwater that ~~[which]~~ could threaten human health or the environment.

(2) Emergency equipment. ~~[Unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in paragraphs (a)(2)(i) through (iv) of this section, a]~~All facilities shall be equipped with the following:

(i) An internal communications or alarm system capable of providing immediate emergency instruction, voice ~~or~~ and signal, to facility personnel;

(ii) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(iii) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(3) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency. Records of such testing and maintenance shall be kept for three years.

(4) Access to communications or alarm system.

(i) Whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in ~~[paragraph]R315-15-5.3(a)(2)[of this section]~~.

(ii) If there is ever just one employee on the premises while the facility is operating, the employee shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in ~~[paragraph]R315-15-5.3(a)(2)[of this section]~~.

(5) Required aisle space. The owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(6) Arrangements with local authorities.

(i) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

(A) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(B) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(C) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(D) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses ~~[which]that~~ could result from fires, explosions, or releases at the facility.

(ii) Where State or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the facility's operating record.

(b) Contingency plan and emergency procedures. Owners and operators of used oil processor[s] and re-refiner[s] facilities shall comply with the following requirements:

(1) Purpose and implementation of contingency plan.

(i) Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, groundwater, or surface water.

(ii) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of used oil ~~[which]that~~ could threaten human health or the environment.

(2) Content of contingency plan.

(i) The contingency plan shall describe the actions facility personnel shall take to comply with ~~[paragraphs]R315-15-5.3(b)(1)~~ and (6) ~~[of this section]~~ in response to fires, explosions, or any

unplanned sudden or non-sudden release of used oil to air, soil, groundwater, or surface water at the facility.

(ii) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112 or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions necessary to comply with the requirements of R315-15.

(iii) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, ~~[pursuant to paragraph]in accordance with R315-15-5.3(a)(6)[of this section]~~.

(iv) The plan shall list names, addresses, and phone numbers, ~~[office and home,]~~of all persons qualified to act as 24-hour emergency coordinator. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. See also ~~[paragraph]R315-15-5.3(b)(5)[of this section]~~.

(v) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of used oil or fires.

(3) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(i) Maintained at the facility; and

(ii) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(4) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(i) Applicable regulations are revised;

(ii) The plan fails in an emergency;

(iii) The facility changes its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

(5) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person shall have the

authority to commit the resources needed to carry out the contingency plan.

(6) Emergency procedures.

(i) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or the designee when the emergency coordinator is on call, shall immediately:

(A) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(B) Notify appropriate State or local agencies with designated response roles if their help is needed.

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. ~~He~~ The emergency coordinator may do this by observation or review of facility records of manifests and, if necessary, by chemical analysis.

(iii) Concurrently, the emergency coordinator shall assess possible hazards to human health ~~or~~ and to the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion ~~which~~ that could threaten human health, or the environment, outside the facility, the coordinator shall report ~~the~~ his findings as follows:

(A) If the emergency coordinator ~~his~~ assessment indicates ~~d~~ that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. ~~He~~ The coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(B) ~~He~~ The emergency coordinator shall implement the actions as required in Section R315-15-9.

(v) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.

(vi) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(vii) Immediately after an emergency, the emergency coordinator shall provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(viii) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(A) No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and

(B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(C) The owner or operator shall notify the ~~Executive Secretary~~ Director, and appropriate local authorities that the facility is in compliance with ~~paragraphs~~ R315-15-5.3(b)(6)(viii)(A) and (B)

~~of this section~~ before operations are resumed in the affected area(s) of the facility.

(ix) The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, ~~he~~ the owner or operator shall submit a written report on the incident to the ~~Executive Secretary~~ Director. The report shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident, e.g., fire, explosion;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

5.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of ~~Subsection~~ R315-15-1.1(b)(1)(ii), the owner or operator of a used oil processing/re-refining facility shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The owner or operator shall make this determination by:

(1) Testing the used oil; or

(2) Applying and documenting generator knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in ~~Section~~ R315-2-10. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from EPA SW-846, Edition III, Update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in ~~Section~~ R315-50-10, ~~which incorporates by reference 40 CFR 261 Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.~~

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, 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.

(2) 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.

5.5 USED OIL MANAGEMENT

Used oil processor/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures, found in 40 CFR 112, in addition to the requirements of ~~Section~~ R315-15-5. Used oil processors/re-refiners are also subject to the standards and

requirements ~~found in [of Rules]~~ R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of ~~[Section]~~ R315-15-5.

(a) Management units. Used oil processors/re-refiners may not store used oil in units other than tanks, containers, or units subject to regulation under ~~[Rule]~~ R315-7 or R315-8.

(b) Condition of units. Containers and aboveground tanks including their associated pipes and valves used to store or process used oil at processing and re-refining facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; ~~[and]~~

(2) Not leaking ~~[(no visible leaks)]~~; and

(3) Closed during storage except when used oil is being added or removed.

(c) Secondary containment. Containers ~~[,] existing aboveground tanks,~~ and ~~[new]~~ aboveground tanks used to store or process used oil at processing and re-refining facilities including their pipe connections and valves shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of ~~[,] at a minimum~~:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of ~~[existing]~~ aboveground tanks meet the ground; ~~or~~ ~~[:]~~

(iii) An equivalent secondary containment system approved by the Director.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) The secondary containment system shall be of sufficient size and volume to prevent any used oil released from tanks and containers described in R315-15-5.5(a), from migrating out of the system to the soil, groundwater, or surface water.

(4) Water, used oil, or other liquids shall be removed from secondary containment within 24 hours of their discovery.

(5) Used oil shall not be stored or allowed to accumulate in sumps and similar water-containment structures at the facility. Any used oil in such sumps shall be removed within 24 hours of its discovery.

(d) Labels.

(1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of ~~[Section]~~ R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, an owner/operator shall comply with ~~[Section]~~ R315-15-9.

(f) Closure.

(1) Aboveground tanks. Owners and operators who store or process used oil in aboveground tanks shall comply with the following requirements:

(i) At closure of a tank system, the owner or operator shall remove or decontaminate used oil residues in tanks, contaminated

containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under this chapter. Nonhazardous solid waste~~[:]~~ must be managed in accordance with ~~[Section]~~ R315-301-4.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in ~~[paragraph]~~ R315-15-5.5(f)(1)(i) ~~[-of this section]~~, then the owner or operator shall close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills, ~~[Section]~~ R315-7-21.4.

(2) Containers. Owners and operators who store used oil in containers shall comply with the following requirements:

(i) At closure, containers holding used oils or residues of used oil shall be removed from the site;

(ii) The owner or operator shall remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under ~~[Rule]~~ R315-2.

5.6 ANALYSIS PLAN

Owners or operators of used oil processing ~~[,] and~~ re-refining facilities shall develop and follow a written used oil analysis plan describing the procedures that will be used to comply with the analysis requirements of ~~[Section]~~ R315-15-5.4, R315-15-18, and, if applicable, the marketer requirements in ~~[Section]~~ R315-15-7.3. The owner or operator shall keep the plan at the facility.

(a) Rebuttable presumption for used oil in ~~[Section]~~ R315-15-5.4. ~~[At a minimum, t]~~ The plan shall specify the following:

(1) Whether sample analyses ~~[-or]~~ documented generator knowledge of the halogen content of the used oil, or both, will be used to make this determination.

(2) If sample analyses are used to make this determination, the plan shall specify:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in ~~[Section]~~ R315-50-6 ~~[,] which incorporates by reference 40 CFR 261, Appendix I~~; or

(B) A method shown to be equivalent under ~~[Section]~~ R315-2-15;

(ii) The frequency of sampling to be performed, and whether the analysis will be performed on ~~[-]site or off~~ ~~[-]site~~; and

(iii) The methods used to analyze used oil for the parameters specified in ~~[Section]~~ R315-15-5.4; and

(3) The type of information that will be used to determine the halogen content of the used oil.

(b) On-specification used oil fuel in ~~[Section]~~ R315-15-7.3. At a minimum, the plan shall specify the following if ~~[Section]~~ R315-15-7.3 is applicable:

(1) Whether sample analyses or other information will be used to make this determination;

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in ~~[Section]~~ R315-50-6, which incorporates by reference 40 CFR 261, Appendix I; or

(B) A method shown to be equivalent under ~~[Section]~~ R315-2-15;

(ii) Whether used oil will be sampled and analyzed prior to or after any processing/re-refining;

(iii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iv) The methods used to analyze used oil for the parameters specified in ~~[Section]~~ R315-15-7.3.

(3) The type of information that will be used to make the on-specification used oil fuel determination.

5.7 TRACKING

(a) Acceptance. Used oil processors/re-refiners shall keep a written record of each used oil shipment accepted for processing/re-refining. These records ~~may~~ shall take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the processor/re-refiner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(3) The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(5) The quantity of used oil accepted; ~~and~~

(6) The date of acceptance; and

(7) Written documentation that the processor/re-refiner has met the rebuttable presumption requirements of R315-15-5.4 and the PCB testing requirements of R315-15-18.

(b) Delivery. Used oil processor/re-refiners shall keep a written record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(2) The name and address of the burner, processor/re-refiner, or disposal facility ~~which~~ that will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(4) The EPA identification number of the burner, processor/re-refiner, or disposal facility ~~which~~ that will receive the used oil;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(c) Record retention. The records described in paragraphs (a) and (b) of this section shall be maintained for at least three years at the permitted facility or other location approved by the Director.

5.8 OPERATING RECORD AND REPORTING

(a) Operating record.

(1) The owner or operator of the processor/re-refiner facility shall keep a written operating record at the facility.

(2) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(i) Records and results of used oil analyses performed as described in the analysis plan required under R315-15-5.6;

(ii) Summary reports and details of all incidents that require implementation of the contingency plan as specified in ~~[Subsection]~~ R315-15-5.3(b); and

(iii) Records detailing the mass balance of wastewater entering and leaving the facility. This includes wastewater discharge records. This does not include water used in non-contact cooling processes.

(b) Reporting. A used oil processor/re-refiner shall report annually March 1 to the ~~[Executive Secretary]~~ Director ~~[by March 1 of each year]~~. The report shall be consistent with the requirements of ~~[Subsection]~~ R315-15-13.5(d).

5.9 OFF-SITE SHIPMENTS OF USED OIL

Used oil processors/re-refiners who initiate shipments of used oil off-site shall ship the used oil using a used oil transporter who has obtained an EPA identification number, a permit, and current used oil handler certificate issued by the Director.

5.10 ACCEPTANCE OF OFF-SITE USED OIL

Processors accepting used oil from off site shall ensure that transporters delivering used oil to their facility have obtained a current used oil transporter permit and an EPA identification number.

5.1[0] MANAGEMENT OF RESIDUES

Owners and operators who generate residues from the storage, processing, or re-refining of used oil shall manage the residues as specified in ~~[Subsection]~~ R315-15-1.1(e).

R315-15-6. Standards for Used Oil Burners Who Burn Used Oil for Energy Recovery.

6.1 APPLICABILITY

(a) General. A used oil burner is a person who burns used oil for energy recovery. An on-specification used oil burner is a person who only burns used oil that meets the specifications of R315-15-1.2. Used oil that has not been determined to be on-specification used oil by a Utah-registered marketer shall be managed as off-specification used oil except as described R315-15-2.4. [The requirements of Section R315-15-6 apply to used oil burners except as specified in paragraphs (a)(1) through (a)(3) of this section.] An off-specification used oil burner is a person who burns [facility where] used oil not meeting the specifications found [requirements] in ~~[Section]~~ R315-15-1.2 [is burned] for energy recovery ~~[in devices identified in Subsection R315-15-6.2(a)]~~. Facilities burning used oil for energy recovery under the following conditions are ~~not~~ subject to ~~[Section R315-15-6]~~ R315-15-6.1(a) and (b) and R315-15-6.2(b) and (c), but not other portions of R315-15-6:

(1) The used oil is burned by the generator in an on-site space heater under the provisions of ~~[Section]~~ R315-15-2.4;

(2) The used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing; or

(3) The used oil burned by the facility is obtained from a Utah-registered marketer who claims and has demonstrated that the used oil meets the used oil fuel specifications set forth in ~~[Section]~~ R315-15-1.2 and who delivers the used oil in the manner set forth in ~~[Subsection]~~ R315-15-7.5(b).

(b) Other applicable provisions. In addition to the requirements of R315-15-6.1(a), used [Used] oil burners who conduct the following activities are ~~also~~ subject to the requirements ~~[of other applicable provisions]~~ of ~~[Rule]~~ R315-15 as indicated below.

(1) Burners who generate used oil shall ~~[also]~~ comply with ~~[Section]~~ R315-15-2;

(2) Burners who transport used oil shall ~~[also]~~ comply with ~~[Section]~~ R315-15-4;

(3) Except as provided in ~~[Subsection]~~ R315-15-6.2(b)(2), burners who process or re-refine used oil shall ~~[also]~~ comply with Section R315-15-5;

(4) Burners who direct shipments of off-specification used oil from their facility to an off-specification used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in ~~[Section]~~ R315-15-1.2 shall ~~[also]~~ comply with ~~[Sections]~~ R315-15-7 and R315-15-13.7;

(5) Burners who dispose of used oil shall comply with ~~[Section]~~ R315-15-8; and

(6) Burners who collect used oil ~~[must]~~ shall also comply with the collection center requirements in ~~[Section]~~ R315-15-3. Burners ~~[who]~~ may only burn used oil collected from other generators if that used oil has been certified to be on-specification used oil by a Utah-registered used oil marketer in compliance with ~~[must become marketers and comply with the provisions of Section]~~ R315-15-7. Burners who collect and burn used oil that is ~~not~~ ~~[does not fall into the categories of]~~ "do-it-yourselfer" or farmer-generated ~~[used oil]~~ as described in ~~[Subsections]~~ R315-15-2.1(a)(1) and (4), ~~[must also become]~~ shall obtain a used oil marketer[s] registration before burning such oil and shall ~~[and]~~ comply with the provisions of ~~[Section]~~ R315-15-7.

(7) Tanks, containers, and piping that previously contained listed hazardous waste. Unless tanks, containers, and piping that previously contained listed hazardous waste are decontaminated as described in R315-2-7 prior to storing used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste and used oil mixture is determined not to be hazardous waste.

(8) Tanks, containers, and piping that previously contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to transfer of used oil, the used oil is considered to have been mixed with the PCB-contaminated material and shall be managed as PCB-contaminated material in accordance with R315-15-18.

(c) Off-specification used oil burner permit. Off-specification used oil burners shall obtain a permit from the Director prior to burning off-specification used oil unless exempted by R315-15-13.6(b)(5). An application for a permit shall contain the information required by R315-15-13.6(b). Off-specification used oil burners shall also obtain a used oil handler certificate in accordance with R315-15-13.8.

(d) Testing of used oil fuel for PCBs. Used oil to be burned for energy recovery is presumed to contain quantifiable levels, 2 ppm or greater, of PCBs unless a used oil marketer obtains laboratory analyses that the used oil fuel does not contain quantifiable levels of PCBs. The person who first claims that the used oil fuel does not contain a quantifiable level of PCBs shall obtain analyses or other information to support the claim, as described in R315-15-18.

~~_____ (e) Specification fuel. Persons burning used oil that meets the used oil fuel specifications of Section R315-15-1.2 under the conditions described in Subsections R315-15-6.1(a)(1) through (3) are not subject to Section R315-15-6, provided that the burner complies~~

~~with the requirements of Section R315-15-7 and Subsection R315-15-13.6(a).~~

6.2 RESTRICTIONS ON BURNING

(a) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in ~~[Section]~~ R315-1-1(b), which incorporates by reference 40 CFR 260.10;

(2) Boilers, as defined in ~~[Section]~~ R315-1-1(b), which incorporates by reference 40 CFR 260.10, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Used oil-fired space heaters provided that the burner meets the provisions of ~~[Section]~~ R315-15-2.4; or

(3) Hazardous waste incinerators subject to regulation under ~~[Section]~~ R315-7-22 or R315-8-15.

(b)(1) With the ~~[following]~~ exception of the aggregation activity described in R315-15-6.2(b)(2), ~~[off-specification]~~ used oil burners may not process used oil unless they also comply with ~~[the requirements of Section]~~ R315-15-5.

(2) Off-specification used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of ~~[producing]~~ marketing on-specification used oil without also complying with the processor/re-refiner requirements in ~~[Section]~~ R315-15-5.

(c) Burning of hazardous waste. Used oil burners may only burn hazardous waste if they are permitted to do so by the Director.

6.3 NOTIFICATION FOR OFF-SPECIFICATION USED OIL BURNERS

(a) Identification numbers. Off-specification used oil burners ~~[which]~~ who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. An off-specification used oil burner who has not received an EPA identification number may obtain one by notifying the ~~[Executive Secretary]~~ Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12. ~~[To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170]; or~~

(2) A letter to the ~~[Division]~~ Director requesting an EPA identification number. The letter shall include the following information:

(i) Burner company name;

(ii) Owner of the burner company;

(iii) Mailing address for the burner;

(iv) Name and telephone number for the burner point of contact;

(v) Type of used oil activity; and

(vi) Location of the burner facility.

6.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), a used oil burner shall determine

whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The used oil burner shall determine if the used oil contains above or below 1,000 ppm total halogens by[;]

(1) Testing the used oil;

(2) Applying documented generator knowledge of the halogen content of the used oil in light of the materials or processes used; or

(3) Using information provided by the processor/re-refiner, if the used oil has been received from a processor/re-refiner subject to regulation under [~~Section~~]R315-15-5.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in [~~Section~~] R315-2-10. The owner or operator may rebut the 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. [~~SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.~~]

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed[;] through a tolling arrangement, as described in [~~Subsection~~] 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.

(2) 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.

(d) Record retention. Records of analyses conducted or information used to comply with [~~paragraphs~~]R315-15-6.4(a), (b), and (c) [~~of this section~~]shall be maintained at the burner facility or another facility approved by the Director[~~by the burner~~] for at least 3 years.

6.5 USED OIL STORAGE AT OFF-SPECIFICATION USED OIL BURNER FACILITIES

Off-specification used[~~Used~~] oil burners are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR part 112, in addition to the requirements of [~~Section~~]R315-15-6. Used oil burners are also subject to the standards and requirements of [~~Rules~~] R311-200 through R311[5]-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of [~~Section~~]R315-15-6.

(a) Storage units. Off-specification used[~~Used~~] oil burners may not store used oil in units other than tanks, containers[;] or units subject to regulation under [~~Rule~~]R315-7 [~~or~~]and R315-8.

(b) Condition of units. Containers and aboveground tanks used to store oil at off-specification used oil burner facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking[~~(no visible leaks)~~].

(c) Secondary containment. Containers[~~, existing aboveground tanks,~~] and [~~new~~]aboveground tanks used to store off-specification used oil at burner facilities, including their pipe connections and valves, shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of[~~, at a minimum~~]:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of [~~existing~~]aboveground tanks meet the ground.

(iii) Other equivalent secondary containment approved by the Director.

(2) The entire containment system, including walls and floor, shall be of sufficient extent and sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) Any accumulation of water, used oil, or other liquid shall be removed from secondary containment within 24 hours of discovery.

(4) Used oil shall not be stored or allowed to accumulate in sumps and similar water-containment structures at the facility. Any used oil in sumps and similar water-containment structures shall be removed within 24 hours of its discovery.

(d) Labels.

(1) Containers and aboveground tanks used to store off-specification used oil at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer off-specification used oil into underground storage tanks at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of [~~Section~~] R311-202-1, [~~which incorporates by reference 40 CFR 280, Subpart F,~~]a burner shall comply with [~~Section~~]R315-15-9.

6.6 TRACKING FOR OFF-SPECIFICATION USED OIL FACILITIES

(a) Acceptance. Off-specification used oil burners shall keep a record of each off-specification used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the burner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(3) The EPA identification number of the transporter who delivered the used oil to the burner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(5) The quantity of used oil accepted[~~and~~]

(6) The date of acceptance; and[;]

(7) Documentation demonstrating that the transporter has met the rebuttable presumption requirements of R315-15-6.4 and, where applicable, the PCB testing requirements of R315-15-18.

(b) Record retention. The records described in paragraph (a) of this section shall be maintained for at least three years.

6.7 NOTICES

(a) Certification. Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor/re-refiner, the burner shall provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying that:

(1) The burner has notified the ~~[Executive Secretary]~~ Director ~~[stating]~~ of the location and general description of ~~[his]~~ the burner's used oil management activities; and

(2) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in ~~[Subsection]~~ R315-15-6.2(a).

(b) Certification retention. The certification described in ~~[paragraph]~~ R315-15-6.7(a) ~~[of this section]~~ shall be maintained, at the permitted facility or other location approved by the Director, for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor/re-refiner.

6.8 MANAGEMENT OF RESIDUES AT OFF-SPECIFICATION USED OIL BURNER FACILITIES

Off-specification used oil ~~[B]~~ burners who generate residues from the storage or burning of used oil shall manage the residues as specified in ~~[Subsection]~~ R315-15-1.1(e).

6.9 ACCEPTANCE OF OFF-SITE USED OIL

Off-specification used oil burners accepting used oil from off-site shall ensure that transporters delivering used oil to their facility have obtained a current used oil transporter permit and an EPA identification number.

R315-15-7. Standards for Used Oil Fuel Marketers.

7.1 APPLICABILITY

(a) Any person who conducts either of the following activities is a used oil fuel marketer and is subject to the requirements of ~~[Sections]~~ R315-15-7 and R315-15-13.7:

(1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(2) First determines and claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in ~~[Section]~~ R315-15-1.2.

(b) The following persons are not used oil fuel marketers subject to ~~[Section]~~ R315-15-7:

(1) Used oil generators, and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors/re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processors/re-refiners who incidentally burn used oil are not marketers subject to ~~[Section]~~ R315-15-7;

(2) Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of ~~[Section]~~ R315-15-1.2.

(c) Any person subject to the requirements of ~~[Section]~~ R315-15-7 shall also comply with one of the following:

(1) ~~[Section]~~ R315-15-2 - Standards for Used Oil Generators;

(2) ~~[Section]~~ R315-15-4 - Standards for Used Oil Transporters and Transfer Facilities;

(3) ~~[Section]~~ R315-15-5 - Standards for Used Oil Processors and Re-refiners; or

(4) ~~[Section]~~ R315-15-6 - Standards for Used Oil Burners who Burn Off-Specification Used Oil for Energy Recovery.

(d) A person may not act as a used oil fuel marketer without receiving a registration number and a used oil handler certificate, both issued by the ~~[Executive Secretary]~~ Director as required by ~~[pursuant to Section]~~ R315-15-13.7 and R315-15-13.8.

7.2 PROHIBITIONS

A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

(a) Has an EPA identification number; and

(b) Burns the used oil in an industrial furnace or boiler identified in ~~[Subsection]~~ R315-15-6.2(a).

7.3 ON-SPECIFICATION USED OIL FUEL

(a) Analysis of used oil fuel. A used oil fuel marketer who is a used oil generator, transporter, transfer facility, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of ~~[Section]~~ R315-15-1.2 and the PCB requirements of R315-15-18 by performing analyses or obtaining copies of analyses or other information approved by the Director documenting that the used oil fuel meets the specifications. Used oil is not considered to be on-specification until it has been certified as such by a registered used oil fuel marketer in accordance with the used oil fuel marketer's analysis plan, approved by the Director.

(b) Record retention. A generator, transporter, transfer facility, processor/re-refiner, or burner who first certifies ~~[claims]~~ that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under ~~[Section]~~ R315-15-1.2 and the PCB requirements of R315-15-18 shall keep copies of analyses of the used oil, or other information used to make the determination, for three years.

7.4 NOTIFICATION

(a) Identification numbers. A used oil fuel marketer subject to the requirements of ~~[Section]~~ R315-15-7 who has not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) A marketer who has not received an EPA identification number may obtain one by notifying the ~~[Executive Secretary]~~ Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12 ~~[, which can be obtained by calling the Utah Division of Solid and Hazardous Waste at 801-538-6170];~~ or

(2) A letter to the ~~[Division]~~ Director requesting an EPA identification number. The letter shall include the following information:

(i) Marketer company name;

(ii) Owner of the marketer;

(iii) Mailing address for the marketer;

(iv) Name and telephone number for the marketer point of contact; and

(v) Type of used oil activity, e.g., generator directing shipments of off-specification used oil to a burner.

7.5 TRACKING

(a) Off-specification used oil delivery. Any used oil marketer who directs a shipment of off-specification used oil to a burner shall keep a record of each shipment of used oil to a used oil

burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

- (1) The name and address of the transporter who delivers the used oil to the burner;
 - (2) The name and address of the burner who will receive the used oil;
 - (3) The EPA identification number of the transporter who delivers the used oil to the burner;
 - (4) The EPA identification number of the burner;
 - (5) The quantity of used oil shipped; and
 - (6) The date of shipment.
- (b) On-specification used oil delivery. A generator, transporter, transfer facility, processor/re-refiner, or burner who first certifies ~~claims~~ that used oil that is to be burned for energy recovery meets the fuel specifications under ~~Section~~ R315-15-1.2 shall keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment shall include the following information:

- (1) The name and address of the facility receiving the shipment;
- (2) The quantity of used oil fuel delivered;
- (3) The date of shipment or delivery; and
- (4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specifications ~~as~~ required under ~~Subsection~~ R315-15-7.3(a) and the PCB requirements of R315-15-18.

(c) Record retention. The records described in R315-15-7.5 ~~paragraphs~~ (a) and (b) ~~of this section~~ shall be maintained for at least three years.

7.6 NOTICES

(a) Certification. Before a used oil generator, transporter, transfer facility, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he shall obtain a one-time written and signed notice from the burner certifying that:

- (1) The burner has notified the ~~Executive Secretary~~ Director stating the location and general description of used oil management activities; and
- (2) The burner has obtained an EPA identification number and, if the off-specification used oil is burned in Utah, an off-specification used oil burner permit and current used oil handler certificate from the Director; and

(~~2~~)³ The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in ~~Subsection~~ R315-15-6.2(a).

(b) Certification retention. The certification described in ~~paragraph~~ R315-15-7.6(a) of this section shall be maintained for three years, at the permitted facility or other location approved by the Director, from the date the last shipment of off-specification used oil is shipped to the burner.

7.7 LABORATORY ANALYSES

Used oil marketers shall use a Utah-certified laboratory, as specified in R315-15-1.8, to satisfy the analytical requirements of R315-15-7.

R315-15-8. Standards for the Disposal of Used Oil.

8.1 APPLICABILITY

The requirements of ~~Section~~ R315-15-8 apply to all used oils that cannot be recycled and are therefore being disposed.

8.2 DISPOSAL

(a) Disposal of hazardous used oils. Used oils that are identified as a hazardous waste and that cannot be recycled in accordance with ~~Rule~~ R315-15 shall be managed in accordance with the hazardous waste management requirements of ~~Rules~~ R315-1 through R315-14, and R315-50.

(b) Disposal of nonhazardous used oils. Used oils that are not hazardous wastes and cannot be recycled under Rule R315-15 shall be disposed in a solid waste disposal facility meeting the applicable requirements of Rules R315-301 through R315-318 ~~and authorized by the Board~~.

8.3 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.

R315-15-9. Emergency Controls.

9.1 IMMEDIATE ACTION

In the event of a release of used oil, the person responsible for the material at the time of the release shall immediately:

(a) Take appropriate action to minimize the threat to human health and the environment.

(1) Stop the release;

(2) Contain the release;

(3) Clean up and manage properly the released material as described in R315-15-9.3; and

(4) If necessary, repair or replace any leaking used oil tanks, containers, and ancillary equipment prior to returning them to service.

(b) Notify the Utah State Department of Environmental Quality, 24-hour Answering Service, 801-536-4123 for used oil releases exceeding 25 gallons, or smaller releases that pose a potential threat to human health or the environment. Small leaks and drips from vehicles are considered de minimis and are not subject to the release clean-up provisions of R315-15-9.

(c) Provide the following information when reporting the release:

(1) Name, phone number, and address of person responsible for the release.

(2) Name, title, and phone number of individual reporting.

(3) Time and date of release.

(4) Location of release--as specific as possible including nearest town, city, highway, or waterway.

(5) Description contained on the manifest and the amount of material released.

(6) Cause of release.

(7) Possible hazards to human health or the environment and emergency action taken to minimize that threat.

(8) The extent of injuries, if any.

(d) An air, rail, highway, or water transporter who has discharged used oil shall:

(1) Give notice, if required by 49 CFR 171.15 to the National Response Center, <http://nrc.uscg.mil/nrchp.html>, 800-424-8802 or 202-426-2675; and

(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(e) A water, bulk shipment, transporter who has discharged used oil shall give the same notice as required by 33 CFR 153.203 for oil and hazardous substances.

9.2 EMERGENCY CONTROL VARIANCE

If a release of used oil requires immediate removal to protect human health or the environment, as determined by the ~~[Executive Secretary]~~Director, a variance to the used oil transporter permit and used oil handler certificate requirement and the US EPA identification number requirement for used oil transporters may be granted by the ~~[Executive Secretary]~~Director ~~[to the EPA Identification Number requirement for used oil transporters]~~ until the released material and any residue or contaminated soil, water, or other material resulting from the release no longer presents an immediate hazard to human health or the environment, as determined by the ~~[Executive Secretary]~~Director.

9.3 RELEASE CLEAN-UP

The person responsible for the material at the time of the release shall clean up all the released material and any residue or contaminated soil, water or other material resulting from the release or take action as may be required by the ~~[Executive Secretary]~~Director so that the released material, residue, or contaminated soil, water, or other material no longer presents a hazard to human health or the environment. The Director may require releases to be cleaned up to standards found in US EPA Regional Screening Levels. The cleanup or other required actions shall be at the expense of the person responsible for the release.

9.4 REPORTING

Within 15 days after any release of used oil that is reported under R315-15-9.1(b), the person responsible for the material at the time of the release shall submit to ~~[the Board or]~~ the ~~[Executive Secretary]~~Director a written report ~~[which]~~that contains the following information:

- (a) The person's name, address, and telephone number;
- (b) Date, time, location, and nature of the incident;
- (c) Name and quantity of material(s) involved;
- (d) The extent of injuries, if any;
- (e) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
- (f) The estimated quantity and disposition of recovered material that resulted from the incident.

R315-15-10. Financial Requirements.

(a) Used oil activities. An owner or operator of an off-specification burner facility, transportation facility, processing~~[-]~~/ re-refining facility, or transfer facility, or a group of such facilities, is financially responsible for:

- (1) cleanup and closure costs~~[-]~~;
- (2) general liabilities, including operation of motor vehicles, worker compensation and contractor liability~~[-]~~; and
- (3) environmental pollution legal liability for bodily injury or property damage to third parties resulting from sudden or non-sudden used oil releases.

~~(i)(A)~~ The owner or operator of a permitted used oil facility or operation shall present evidence satisfactory to the ~~[Executive Secretary]~~Director of its ability to meet these financial requirements.

~~(B)~~ The owner or operator shall present with its permit application the information the ~~[Executive Secretary]~~Director requires to demonstrate its general comprehensive liability coverage.

~~(C)~~ The owner or operator shall use the financial mechanisms described in ~~[Section]~~R315-15-12 to demonstrate its ability to meet the financial requirements of ~~[Subsection]~~R315-15-10(a)(1) and (a)(3).

~~(ii)~~ In approving the financial mechanisms used to satisfy the financial requirements, the ~~[Executive Secretary]~~Director will take into account existing financial mechanisms already in place by the facility if required by ~~[Sections]~~R315-7-15, R315-8-8, and R311-201-6. Additionally, the ~~[Executive Secretary]~~Director will consider other relevant factors in approving the financial mechanisms, such as the volumes of used oil handled and existing secondary containment.

~~(iii)~~ Financial responsibility, environmental pollution legal liability and general liability coverage shall be provided to the ~~[Executive Secretary]~~Director as part of the permit application and approval process and shall be maintained until released by ~~[Executive Secretary]~~Director.

~~(iv)~~ Changes in extent, type, or amount of the environmental pollution legal liability and financial responsibility shall be considered a permit modification requiring notification to and approval from the ~~[Executive Secretary]~~Director.

~~(b)(1)~~ Environmental pollution legal liability coverage for third party damages at used oil facilities. Each used oil processor, re-refiner, transfer facility, and off-specification burner shall obtain and maintain environmental pollution liability coverage for bodily injury and property damage to third parties resulting from sudden and non-sudden accidental releases of used oil at its facility. This liability coverage shall be maintained for the duration of the permit or until released by the ~~[Executive Secretary]~~Director as provided for in ~~R315-15-10~~~~[this section.]~~

~~(2)~~ Changes in extent, type, or amount of the financial mechanism will be considered a permit modification requiring notification to and approval from the ~~[Executive Secretary]~~Director. The minimum amount of environmental pollution legal liability coverage using an assurance mechanism as specified in this section for third-party damages shall be:

~~(+)~~~~i~~ For operations where individual volumes of used oil are greater than 55 gallons, such as tanks, storage vessels, used oil processing equipment, and that are raised above grade-level sufficiently to allow for visual inspection of the underside for releases shall be required to obtain coverage in the amount of \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, exclusive of legal defense costs~~[-]~~ and

~~(2)~~~~ii~~ For operations in whole or part that do not qualify under ~~[Subsection]~~R315-15-10(b)(1), coverage shall be in the amount of \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, and \$3 million per occurrence for non-sudden releases, with an annual aggregate coverage of \$6 million, exclusive of legal defense costs~~[-]~~

~~(3)~~~~iii~~ For operations covered under ~~[Subsection]~~R315-15-10(b)(2), the owner or operator may choose to use a combined liability coverage for sudden and non-sudden accidental releases in the amount of \$4 million per occurrence, with an annual aggregate coverage of \$8 million, exclusive of legal defense costs.

(c) Used oil transporter environmental pollution legal liability coverage for third party damages. Each used oil transporter shall obtain environmental pollution legal liability coverage for bodily injury and property damage to third parties covering sudden accidental releases of used oil from its vehicles and other equipment and

containers used during transit, loading, and unloading in Utah, and shall maintain this coverage for the duration of the permit or until released by the ~~[Executive Secretary]~~ Director as provided for ~~R315-15-10~~ ~~[in this section]~~. The minimum amount of the coverage for used oil transporters shall be \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, exclusive of legal defense costs. Changes in extent, type, or amount of the liability coverage shall be considered a permit modification requiring notification to and approval from the ~~[Executive Secretary]~~ Director.

(d) An owner or operator responsible for cleanup and closure under ~~[Section]~~ R315-15-11 or environmental pollution legal liability for bodily injury and property damage to third parties under ~~[Subsections]~~ R315-15-10(b) and (c) shall demonstrate its ability to satisfy its responsibility to the ~~[Executive Secretary]~~ Director through the use of an acceptable financial assurance mechanism indicated under ~~[Section]~~ R315-15-12.

(e) Used Oil Collection Centers. Except for DIYers, who are subject to Utah Code Annotated 19-6-718, [A] an owner of a used oil collection center shall be subject to the same liability requirements as a permitted facility under ~~[Subsection]~~ R315-15-10(a) and (b) unless these requirements are waived by the ~~[Executive Secretary]~~ Director. [Pursuant] In accordance with [to Section] Utah Code Annotated 19-6-710, the [Executive Secretary] Director may waive the requirement of proof of liability insurance or other means of financial responsibility that may be incurred in collecting or storing used oil if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system;

(3) The storage tank or container is clearly labeled with the words "Used Oil";

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received; and

(5) Oil sorbent material is readily available on site for immediate cleanup of spills.

(f) The ~~[Executive Secretary]~~ Director shall ~~[release]~~ waive an owner or operator from its existing financial responsibility mechanism as described in ~~[Section]~~ R315-15-10 when:

(1) The ~~[Executive Secretary]~~ Director approves an alternative mechanism;

(2) The owner or operator has achieved cleanup and closure according to ~~[Section]~~ R315-15-11; or

(3) The ~~[Executive Secretary]~~ Director determines that financial responsibility is no longer applicable under ~~[Rule]~~ R315-15.

(g) State of Utah and Federal government used oil permittees are exempt from the requirements of ~~[Section]~~ R315-15-10.

R315-15-11. Cleanup and Closure.

11.1 The owner or operator of a used oil collection, aggregation, transfer, processing/re-refining, or off-specification used oil burning facility shall remove all used oil and used oil residues from the site of operation and return the site to a post-operational land use in a manner that:

(a) Minimizes the need for further maintenance;

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of used oil, used oil constituents, leachate, contaminated runoff, or used oil decomposition products to the ground or surface waters, or to the atmosphere; and

(c) Complies with the closure requirements of ~~[Section]~~ R315-15-11 or supplies evidence acceptable to the ~~[Executive Secretary]~~ Director demonstrating a closure mechanism meeting the requirements of ~~[Section]~~ R315-7-15[;] and R315-8-8[; or 311-201-6].

(d) The permittee shall be responsible for used oil, used oil contaminants, or used oil residual materials that have been discharged or migrate beyond the facility property boundary. The permittee is not relieved of all or any responsibility to cleanup, remedy or remediate a release that has discharged or migrated beyond the facility boundary where off-site access is denied. When off-site access is denied, the permittee shall demonstrate to the satisfaction of the ~~[Executive Secretary]~~ Director that, despite the permittee's best efforts, the permittee was unable to obtain the necessary permission to undertake the actions to cleanup, remedy or remediate the discharge or migration. The responsibility for discharges or migration beyond the facility property boundary does not convey any property rights of any sort, or any exclusive privilege to the permittee.

11.2 CLEANUP AND CLOSURE PLAN

(a) Written plan.

(1) The owner or operator of a used oil transfer, off-specification burner, or processing/re-refining facility shall have a written cleanup and closure plan. The cleanup and closure plan shall be submitted to the ~~[Executive Secretary]~~ Director for approval as part of the permit application.

(2) When physical or operational conditions at the facility change that result in a change in the nature or extent of cleanup and closure or an increase in the estimated costs of cleanup and closure, the owner or operator shall submit a modified plan for review and approval by the ~~[Executive Secretary]~~ Director.

(3) Changes in the amount or face value of a financial mechanism that are the result of the annual inflation update from the application of the implicit price deflator multiplier to a permit cleanup and closure plan cost estimate shall not require approval by the ~~[Executive Secretary]~~ Director.

(4) The adjustment shall be made by recalculating the cleanup closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce, Bureau of Economic Analysis in its Survey of Current Business as specified in ~~[Section]~~ 40 CFR 264.145(b)(1) and (2). The inflation factor is the incremental increase of the latest published annual Deflator to the Deflator for the previous year divided by the previous year Deflator. The first adjustment is made by multiplying the cleanup closure cost estimate by the inflation factor. The result is the adjusted cleanup closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted cleanup closure cost estimate by the latest inflation factor.

(b) Content of plan. The plan shall identify steps necessary to perform partial or final cleanup and closure of the facility at any point during its active life.

(1) The cleanup and closure plan shall be based on third-party, direct-estimated costs or on third-party costs using RS Means methods, applications, procedures, and use cost values applicable to the location of the facility and include, at least:

(i) A description of how each used oil management unit at the facility will be closed.

(ii) A description of how final cleanup and closure of the facility will be conducted. The description shall identify the maximum extent of the operations ~~which~~ that will be cleaned, closed, or both during the active life of the facility.

(iii) ~~An~~ The highest cost estimate of the maximum inventory of used oil to be stored onsite at any one time during the life of the facility and a detailed description of the methods to be used during partial cleanup and closure final cleanup and closure, or both, including, but not limited to, methods for removing, transporting, or disposing of all used oil, and identification of the off-site used oil facilities to be used, if applicable.

(iv) A detailed description of the steps needed to remove or decontaminate all used oil and used oil residues and contaminated containment system components, equipment, structures, and soils during partial or final cleanup and closure, including procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy closure. This description shall address the management and disposal of all residues resulting from the decontamination activity, including, but not limited to, rinse waters, rags, personal protective equipment, small hand implements, vehicles, and mechanized equipment.

(v) A detailed description of other activities necessary during the cleanup and closure period to ensure that all partial closures shall satisfy the final cleanup and closure plan.

(vi) A cleanup and closure cost estimate and a mechanism for financial responsibility to cover the cost of cleanup and closure[-]

(vii) State of Utah and Federal government used oil permittees are exempt from the requirements of ~~Subsection~~ Section R315-15-11(b)(1)(vi).

(2) The owner or operator shall update its cleanup and closure plan cost estimate and provide the updated estimate to the ~~Executive Secretary~~ Director, in writing, within 60 days following a facility modification that causes an increase in the amount of the financial responsibility required under ~~Section~~ Section R315-15-10. Within 30 days of the ~~Executive Secretary's~~ Director's approval of a permit modification for the cleanup and closure plan that would result in an increased cost estimate, the owner or operator shall provide to the ~~Executive Secretary~~ Director:

(i) evidence that the financial assurance mechanism amount or value includes the cleanup and closure cost estimate increase; or

(ii) other mechanisms covering the increased closure plan cost estimate and a summary document indicating the multiple financial mechanisms, by mechanism name, account number, and the amounts to satisfy ~~Sections~~ Section R315-15-10 and 11.

(c) The owner or operator shall update the cleanup and closure cost estimate to adjust for inflation and include the updated estimate in the permitted facility's annual report due by March 1st of each year, using either:

(1) the multiplier formed from the gross domestic product implicit price deflator ratio of the current calendar year to the past calendar year as published by the federal government Bureau of Economic Analysis; or

(2) new cleanup and closure cost estimate from the recalculation of the cleanup and closure plan costs to account for all changes in scope and nature of the facility or facilities, in current dollars.

11.3 TIME ALLOWED TO INITIATE CLOSURE

(a) The owner or operator shall initiate closure in accordance with the approved cleanup and closure plan and notify the ~~Executive Secretary~~ Director ~~[of this fact]~~ that closure has been initiated:

(1) Within 90 days after the owner or operator receives the final volume of used oil; or

(2) ~~The Executive Secretary~~ Within 90 days after the Director revokes the facility's used oil permit.

(b) During the cleanup and closure period or at any other time, if the ~~Executive Secretary~~ Director determines that the owner or operator has failed to comply with ~~Rule~~ Rule R315-15, the ~~Executive Secretary~~ Director may, after 30 days ~~following~~ on written notice to the owner or operator, draw upon the financial mechanism associated with the cleanup and closure plan for the facility or facilities covered by the financial responsibility requirements of ~~Section~~ Section R315-15-10.

11.4 CERTIFICATION OF CLOSURE

(a) Within 60 days of completion of cleanup and closure, the owner or operator of a permitted used oil facility shall submit to the ~~Executive Secretary~~ Director, by registered mail, a certification that the used oil facility has been cleaned and closed in accordance with the specifications in the approved cleanup and closure plan. The certification shall be signed by the owner or operator and by an independent, Utah-registered professional engineer.

(b) The ~~Executive Secretary~~ Director shall make the determination of whether cleanup and closure has been completed according to the cleanup and closure plan and ~~Rule~~ Rule R315-15.

R315-15-12. Financial Assurance.

12.1 DEFINITIONS

For the purposes of ~~Section~~ Section R315-15-12, the following definitions apply:

(a) "Existing used oil facility" means any used oil transfer facility, off-specification burner, or used oil processing/re-refining facility in operation on July 1, 1993 under a used oil operating permit issued by the Division of Oil, Gas and Mining and in effect on or before June 30, 1993. An existing used oil facility is also required to obtain a permit from the ~~Executive Secretary~~ Director in accordance with ~~Section~~ Section R315-15-13.

(b) "New used oil facility" means any used oil transfer, off-specification burner, or used oil processing/re-refining facility that was not in operation as a used oil facility on July 1, 1993, and received an operating permit in accordance with ~~Section~~ Section R315-15-13 from the ~~Executive Secretary~~ Director after July 1, 1993.

(c) "Financial assurance mechanism" means "reclamation surety" as used in ~~Sections~~ Utah Code Annotated 19-6-709 and 19-6-710 of the Used Oil Management Act.

12.2 APPLICABILITY

(a) The owner or operator of an existing or new used oil facility requiring a permit under ~~Section~~ Section R315-15-13 shall establish a financial assurance mechanism as evidence of financial responsibility under ~~Section~~ Section R315-15-10 sufficient to assure cleanup and closure of the facility in conformance ~~with~~ with ~~Subsection~~ Subsection R315-15-11.1 with one or more of the financial assurance mechanisms of ~~Subsection~~ Section R315-15-12.3 prior to receiving a permit from the ~~Executive Secretary~~ Director.

(b) Any increase in capacity to store or process used oil at a used oil facility permitted by the ~~Executive Secretary~~ Director, above the storage or processing capacity identified in the permit application

approved by the ~~[Executive Secretary]~~Director, shall require the owner or operator of the permitted used oil facility to increase the amount or face value of the financial assurance mechanism to meet the additional capacity. The additional amount or increase in face value of financial assurance mechanism shall be in place and effective before operation of the increased storage or processing capacity and shall meet the requirements of ~~[Subsections]~~R315-15-12.3 and R315-15-12.4.

(c) DIYer used oil collection centers, generator used oil collection centers, and used oil aggregation points are not required to post a financial assurance mechanism, but are subject to the cleanup and closure requirements of ~~[Sections]~~R315-15-10 and R315-15-11 unless they have received a waiver in writing from the ~~[Executive Secretary]~~Director under Subsection 12.3 as identified in R315-15-10(e).

12.3 FINANCIAL ASSURANCE MECHANISMS

(a) Any financial assurance mechanism used to show financial responsibility under ~~[Sections]~~R315-15-10 and 11 for an existing or new used oil facility shall:

(1) be legally valid, binding, and enforceable under Utah and federal law;

(2) be approved by the ~~[Executive Secretary]~~Director;

(3) ensure that funds will be available in a timely fashion for:

(i) completing all cleanup and closure activities indicated in the closure plan of the permit approved by the ~~[Executive Secretary]~~Director; and

(ii) environmental pollution legal liability for third party damages for bodily injury and property damage resulting from a sudden or non-sudden accidental release of used oil from or arising from permitted operations; and

(4) require a written notice sent by certified mail to the ~~[Executive Secretary]~~Director 120 days prior to cancellation or termination of the financial mechanism.

(5) be updated each year to adjust for inflation, using either:

(i) the gross domestic product implicit price deflator ratio of the increase of the current calendar year to the past calendar year or

(ii) a new estimated cleanup and closure cost estimate recalculated to account for all changes in scope and nature of the permitted operation.

(b) The owner or operator of an existing or new used oil facility shall establish a financial assurance mechanism for cleanup and closure by one of the following mechanisms and shall submit a signed original or an original signed duplicate of the financial assurance mechanism to the ~~[Executive Secretary]~~Director for approval as part of the permit application:

(1) Trust Fund.

(i) The trustee shall be an entity ~~[which]~~that has the authority to act as a trustee and whose operations are regulated and examined by a federal or state agency.

(ii) A signed original or an original signed duplicate of the trust agreement and accompanied by a formal certification of acknowledgement shall be submitted to the ~~[Executive Secretary]~~Director.

(iii) For trust funds that are fully funded at the time of permit approval, an annual trust valuation shall be certified and submitted to the Director. The permittee shall provide evidence, annually, upon the anniversary of the trust agreement, that the trust remains fully funded.

(iv) For trust funds not fully funded at the time of permit approval by the ~~[Executive Secretary]~~Director, incremental payments

into the trust fund shall be made annually by the owner or operator to fully fund the trust within five years of the ~~[Executive Secretary's]~~Director's approval of the permit as follows:

(A) initial payment value shall be the initial cleanup and closure cost estimate value divided by the pay-in period, not to exceed five years, and

(B) next payment value shall be the difference of the approved current cleanup and closure cost estimate less the trust fund value, all divided by the remaining number of years in the pay-in period, and

(C) subsequent next payments shall be made into the trust fund annually on or before the anniversary date of the initial payment made into the trust fund and reported in accordance with the approved trust agreement, and

(D) no later than 30 days after the last incremental payment to fully fund the trust, the permittee shall provide proof to the ~~[Executive Secretary]~~Director ~~[in writing]~~ that the trust fund has been fully funded according to the current permitted cleanup and closure cost estimate.

(E) The facility shall submit an annual valuation of the trust to the Director on or before the anniversary date of the trust.

~~[(i)v] For a new used oil facility, the payment into the trust fund shall be made before the initial receipt of used oil.~~

~~[(v) For an existing used oil facility, the payment into the trust fund shall be made on or before April 1, 1994.]~~

(vi) The owner or operator, or other person authorized to conduct cleanup and closure activities may request reimbursement from the trustee for cleanup and closure completed when approved in writing by the ~~[Executive Secretary]~~Director.

(vii) The request for reimbursement may be granted by the trustee as follows:

(A) only if sufficient funds exist to cover the reimbursement request; and

(B) if justification and documentation of the cleanup and closure expenditures are submitted to and approved by the ~~[Executive Secretary]~~Director in writing prior to the trustee granting reimbursement.

(viii) The ~~[Executive Secretary]~~Director may cancel the incremental trust funding option at any time and require the permittee to provide either a fully funded trust or other cleanup and closure financial mechanism as provided in ~~[Section]~~R315-15-12 under the following conditions:

(A) upon the insolvency of the permittee, or

(B) when a violation of ~~[Sections]~~R315-15-10, 11 or 12 has been determined.

(ix) The trust agreement shall follow the wording provided by the ~~[Executive Secretary]~~Director ~~[found]~~as identified in [Subsection]R315-15-17.2.

(2) Surety Bond Guaranteeing Payment.

(i) The bond shall be effective ~~[as follows]:~~

~~[(A) For a new used oil facility,]~~before the initial receipt of used oil, ~~[; or]~~

~~[(B) For an existing used oil facility, on or before April 1, 1994.]~~

(ii) The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator shall notify the ~~[Executive Secretary]~~Director that a copy of the bond has been placed in the operating record.

(iii) The penal sum of the bond shall be in an amount at least equal to the cleanup and closure cost estimate developed under ~~[Subsection]R315-15-11.2.~~

(iv) Under the terms of the bond, the surety ~~[will] shall~~ become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(v) The owner or operator shall establish a standby trust agreement at the time the bond is established.

(A) The standby trust agreement shall meet the requirements of ~~[Subsection]R315-15-12.3(b)(1),~~ except for ~~[Subsections]R315-15-12.3(b)(1)(iii), (viii), and (ix)~~ and the standby trust agreement shall follow the wording provided by the ~~[Executive Secretary]Director~~ ~~[found] as identified~~ in ~~[Subsection]R315-15-17.14.~~

(B) Payment made under the terms of the bond shall be deposited by the surety directly into the standby trust agreement and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the ~~[Executive Secretary]Director.~~

(vi) The surety bond shall automatically be renewed on the expiration date unless cancelled by the surety company 120 days in advance by sending both the bond applicant and the ~~[Executive Secretary]Director~~ a written cancellation notice by certified mail.

(vii) The bond applicant may terminate the bond for nonpayment of fee by providing written notice, by certified mail, to the ~~[Executive Secretary]Director~~ 120 days prior to termination.

(viii) Any change to the form or content of the surety bond shall be submitted to the ~~[Executive Secretary]Director~~ for approval and acceptance.

(ix) The surety bond shall follow the language provided by the ~~[Executive Secretary]Director~~ found in ~~[Subsection]R315-15-17.3.~~

(3) Letter of Credit

(i) The letter of credit shall be effective ~~[as follows:~~

~~_____ (A) For a new used oil facility,] before the initial receipt of used oil[; or]~~

~~_____ (B) For an existing used oil facility, on or before April 1, 1994.~~

]
(ii) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a state or federal agency.

(iii) The letter of credit shall be issued in an amount at least equal to the cleanup and closure cost estimate developed under ~~[Subsection]R315-15-11.2.~~

(iv) The owner or operator shall establish a standby trust agreement at the time the letter of credit is established.

(A) The standby trust agreement shall meet the requirements of ~~[Subsection]R315-15-12.3(b)(1),~~ except for ~~Subsections R315-15-12.3(b)(1)(iii), (viii), and (ix)~~ and the ~~[surety bond] standby trust agreement~~ shall follow the language incorporated by reference in ~~[Subsection]R315-15-17.14.~~

(B) Payment made under the terms of the letter of credit shall be deposited by the surety directly into the standby trust and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the ~~[Executive Secretary]Director.~~

(vi) The letter of credit shall follow the wording provided by the ~~[Executive Secretary]Director~~ as identified ~~[found] in~~ ~~[Subsection]R315-15-17.4.~~

(4) Insurance.

(i) The insurance shall be effective ~~as follows:~~

~~_____ (A) For a new used oil facility,] before the initial receipt of used oil[; or]~~

~~_____ (B) For an existing used oil facility, on or before April 1, 1994.~~

]
(C) Insurance coverage period shall be the earliest date of permit issuance or a retroactive date established by the earliest period of coverage for any financial assurance mechanism.

(ii) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(iii) The insurance policy shall guarantee that funds will be available to perform the cleanup and closure activities approved by the ~~[Executive Secretary]Director.~~

(iv) The policy shall guarantee that the insurer will be responsible for the paying out of funds to the owner or operator or person authorized to conduct the cleanup and closure activities, as approved by the ~~[Executive Secretary]Director,~~ up to an amount equal to the face amount of the policy. Payment of any funds by the insurer shall be made with the written concurrence of the ~~[Executive Secretary]Director.~~

(A) The Insurer shall establish at a standby trust agreement for only the benefit of the ~~[Executive Secretary]Director~~ when the ~~[Executive Secretary]Director~~ notifies the Insurer that the ~~[Executive Secretary]Director~~ is making a claim, as provided for in ~~[Rule]R315-15,~~ for cleanup and closure of a permitted used oil transfer, processor, re-refiner, or off-specification burner facility.

(B) The Insurer shall place the face value of the applicable coverage in the trust within ~~[thirty (30)]~~ days of establishing the standby trust agreement.

(C) The standby trust agreement shall meet the requirements of ~~[Subsection]R315-15-12.3(b)(1),~~ except for ~~[Subsections]R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (xi),~~ and the standby trust agreement shall follow the language provided by the ~~[Executive Secretary]Director~~ incorporated by reference in ~~[Subsection]R315-15-17.14.~~

(v) The insurance policy shall be issued for a face amount at least equal to the cleanup and closure cost estimate developed under ~~[Subsection]R315-15-11.2.~~

(vi) An owner or operator, or other ~~[authorized] person~~ ~~authorized by the Director,~~ may receive reimbursements for cleanup and closure activities completed if:

(A) the value of the policy is sufficient to cover the reimbursement request; and

(B) justification and documentation of the cleanup and closure expenditures are submitted to and approved by the ~~[Executive Secretary]Director,~~ prior to receiving reimbursement.

(vii) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator.

(viii) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the ~~[Executive Secretary]Director~~ 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator shall obtain an alternate financial assurance mechanism meeting the requirements for financial responsibility under ~~[Section]R315-15-10~~ and of this subsection within 60 days of notice of cancellation of the policy.

(ix) The policy coverage amount for cleanup and closure is exclusive of legal and defense costs.

(x) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

(xi) The Insurer as first-payer is liable for the payment of amounts within any deductible, retention, self-insured retention (SIR), or reserve applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible, retention, self-insured retention, or reserve for which coverage is otherwise demonstrated as specified in ~~[Section]~~R315-15-12.

(xii) Whenever requested by the ~~[Executive Secretary]~~Director, the Insurer agrees to furnish to the ~~[Executive Secretary]~~Director a signed duplicate original of the policy and all endorsements.

(xiii) Cancellation of the policy, whether by the Insurer, the Insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the used oil management facility, will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the ~~[Executive Secretary]~~Director for those facilities ~~[which]~~that are located in Utah.

(xiv) Any other termination of the policy will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the ~~[Executive Secretary]~~Director for those facilities ~~[which]~~that are located in Utah.

(xv) All policy provisions related to ~~[Rule]~~R315-15 shall be construed ~~[pursuant]~~in accordance with ~~[to]~~the laws of the State of Utah. In the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the Insured will submit to the jurisdiction of the appropriate court of the State of Utah, and will comply with all the requirements necessary to give such court jurisdiction. All matters arising hereunder, including questions related to the interpretation, performance and enforcement of this policy, shall be determined in accordance with the law and practice of the State of Utah (notwithstanding Utah conflicts of law rules).

(xvi) Endorsement(s) added to, or removed from the policy that have the effect of affecting the environmental pollution liability language, directly or indirectly, shall be approved in writing by the ~~[Executive Secretary]~~Director before said endorsement(s) become effective.

(xvii) Neither the Insurer nor the Insured shall contest the state of Utah's use of the drafting history of the insurance policy in a judicial interpretation of the policy or endorsement(s) to said policy.

(xviii) The Insurer shall establish a standby trust fund for the benefit of the ~~[Executive Secretary]~~Director at the time the ~~[Executive Secretary]~~Director first makes a claim against the insurance policy.

(A) The standby trust fund shall meet the requirements of ~~[Subsection]~~R315-15-12.3(b)(1), except for item ~~[Subsections]~~R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (ix) and the standby trust agreement shall follow the wording found in ~~[Subsection]~~R315-15-17.14.

(B) Payment made under the terms of the insurance policy shall be deposited by the Insurer as grantor directly into the standby trust fund and payments from the trust fund shall be approved by the trustee with the written concurrence of the ~~[Executive Secretary]~~Director.

(5) The owner or operator of an existing or new used oil facility may establish a financial assurance mechanism by a combination of the above mechanisms as approved by the ~~[Executive Secretary]~~Director.

(c) The owner or operator of an existing or new used oil facility or operation shall establish a financial assurance mechanism for bodily injury and property damage to third parties resulting from sudden and/or non-sudden accidental releases of used oil from a permitted used oil facility or operation as follows:

(1) An owner or operator that is a used oil processor, transfer facility, or off-specification burner, or a group of such facilities regulated under ~~[Rule]~~R315-15 shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and/or non-sudden accidental release of used oil arising from operations or operations of the facility or group of facilities shall have and maintain liability coverage in the amount as specified in ~~[Subsection]~~R315-15-10(b). This liability coverage shall be demonstrated by one or more of the financial mechanisms in ~~[Subsection]~~R315-15-12.3(c)(3).

(2) An owner or operator that is a used oil transporter regulated under ~~[Rule]~~R315-15, must demonstrate financial responsibility for bodily injury and property damage to third-parties resulting from sudden release of used oil arising from transit, loading and unloading, to or from facilities within Utah. The owner or operator shall maintain liability coverage for sudden accidental occurrences in the amount specified in ~~[Subsection]~~R315-15-10(c). This liability coverage shall be demonstrated by one or more of the financial mechanisms in ~~[Subsection]~~R315-15-12.3(c)(3).

(3) The owner or operator ~~[using insurance to]~~shall demonstrate compliance with ~~[Subsection]~~R315-15-10(b) or (c) ~~[shall use]~~by using one or more of the following financial assurance mechanisms:

(i) Insurance. The owner or operator shall follow the wording provided by the ~~[Executive Secretary]~~Director ~~[found]~~identified in ~~[Subsections]~~R315-15-17.5 through R315-15-17.9, as may be applicable.

(ii) Trust. The owner or operator shall follow the wording provided by the ~~[Executive Secretary]~~Director ~~[found]~~identified in ~~[Subsection]~~R315-15-17.12.

(iii) Surety Bond. The owner or operator shall follow the wording provided by the ~~[Executive Secretary]~~Director ~~[found]~~identified in ~~[Subsection]~~R315-15-17.11.

(iv) Letter of Credit. The owner or operator shall follow the wording provided by the ~~[Executive Secretary]~~Director ~~[found]~~identified in ~~[Subsection]~~R315-15-17.10.

(d) Adjustments by the ~~[Executive Secretary]~~Director. If the ~~[Executive Secretary]~~Director determines that the levels of financial responsibility required by ~~[Subsection]~~R315-15-10(b) or (c), as applicable are not consistent with the degree and duration of risk associated with used oil operations or facilities, the ~~[Executive Secretary]~~Director may adjust the level of financial responsibility required under ~~[Subsection]~~R315-15-10(b) or (c), as applicable, as may be necessary to protect human health and the environment. This adjusted level will be based on the ~~[Executive Secretary's]~~Director's assessment of the degree and duration of risk associated with the used oil operations or facilities. In addition, if the ~~[Executive Secretary]~~Director determines that there is a significant risk to human health and the environment from non-sudden release of used oil resulting from the used oil operations or facilities, the ~~[Executive Secretary]~~Director

may require that an owner or operator of the used oil facility or operation comply with ~~[Subsection]~~R315-15-10(b) and (c), as applicable. An owner or operator must furnish, within a reasonable time to the ~~[Executive Secretary]~~Director when requested in writing, any information ~~[which]~~ the ~~[Executive Secretary]~~Director requests to determine whether cause exists for an adjustment to the financial responsibility under ~~[Subsection]~~R315-15-10(b) or (c) with the used oil operations or facilities. Failure to provide the requested information as and when requested under this section may result in the ~~[Executive Secretary]~~Director revoking the owner's or operator's used oil permit(s). Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification.

(e) When the owner or operator of a permitted used oil facility or operation believes that its responsibility for cleanup and closure or for environmental pollution liability as described in ~~[Subsection]~~R315-15-10(d) has changed, it may submit a written request to the ~~[Executive Secretary]~~Director to modify its permit to reflect the changed responsibility.

(f) The ~~[Executive Secretary]~~Director may release the requirement for cleanup and closure financial assurance after the owner or operator has clean-closed the facility according to ~~[Section]~~R315-15-11.

(g) The owner or operator of a permitted used oil facility or operation may request the ~~[Executive Secretary]~~Director to modify its permit to change its financial assurance mechanism or mechanisms as described in ~~[Section]~~R315-15-12.

(h) The ~~[Executive Secretary]~~Director may modify the permit to change financial assurance mechanism or mechanisms after the owner or operator has established a replacement financial assurance mechanism or mechanisms acceptable to the ~~[Executive Secretary]~~Director.

(i) Incapacity of owners or operators, guarantor, or financial institution. An owner or operator of a permitted used oil facility or operation shall notify the ~~[Executive Secretary]~~Director by certified mail within ~~[40]~~ten days of the commencement of a bankruptcy proceeding naming the owner or operator as debtor.

(1) An owner or operator who fulfills the financial responsibility requirements by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be considered to be without the required financial responsibility or liability coverage in the event of:

- (i) bankruptcy of the trustee or issuing institution; or
- (ii) a suspension or revocation of the authority of the trustee institution to act as trustee; or
- (iii) a suspension or revocation of the authority of the institution to issue a surety bond, a letter of credit, or an insurance policy.

(2) The owner or operator of a permitted used oil facility or operation must establish other financial responsibility or liability coverage within 60 days after such an event.

12.4 ANNUAL UPDATE OF CLOSURE COST ESTIMATE AND FINANCIAL ASSURANCE MECHANISM

(a) The financial responsibility information required by ~~[Sections]~~R315-15-10, 11, and 12 and submitted to the ~~[Executive Secretary]~~Director with the initial permit application for a used oil facility or operation, or information provided as part of subsequent modifications to the permit made thereafter, shall be updated annually.

(b) The following annual updated financial responsibility information for the previous calendar year shall be submitted to the

~~[Executive Secretary]~~Director by March 1 of each year for each permitted facility or operation:

(1) The cleanup and closure cost estimate shall be based on a third party performing cleanup and closure of the facility to a post-operational land use in accordance with ~~[Subsection]~~R315-15-11.1.

(2) The financial assurance mechanism shall be adjusted to reflect the new cleanup and closure cost estimate.

(3) The type of financial assurance mechanism, its current face value, and corresponding financial institution's instrument control number shall be provided.

(4) The type of environmental pollution liability financial responsibility for third-party damage mechanism shall be provided, including:

- (i) policy number or other mechanism control number,
- (ii) effective date of policy or other mechanism, and
- (iii) coverage types and amounts.

(5) The type of general liability insurance information shall be provided, including:

- (i) policy number,
- (ii) date of policy, effective date of policy, retroactive date of coverage, if applicable, and
- (iii) coverage types and amounts.

(c) Other type of information deemed necessary to evaluate compliance with a permitted used oil facilities or operations and ~~[Sections]~~R315-15-10, 11, and 12, shall be provided upon request by the ~~[Executive Secretary]~~Director.

R315-15-13. Registration and Permitting of Used Oil Handlers.

13.1 DO-IT-YOURSELF USED OIL COLLECTION CENTERS TYPES A AND B

(a) Applicability. A person may not operate a do-it-yourselfer (DIYer) Type A or B used oil collection center without holding a registration number issued by the ~~[Executive Secretary]~~Director.

(b) General. The application for a registration number shall include the following information regarding the DIYer used oil collection center:

- (1) the name and address of the operator;
- (2) the location of the center;
- (3) the type of storage and secondary containment to be used;
- (4) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;
- (5) a spill containment plan in the event of a release of used oil; and
- (6) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. In accordance with Utah Annotated~~[Pursuant to Section]~~19-6-710, the ~~[Executive Secretary]~~Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA[-]-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean[-]up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the ~~[Executive Secretary]~~ Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.2 GENERATOR USED OIL COLLECTION CENTERS TYPES C AND D

(a) Applicability. A person may not operate a generator used oil collection center Type C or D without holding a registration number issued by the ~~[Executive Secretary]~~ Director.

(b) General. The application for registration shall include the following information regarding the generator used oil collection center:

- (1) the name and address of the operator;
- (2) the location of the center;
- (3) whether the center will accept DIYer used oil;
- (4) the type of storage and secondary containment to be used;
- (5) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;
- (6) a spill containment plan in the event of a release of used oil; and
- (7) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) ~~[p]~~ Permit. Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. Pursuant to Section 19-6-710, the ~~[Executive Secretary]~~ Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA[-]-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the ~~[Executive Secretary]~~ Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.3 USED OIL AGGREGATION POINTS

(a) Applicability. A person may operate a used oil aggregation point without holding a registration number issued by the ~~[Executive Secretary]~~ Director ~~[unless]~~ if that aggregation point also accepts used oil from household do-it-yourselfers (DIYers) or other generators.

(b) If an aggregation point accepts used oil from household DIYers, it must register with the ~~[Division]~~ Director as a DIYer collection center and comply with the DIYer standards in Section R315-15-3.1.

(c) If an aggregation point accepts used oil from other generators it must register with the ~~[Division]~~ Director as a generator collection center and comply with the standards in ~~[Section]~~ R315-15-3.2.

13.4 USED OIL TRANSPORTERS AND USED OIL TRANSFER FACILITIES

(a) Applicability. Except as provided by ~~[Section]~~ R315-15-13.4(f), a person may not operate as a used oil transporter ~~[or operate a transfer facility]~~ without holding a used oil transporter permit issued by the ~~[Executive Secretary]~~ Director. A person shall not operate a used oil transfer facility without holding a used oil transfer facility permit specific to that facility, issued by the Director.

(b) General. The application for a permit shall include the following information:

- (1) The name and address of the operator;
- (2) The location of the transporter's base of operations and the location of any transfer facilities, if applicable;
- (3) Maps of all transfer facilities, if applicable;
- (4) The methods to be used for collecting, storing, and delivering used oil;
- (5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification and how the transporter will comply with the rebuttable requirements of R315-15-4.5;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be carried in vehicles used to transport used oil and spill containment equipment maintained at the used oil transfer facility, and how the transporter shall comply with the requirements of R315-15-9;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in collecting, transporting, or storing used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil; ~~[and]~~

(12) A closure plan meeting the requirements of ~~[Section]~~ R315-15-11;[-]

(13) Proof of applicant's ownership of any property and facility used for storage of used oil or, if the property and facility is not owned by the applicant, the owners' written statement acknowledging the activities specified in the application;

(14) For transfer facility permit applications, tank certification in accordance with R315-8-10 for used oil storage tanks at the transfer facility;

(15) For transfer facility permit applications, a facility piping and instrument drawing certified by a Professional Engineer;

(16) If rail transport is part of the application, a loading/off-loading plan for rail tanker cars used to transport used oil. This plan shall include detailed procedures to be followed to minimize the potential for releases and on-site accidents. At a minimum, the following items shall be addressed:

(i) Personal safety equipment;

(ii) Coordination with railroad to ensure exclusive rights to the loading track during the entire period of loading/offloading;

(iii) A minimum number and qualification of workers involved in the loading or off-loading operations;

(iv) Braking and blocking of rail car wheels;

(v) Procedures for depressurizing tank car prior to opening manhole covers and outlet valves;

(vi) The sequence of valve openings and closings on any hosing or piping involved in the loading or off-loading process;

(vii) A description of how and where pipe and hose fitting will be attached, including a description of which rail car valves/openings will be used;

(viii) Use of catchment container to collect any used oil released from hoses, valves, and pipes during and following the loading/offloading operation;

(ix) Measures to insure ignition sources are not present;

(x) Procedures for cleanup of any spills that occur during the loading/offloading operations; and

(xi) Other site-specific requirements required by the Director to protect human health and the environment.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of ~~[Section]~~ Utah Code Annotated 63J-1-~~[303]~~504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of ~~[registration numbers and]~~ permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each transporter~~[/]~~ and transfer facility shall submit an annual report to the ~~[Division]~~ Director of ~~[their]~~ its activities during the calendar year. The annual report shall be submitted to the ~~[Division]~~ Director no later than March 1, of the year following the reported activities. The Annual report shall either be submitted on a form provided by the ~~[Division]~~ Director or shall contain the following information:

(1) the EPA identification number, name, and address of the transporter/transfer facility;

(2) the calendar year covered by the report;

(3) the total amount of used oil transported;

(4) the itemized amounts and types of used oil transferred to permitted transporters~~[/]~~ and transfer facilities, used oil processors/refiners, off-specification used oil burners, and used oil fuel marketers; and

(5) the itemized amounts and types of used oil transferred inside and outside the state, indicating the state ~~[of]~~ to which used oil is

transferred, and the specific name, address and telephone number of the operations or facility to which used oil was transferred.

(e) Changes in information. The owner or operator of the facility shall notify the ~~[Executive Secretary]~~ Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Transporter and Transfer Facility Permit[s] by rule. Notwithstanding any other provisions of ~~[Section]~~ R315-15-13.4, a used oil generator who self-transported used oil generated by that generator at a non-contiguous operation to a central collection facility in the generator's own service vehicles in quantities exceeding 55 gallons ~~[for the purpose of storing it]~~ shall be deemed to have an approved used oil transporter permit or used oil transfer facility permits, or both if the generator meets all ~~[of the following conditions:]~~ applicable requirements of R315-15-13.4(f)(1) through (4).

(1) All used oil transporters or transfer facilities who qualify for a permit by rule shall submit a notification to the Director of their intent to operate under R315-15-13.4(f) and comply with the following conditions:

(i) The generator's facility is defined under the North American Industry Classification System (NAICS), published in 2007, by the US Economic Classification Policy Committee, with a NAICS code of 21 (Mining), 23 (Construction), or 541360 (Geophysical Surveying and Mapping Services);

(ii) The generator self-transported and delivers the used oil to facilities that the generator owns, operates, or both.

(iii) The generator notifies the Director with the information required by R315-15-13.4(b)(1) through (10); and

(iv) The generator complies with R315-15-4.3, R315-15-4.4(b) through (d), R315-15-4.6(b) through (f), R315-15-4.7(b) and (d), and R315-15-4.8.

(2) A generator who self-transported used oil in accordance with R315-15-13.4(f)(1) and who burns all the collected used oil for energy recovery is deemed to be approved by rule to operate as a used oil transporter for that activity if the following additional conditions are met:

(i) The generator only burns the self-collected used oil for energy recovery at that generator's own central collection facility.

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7.

(3) A generator who self-transported used oil in accordance with R315-15-13.4(f)(1) and only stores the used oil for subsequent collection by permitted used oil transporters is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The generator arranges for permitted used oil transporters to collect the generator's used oil.

(ii) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(4) A generator who self-transported used oil in accordance with R315-15-13.4(f)(1), and who both burns their collected used oil for energy recovery and arranges for permitted use oil transporters to collect that used oil, is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

~~(i) The self-transported used oil burned for energy recovery is only burned at the generator's central collection facility;~~

~~(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7; and~~

~~(iii) The generator arranges for permitted used oil transporters to collect the generator's used oil not burned on site.~~

~~(iv) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.~~

~~(g) All used oil transporters and transfer facilities shall obtain and maintain a used oil handler certificates in accordance with R315-15-13.8.~~

~~[(1) Transports only used oil generated by the generator;~~

~~(2) Transports the used oil in a service vehicle owned by the generator;~~

~~(3) Transports the used oil to a facility that the generator owns, operates, or both;~~

~~(4) Subsequently burns the stored used oil for energy recovery at that facility, or arranges for a permitted used oil transporter to pick up the used oil;~~

~~(5) Complies with Sections R315-15-4.3, R315-15-4.4, and R315-15-4.8, and Subsections R315-15-4.6(b) through (f) and R315-15-4.7(b) and (d);~~

~~(6) Notifies the Executive Secretary with the information required by Subsection R315-15-13.4(b)(6);~~

~~(7) Registers as a used oil fuel marketer and complies with Section R315-15-7; and~~

~~(8) Is defined by one of the following Standard Industrial Classification (SIC) codes found in the Standard Industrial Classification Manual, 1987, published by the US Office of Management and Budget:~~

~~(i) 10 (metal mining);~~

~~(ii) 12 (coal mining);~~

~~(iii) 13 (oil and gas extraction);~~

~~(iv) 14 (mining and quarrying of nonmetallic minerals, except fuels;~~

~~(v) 15 (building construction-general contractors and operative builders);~~

~~(vi) 16 (heavy construction other than building construction);~~

~~(vii) 1791 (miscellaneous special trade contractors);~~

~~(viii) 1794 (excavation work); and~~

~~(ix) 1795 (wrecking and demolition work).~~

] 13.5 USED OIL PROCESSORS/RE-REFINERS

(a) Applicability. A person may not operate as a used oil processing/re-refining facility without holding a permit issued by the [Executive Secretary]Director.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the facility;

(3) A map of the facility;

(4) The grades of oil to be produced;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be maintained at the used oil processor facility;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in processing or re-refining used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil; [and]

(12) Any other information the Director finds necessary to ensure the safe handling of used oil;

[1[2]3] A closure plan meeting the requirements of [Section]R315-15-11.

(14) A contingency plan meeting the requirements of R315-15-5.3(b);

(15) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the owner's written statement acknowledging the activities specified in the application;

(16) Tank certification in accordance with R315-8-10 for used oil storage tanks at the processor facility; and

(17) A facility piping and instrument drawing certified by a Professional Engineer.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of [Section-]Department fee schedule 631-1-[303]504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of [registration numbers and-]permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each used oil processing or re-refining facility shall submit an annual report to the [Division-]Director of [their-]its activities during the calendar year. The annual report shall be submitted to the [Division-]Director no later than March 1[;] of the year following the reported activities. The annual report shall either be submitted on a form provided by the [Division-]Director or shall contain the following information:

(1) the EPA identification number, name, and address of the processor/re-refiner facility;

(2) the calendar year covered by the report;

(3) the quantities of used oil accepted for processing/re-refining and the manner in which the used oil is processed/re-refined, including the specific processes employed;

(4) the average daily quantities of used oil processed at the beginning and end of the reporting period;

(5) an itemization of the total amounts of used oil processed or re-refined during the reporting period year specifying the type and amounts of products produced, i.e., lubricating oil, fuel oil, etc.; and

(6) the amounts of used oil prepared for reuse as a lubricating oil, as a fuel, and for other uses, specifying each type of use, the amounts of used oil consumed or used in the process of

preparing used oil for reuse, specifying the amounts and types of waste by-products generated including waste, water, and the methods and specific locations utilized for disposal.

(e) Changes in information. The owner or operator of the facility shall notify the ~~[Executive Secretary]~~Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

~~(f) Used oil processors and re-refiners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.~~

13.6 USED OIL BURNERS

(a) ~~On-s~~[S]pecification used oil fuel burners. Facilities burning only on-specification used oil fuel are not required to register as used oil burners with the ~~[Executive Secretary]~~Director[.].

~~(1) Applicability. These requirements apply to persons burning only used oil that meets the used oil fuel specification of Section R315-15-1.2, provided that the burner also complies with the requirements of Section R315-15-7.3. Persons burning specification used oil fuel shall be considered to have an authorization from the Department, for the purpose of [this section]R315-15-13.6, if they hold a valid air quality operating order[;] or are exempt under [Section]R315-15-2.4.~~

~~(2) Notification. Specification used oil fuel burners are required to notify the Executive Secretary by submitting a letter that includes the following information:~~

~~(i) Company name and location;~~
~~(ii) Owner of the company; and~~
~~(iii) Name and telephone number for the company point of contact.~~

(b) Off-specification used oil fuel burners

(1) Applicability. The permitting requirements of this section apply to used oil burners who burn off-specification used oil for energy recovery except as specified in ~~[Subsections]~~R315-15-6.1(a)(1) through (3). A person may not burn off-specification used oil fuel for energy recovery without holding a permit issued by the ~~[Executive Secretary]~~Director.

(2) Permit application. The application for a permit shall include the following information regarding the facility:

(i) ~~[t]~~The name and address of the operator;
(ii) ~~[t]~~The location of the facility;
(iii) ~~[t]~~The type of containment and type and capacity of storage;
(iv) ~~[t]~~The type of burner to be used;
(v) ~~[t]~~The methods of disposing of any waste by-products;
(vi) ~~[t]~~The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(vii) ~~[a]~~An emergency spill containment plan; including a list of spill containment equipment to be maintained at the used oil processor facility.

(viii) ~~[p]~~Proof of insurance or other means of financial responsibility for liabilities that may be incurred in storing and burning off-specification used oil fuels.

(ix) ~~[p]~~Proof of form and amount of reclamation surety for any facility receiving and burning off-specification used oil.

(x) A closure plan meeting the requirements of ~~[Section]~~R315-15-11[.].

~~(xi) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the~~

owner's written statement acknowledging the activities specified in the application:

~~(xii) Tank certification in accordance with R315-8-10 for used oil storage tanks at the processor facility; and~~

~~(xiii) A facility piping and instrument drawing certified by a Professional Engineer.~~

(3) Permit fees. Registration and permitting fees are established under the terms and conditions of ~~[Section]~~Utah Code Annotated 63J-1-~~[303]~~504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of ~~[registration numbers or]~~permit approvals and annual used oil handler certificates.

(4) Changes in information. The owner or operator of the facility shall notify the ~~[Executive Secretary]~~Director in writing of any changes in the information submitted during permit application within 20 days of the change.

(5) Permits by rule. Any facility permitted by rule is not required to obtain a permit as required by ~~[Subsection]~~R315-15-13.6(b)(1), but may be required to follow operational practices, as determined by the ~~[Executive Secretary]~~Director, to minimize risk to human health or the environment. A permit by rule is conditional upon continued compliance with the requirements of R315-15-13.6(b), as determined by the ~~[Executive Secretary]~~Director. Notwithstanding any other provisions of ~~[Section]~~R315-15-13.6, a hazardous waste incinerator facility ~~[which]~~that has been issued a final permit under R315-3-1, and ~~[which]~~that implements the requirements of R315-8-15, shall be deemed to have an approved off-specification used oil burner permit if that facility meets all of the following conditions:

(i) ~~[Burns]~~It burns off-specification used oil only in devices specified in R315-15-6.2(a);

(ii) ~~[Stores]~~It stores used oil in the manner described in R315-15-6.5;

(iii) ~~[Tracks]~~It tracks off-specification used oil shipments as described in R315-15-6.6;

(iv) ~~[Complies]~~It complies with ~~[Sections]~~R315-15-6.3 and R315-15-6.7;

(v) It ~~[M]~~modifies its closure plan required under ~~[Section]~~R315-8-7 (Closure and Post Closure), to include used oil storage and burning devices, taking into account any used oil activities at this facility;

(vi) ~~[Modify]~~It modifies its financial mechanism or mechanisms required under ~~[Section]~~R315-8-8 (Financial Requirements), using a mechanism other than a corporate financial test/corporate written guarantee, to reflect the used oil activities at the facility; and

(vii) It ~~[S]~~submits to the ~~[Executive Secretary]~~Director the information required by ~~[Subsection]~~R315-15-13.6(b)(2)(i) through (vi), and a one-time declaration that the facility intends to burn off-specification used oil.

(6) Annual Reporting. Each off-specification used oil burner, including those permitted by rule under R315-15-13.6(b)(5), shall submit an annual report to the ~~[Division]~~Director of their activities during the calendar year. The annual report shall be submitted to the ~~[Division]~~Director no later than March 1, of the year following the reported activities. The annual report shall either be submitted on a form provided by the ~~[Division]~~Director or shall contain the following information:

(i) ~~[t]~~The EPA identification number, name, and address of the burner facility;

- (ii) ~~[t]~~The calendar year covered by the report; and
- (iii) ~~[t]~~The total amount of used oil burned.

(c) Off-specification used oil burners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.

13.7 USED OIL FUEL MARKETERS

(a) Applicability. A person may not act as a used oil fuel marketer, as defined in ~~[Section]~~R315-15-7, without holding a registration number issued by the ~~[Executive Secretary]~~Director.

(b) General. The application for a registration number shall include the following information regarding the facility acting as a used oil fuel marketer:

(1) The name and address of the marketer.

(2) The location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits, or registrations under this section.

(3) ~~[t]~~The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities, including registrations or permits required under this part to collect, process/re-refine, transport, or store used oil.

(4) Sampling and Analysis Plan. Marketers shall develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of R315-15, including the applicable portions of R315-15-1.2, R315-15-5.4, R315-15-7.3, and R315-15-18. The owner or operator shall keep the plan at the facility. The plan shall address at a minimum the following:

(i) Specification used oil fuel. The analysis plan shall describe how the marketer will comply with R315-15-1.2, R315-15-5.6, and R315-15-7.3, as applicable.

(ii) Analytical methods. The plan shall specify the preparation and analytical methods for each parameter.

(iii) PCBs. The analysis plan shall describe how the marketer will comply with R315-15-18.

(iv) Generator knowledge. The plan shall describe the requirements for generator knowledge, if applicable.

(v) Sample Quality Control. The plan shall specify the quality control parameters and acceptance limits.

(vi) Rebuttable presumption for used oil. The analysis plan shall describe how the marketer will comply with R315-15-1.1(b)(ii) and R315-15-5.4, if applicable.

(vii) Sampling. The analysis plan shall describe the sampling protocol used to obtain representative samples, including:

(A) Sampling methods. The marketer shall use one of the sampling methods in R315-50-6, which incorporates by reference 40 CFR 261, Appendix I; or a method shown to be equivalent under R315-2-15.

(B) Sample frequency. The plan shall specify the frequency of sampling to be performed, and whether the analysis will be performed on site or off site.

(4)c Registration fees. Registration and permitting fees are established under the terms and conditions of ~~[Section]~~Utah Code Annotated 63J-1-~~[303]~~504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers and annual used oil handler certificates.

(d) A person who acts as used oil fuel marketer shall annually obtain a used oil handler certificate in accordance with R315-15-13.8. A used oil fuel marketer shall not operate without a used oil handler certificate.

(5)e Changes in information. The owner or operator of the facility shall notify the ~~[Executive Secretary]~~Director in writing of any changes in the information submitted to apply for a registration within 20 days of the change.

13.8 USED OIL HANDLER CERTIFICATES

(a) Applicability. As well as obtaining permits and registration described in R315-15-13.4 through 13.8, a person shall not act as a used oil transporter, operator of a transfer facility, processor/re-refiner, off-specification burner, or marketer without applying for, receiving, and maintaining a current used oil handler certificate issued by the Director for each applicable activity. Each used oil permit and marketer registration described in R315-15-13.4 through 13.7 above requires a separate used oil handler certificate.

(b) General. Each application for a used oil handler certificate shall include the following information:

(1) business name;

(2) address to include:

(i) mailing address; and

(ii) site address if different from mailing address

(3) telephone number

(4) name of business owner;

(5) name of business operator;

(6) permit/registration number; and

(7) type of permit/registration number (i.e., processor, transporter, transfer facility, off-specification burner, or marketer).

(c) Changes in information. A used oil handler certificate holder shall notify the Director of any changes in the information provided in Subsection R315-15-13.8(b) within 20 days of implementation of the change.

(d) A used oil handler certificate will be issued to an applicant following the:

(1) completion and approval of the application required by R315-15-13.8(a); and

(2) payment of the fee required by the Annual Appropriations Act.

(e) A used oil handler certificate is not transferable and shall be valid January 1 through December 31 of the year issued. The certificate shall become void if the permit or registration associated with the used oil activity described in the certificate, in accordance with R315-15-13.8(b)(6) in the application, is revoked under R315-15-15.2 or if the Director, upon the written request of the permittee or registration holder, cancels the certificate.

(f) The certificate registration fee shall be paid prior to operation within any calendar year.

R315-15-14. DIYer Reimbursement.

14.1 DIYER USED OIL COLLECTION CENTER INCENTIVE PAYMENT APPLICABILITY

(a) The ~~[Division]~~Director shall pay a quarterly recycling fee incentive to registered DIYer used oil collection centers and curbside programs approved by the ~~[Executive Secretary]~~Director for each gallon of used oil collected from DIYer used oil generators~~[-on and after July 1, 1994]~~, and transported by a permitted used oil transporter to a permitted used oil processor/re-refiner, burner, ~~[or]~~ registered marketer or burned in accordance with R315-15-2.4(b).

(b) All registered DIYer used oil collection centers can qualify for a recycling incentive payment of up to \$0.16 per gallon, subject to availability of funds and the priorities of ~~[Section]~~Utah Code Annotated 19-6-720.

14.2 REIMBURSEMENT PROCEDURES

In order for DIYer collection centers to qualify for the recycling incentive payment they are required to comply with the following procedures.

(a) Submit a copy of all records and receipts ~~from permitted transporters~~ of DIYer and farmer, as defined in R315-15-2.1(a)(4), used oil collected during the quarter for which the reimbursement is requested ~~[quarterly, beginning July 1, 1994 and ending September 30, 1994, and each quarter thereafter]~~. These records shall be submitted within 30 days following the end of the calendar quarter in which the DIYer oil was collected and for which reimbursement is requested.

(b) Reimbursements will be issued by the ~~Executive Secretary~~ Director within 30 days following the report ~~[filling]~~ filing period.

(c) Reports received later than 30 days after the end of the calendar quarter for which reimbursement is requested will be paid during the next quarterly reimbursement period.

~~(d) Any reimbursement requests outside the timeframe outlined in R315-15-14.2(a) will not be granted unless approved by the Director.~~

R315-15-15. Issuance, Renewal, and Revocation of Permits and Registrations.

15.1 PUBLIC COMMENTS AND HEARING.

~~(a) [In considering permit applications under these Rules,] The [Executive Secretary] Director shall: [adhere to the requirements of Section 19-6-712.]~~

~~(1) determine if the permit application or modification request is complete and meets all requirements of R315-15-13;~~

~~(2) publish notice of the proposed permit in a newspaper of general circulation in the state and also in a newspaper of general circulation in the county in which the proposed permitted facility is located;~~

~~(3) provide a 15-day public comment period from the date of publication to allow the public time to submit written comments;~~

~~(4) consider submitted public comments received within the comment period; and~~

~~(5) send a written decision to the applicant and to persons submitting comments.~~

~~(b) The Director's decision under R315-15-15.1(a) may be appealed in accordance with Utah Administrative Code R305-7.~~

~~(c) Duration of Permits. Used oil permits shall be effective for a fixed term not to exceed ten years. Any Permittee holding a permit issued on or before January 1, 2005 who wants to continue operating shall submit an application for a new permit not later than 180 days after January 1, 2015. The term of a permit shall not be extended by modification to the permit.~~

~~(d) The conditions of an expired permit continue in force until the effective date of a new permit if:~~

~~(1) The permittee has submitted a timely application under R315-15-13, at least 180 days prior to the expiration date of the current permit. The permit application shall contain all the materials required by R315-15-13.~~

~~(2) The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).~~

~~(e) Effect. Permits continued under this section remain fully effective and enforceable.~~

~~(f) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Director may choose to do any or all of the following:~~

~~(1) Initiate enforcement action based upon the permit that has been continued;~~

~~(2) Issue a notice of intent to deny the new permit under R315-15-15.2. If the permit is denied, the owner or operator is required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;~~

~~(3) Issue a new permit under R315-15-15.2 with appropriate conditions;~~

~~(4) Take other actions authorized by these rules~~

~~(g) Five-Year Review of Permit. Each used oil permit, including the costs of closure and post closure care issued under R315-15-13, shall be reviewed by the Director five years after the permit's issuance, or when the Director determines that a permit requires review and modification.~~

15.2 MODIFICATION AND REVOCATION OF PERMITS, [AND] REGISTRATIONS AND HANDLER CERTIFICATES.

~~(a) A permit may be considered for modification, renewal, or termination at the request of any interested person, including the permittee, or upon the Director's initiative as a result of new information or changes in statutes or rules. Requests for modification, reissuance, or termination shall be submitted in writing to the Director and shall contain facts or reasons supporting the request. The permit modification requests shall not be implemented until approval of the Director.~~

~~Violation of any permit [or] registration conditions or failure to comply with any provisions of the applicable statutes and rules, shall be grounds for imposing statutory sanctions, including [revocation of the permit or registration and] denial of an application for permit, [or] registration, or used oil handler certificate. [The Executive Secretary shall notify, in writing, the owner or operator of any facility of intent to revoke a permit or registration.]~~

~~(b) Request for agency action. The owner or operator of a facility may contest an order associated with modification, renewal, or termination in accordance with Utah Administrative Code R305-7.~~

R315-15-16. Grants.

16.1 STATUTORY AUTHORITY.

~~[Section] Utah Code Annotated 19-6-720 authorizes the Division of Solid and Hazardous Waste to award grants, as funds are available, for the following:~~

~~(a) Used oil collection centers; and~~

~~(b) Curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of collection programs.~~

16.2 ELIGIBILITY AND APPLICATION.

~~(a) The establishment of new or the enhancement of existing used oil collection centers or curbside collection programs that address the proper management of used lubricating oil may be eligible for grant assistance.~~

~~(b) A Used Oil Recycling Block Grant Package, published by the [Division] Director, shall be completed and submitted to the [Executive Secretary] Director for consideration.~~

16.3 LIMITATIONS.

(a) The grantee must commit to perform the permitted used oil handling activity for a minimum of two years.

(b) If the two-year commitment is not fulfilled, the grantee may be required to repay all or a portion of the grant amount.

R315-15-17. Wording of Financial Assurance Mechanisms.

17.1 APPLICABILITY

~~[Section]~~R315-15-17 presents the standard wording forms to be used for the financial assurance mechanisms found in ~~[Section]~~R315-15-12. The following forms are hereby incorporated by reference and are available at the Division of Solid and Hazardous Waste located at ~~[288 North 1460 West]~~195 North 1950 West, Salt Lake City, Utah, during normal business hours or on the Division's web site, <http://www.hazardouswaste.utah.gov/>.

~~(a)[47-1-2]~~ The Division requires that the forms described in ~~[this rule]~~R315-15-17.2 through R315-15-17.14 shall be used for all financial assurance filings and shall be signed in duplicate original documents. The wording of the forms shall be identical to the wording specified in R315-15-17.2 through R315-15-17.4. ~~[Actual copies may be used or facilities may adapt them to their word processing system. If adapted, the content, size, font, and format must be similar.]~~

~~(b)[47-1-3]~~ The ~~[Executive Secretary]~~Director may substitute new wording for the wording found in any of the financial assurance mechanism forms when such language changes are necessary to conform to applicable financial industry changes, when industry-wide consensus language changes are submitted to the ~~[Executive Secretary]~~Director.

17.2 TRUST AGREEMENTS

The trust agreement for a trust fund must be worded as found in the Trust Agreement Form ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~Director.

17.3 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST AGREEMENT TRUST FUND

The surety bond guaranteeing payment into a standby trust agreement trust fund must be worded as found in the Surety Bond Guaranteeing Payment into a Standby Trust Agreement Trust Fund Form ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~Director.

17.4 IRREVOCABLE STANDBY LETTER OF CREDIT WITH STANDBY TRUST AGREEMENT

The letter of credit must be worded as found in the Irrevocable Standby Letter of Credit with Standby Trust Agreement Form ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~Director.

17.5 UTAH USED OIL POLLUTION LIABILITY INSURANCE ENDORSEMENT FOR CLEANUP AND CLOSURE

The insurance endorsement of cleanup and closure must be worded as found in the Utah Used Oil Pollution Liability Insurance Endorsement for Cleanup and Closure Form ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~Director.

17.6 UTAH USED OIL TRANSPORTER POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil transporter pollution liability endorsement for sudden occurrence must be worded as found in the Utah Used Oil Transporter Pollution Liability Endorsement for Sudden Occurrence Form ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~Director.

17.7 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil pollution liability endorsement for sudden occurrence for permitted facilities other than permitted transporters must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Sudden Occurrence Form ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~Director.

17.8 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR NON-SUDDEN OCCURRENCE

The used oil pollution liability endorsement for non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement Non-Sudden Occurrence Form ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~Director.

17.9 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR COMBINED SUDDEN AND NON-SUDDEN OCCURRENCES

The used oil pollution liability endorsement combined for sudden and non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Combined Sudden and Non-Sudden Occurrences Form ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~Director.

17.10 LETTER OF CREDIT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY WITH OPTIONAL STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The letter of credit must be worded as found in the Letter of Credit for Third Party Damages from Environmental Pollution Liability with Optional Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~Director.

17.11 PAYMENT BOND FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A surety bond must be worded as found in the Payment Bond for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification burner Facility Form ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~Director.

17.12 TRUST AGREEMENT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A trust agreement must be worded as found in the Trust Agreement for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~Director.

17.13 TRUST AGREEMENT ASSOCIATED WITH THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY REQUIRING A STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A standby trust agreement must be worded as found in the Standby Trust Agreement Associated with Third Party Damages from Environmental Pollution Liability Requiring Standby Trust Agreement

to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form [~~published January 10, 2008~~] approved by the [~~Executive Secretary~~] Director.

17.14 STANDBY TRUST AGREEMENT, OTHER THAN LIABILITY, FOR TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The standby trust agreement for a trust fund must be worded as found in the Standby Trust Agreement, other than Liability for Transfer/Processor/Re-refiner/Off-specification Burner Facility Form [~~published January 10, 2008~~] approved by the [~~Executive Secretary~~] Director.

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) 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 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: [~~September 1, 2009~~]2014

Notice of Continuation: May 17, 2012

Authorizing, and Implemented or Interpreted Law: 19-6-704

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1-5
Incorporations by Reference

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38599

FILED: 06/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The Department, in order to draw down federal funds, must have an approved state plan with the Centers for Medicare and Medicaid Services (CMS). The purpose of this change, therefore, is to incorporate the most current Medicaid State Plan by reference and to implement by rule ongoing Medicaid policy described in the Medical Supplies Utah Medicaid Provider Manual; Hospital Services Utah Medicaid Provider Manual with its attachments; Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid; Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual; Hospice Care Utah Medicaid Provider Manual; Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments; Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual; Personal Care Utah Medicaid Provider Manual with its attachments; Utah Home

and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual; Office of Inspector General (OIG) Administrative Hearings Procedures Manual; Pharmacy Services Utah Medicaid Provider Manual with its attachments; Coverage and Reimbursement Code Look-up Tool; CHEC Services Utah Medicaid Provider Manual with its attachments; Chiropractic Medicine Utah Medicaid Provider Manual; Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual; General Attachments for the Utah Medicaid Provider Manual; Indian Health Utah Medicaid Provider Manual; Laboratory Services Utah Medicaid Provider Manual with its attachments; Medical Transportation Utah Medicaid Provider Manual; Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments; Licensed Nurse Practitioner Utah Medicaid Provider Manual; Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual; Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments; Podiatric Services Utah Medicaid Provider Manual; Primary Care Network Utah Medicaid Provider Manual with its attachments; Psychology Services Utah Medicaid Provider Manual; Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual; Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual with its attachments; School-Based Skills Development Services Utah Medicaid Provider Manual; Section I: General Information of the Utah Medicaid Provider Manual; Services for Pregnant Women Utah Medicaid Provider Manual; Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual; Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual; Vision Care Services Utah Medicaid Provider Manual; and Women's Services Utah Medicaid Provider Manual.

SUMMARY OF THE RULE OR CHANGE: Section R414-1-5 is changed to incorporate the Utah Medicaid State Plan and approved state plan amendments (SPAs) by reference to 07/01/2014. These SPAs include: SPA 14-0001-MM MAGI-Based Eligibility Groups, which implements the Affordable Care Act by: including the tax-rule requirement to determine household composition and countable income for families with dependent children, pregnant women, and children under 19 years of age; adding coverage for children who age-out of foster care to allow them to receive Medicaid until they turn 26 years old; adding coverage for pregnant women and

children under 19 years of age; and increasing income limits for children. Changes in this SPA also include a streamlined eligibility process, designation of income options, single state agency delegation, state residency regulations, and citizenship regulations. This rule change also incorporates by reference SPA 14-0007-MM Presumptive Eligibility by Hospitals, which specifies options for presumptive eligibility conducted by hospitals and implements these options in accordance with the Affordable Care Act and 42 CFR 435.1110; SPA 14-009-UT 340B Dispensing Fee, which amends the Special Category Fees list of the State Plan to incorporate the 340B Dispensing Fee determined to be consistent with surveys, in-house studies of dispensing fee costs, national and regional data, and economic trends and conditions; SPA 14-010-UT Nurse Practitioner Services, which facilitates client access to health care throughout Utah by allowing licensed nurse practitioners to directly bill Medicaid for their services; and SPA 14-012-UT Physician Services, which updates psychiatric services by removing provisions already consolidated in another section of the State Plan. This rule change also incorporates by reference the Medical Supplies Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Hospital Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2014; incorporates by reference the Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid, effective 07/01/2014; incorporates by reference the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Hospice Care Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, with its attachments, effective 07/01/2014; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Personal Care Utah Medicaid Provider Manual, with its attachments, effective 07/01/2014; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Office of Inspector General (OIG)

Administrative Hearings Procedures Manual, effective 07/01/2014; incorporates by reference the Pharmacy Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2014; incorporates by reference the Coverage and Reimbursement Code Look-up Tool, effective 07/01/2014; incorporates by reference the CHEC Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2014; incorporates by reference the Chiropractic Medicine Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the General Attachments for the Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Indian Health Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Laboratory Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2014; incorporates by reference the Medical Transportation Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments, effective 07/01/2014; incorporates by reference the Licensed Nurse Practitioner Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments, effective 07/01/2014; incorporates by reference the Podiatric Services Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Primary Care Network Utah Medicaid Provider Manual with its attachments, effective 07/01/2014; incorporates by reference the Psychology Services Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2014; incorporates by reference the School-Based Skills Development Services Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference Section I: General Information of the Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Services for Pregnant Women Utah Medicaid Provider Manual, effective 07/01/2014; incorporates by reference the Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual, effective 07/01/2014; Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, effective 07/01/2014; Vision Care Services Utah Medicaid Provider Manual, effective 07/01/2014; and Women's Services Utah Medicaid Provider Manual, effective 07/01/2014.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Utah Medicaid State Plan, published by Centers for Medicare and Medicaid Services, 07/01/2014
- ◆ Updates Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Hospice Care Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Vision Care Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Removes Targeted Case Management for CHEC Medicaid Eligible Children Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2014
- ◆ Updates Office of Inspector General Administrative Hearings Procedures Manual, published by Office of Inspector General and Medicaid Services, 07/01/2014
- ◆ Updates Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Hospital Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Medical Supplies Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual,

published by Division of Medicaid and Health Financing, 07/01/2014

- ◆ Updates CHEC Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Medical Transportation Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates School-Based Skills Development Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Removes Certified Nurse-Midwife Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2014
- ◆ Updates Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Coverage and Reimbursement Code Look-up Tool, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Removes Substance Abuse Treatment Services and Targeted Case Management Services for Substance Abuse Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2014
- ◆ Updates Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates General Attachments for the Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Primary Care Network Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Laboratory Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Removes Mental Health Centers/Prepaid Mental Health Plans Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2014

- ◆ Updates Licensed Nurse Practitioner Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Adds Women's Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Personal Care Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Services for Pregnant Women Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Psychology Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Pharmacy Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Removes Rehabilitative Mental Health Services for Children Under Authority of Department of Human Services, Division of Child and Family Services or Division of Juvenile Justice Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2014
- ◆ Updates General Information of the Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Podiatric Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014
- ◆ Updates Indian Health Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2014

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no budget impact because this change only fulfills the requirement to incorporate the state plan by reference. Implementation of the state plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to the department or other state agencies.

◆ **LOCAL GOVERNMENTS:** There is no budget impact because this change only fulfills the requirement to incorporate the state plan by reference. Implementation of the state plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to local governments.

◆ **SMALL BUSINESSES:** There is no budget impact because this change only fulfills the requirement to incorporate the state plan by reference. Implementation of the state plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because this change only fulfills the requirement to incorporate the state plan by reference. Implementation of the state plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to Medicaid recipients and to Medicaid providers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only fulfills the requirement to incorporate the state plan by reference. Implementation of the state plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to a single Medicaid recipient or to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact on business because it makes no change to current practices.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program.

R414-1-5. Incorporations by Reference.

The Department incorporates the ~~April~~ July 1, 2014 versions of the following by reference:

(1) Utah Medicaid State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies Utah Medicaid Provider Manual, Section 2, Medical Supplies, as applied in Rule R414-70;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual;

~~(6) Audiology Services Utah Medicaid Provider Manual;~~
(7) Hospice Care Utah Medicaid Provider Manual;

(8) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(9) Personal Care Utah Medicaid Provider Manual with its attachments;

(10) Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual;

(11) Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(16) Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual;

(1[7]6) Office of Inspector General Administrative Hearings Procedures Manual;

(1[8]7) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(1[9]8) Coverage and Reimbursement Code Look-up Tool found at <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>;

~~(20) Certified Nurse – Midwife Services Utah Medicaid Provider Manual;~~

(2[1]9) CHEC Services Utah Medicaid Provider Manual with its attachments;

(2[2]0) Chiropractic Medicine Utah Medicaid Provider Manual;

(2[3]1) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;

(2[4]2) General Attachments for the Utah Medicaid Provider Manual;

(2[5]3) Indian Health Utah Medicaid Provider Manual;

(2[6]4) Laboratory Services Utah Medicaid Provider Manual with its attachments;

(2[7]5) Medical Transportation Utah Medicaid Provider Manual;

~~(28) Mental Health Centers/Prepaid Mental Health Plans Utah Medicaid Provider Manual;~~

(2[9]6) Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments;

(3[0]7) ~~[Certified Family Nurse Practitioner and Pediatric]~~ Licensed Nurse Practitioner Utah Medicaid Provider Manual;

(3[1]8) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual;

(3[2]9) Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments;

(3[3]0) Podiatric Services Utah Medicaid Provider Manual;

(3[4]1) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(3[5]2) Psychology Services Utah Medicaid Provider Manual;

(3[6]3) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

~~(37) Rehabilitative Mental Health Services for Children Under Authority of Department of Human Services, Division of Child and Family Services or Division of Juvenile Justice Services Utah Medicaid Provider Manual;~~

(3[8]4) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual with its attachments;

(3[9]5) School-Based Skills Development Services Utah Medicaid Provider Manual;

(4[0]6) Section I: General Information of the Utah Medicaid Provider Manual;

(4[1]7) Services for Pregnant Women Utah Medicaid Provider Manual;

~~(42) Substance Abuse Treatment Services and Targeted Case Management Services for Substance Abuse Utah Medicaid Provider Manual;~~

~~(43) Targeted Case Management for CHEC Medicaid-Eligible Children Utah Medicaid Provider Manual;~~

(4[4]8) Targeted Case Management for ~~the Chronically Mentally Ill~~ Individuals with Serious Mental Illness Utah Medicaid Provider Manual;

(4[5]9) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;~~and~~

(4[6]0) Vision Care Services Utah Medicaid Provider Manual~~[-]; and~~

(41) Women's Services Utah Medicaid Provider Manual.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [May 1,] 2014

Notice of Continuation: March 2, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-54** Speech-Language Pathology Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38613

FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to streamline and consolidate the scope of speech-language pathology services for Medicaid recipients.

SUMMARY OF THE RULE OR CHANGE: This amendment consolidates the scope of speech-language pathology services by removing sections in the rule text that specify reimbursement, eligibility, and service coverage, and deferring to the scope of services found in the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual and in the Medicaid State Plan.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 440.110 and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only consolidates the scope of speech-language pathology services for Medicaid recipients.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide speech-language pathology services to Medicaid recipients.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only consolidates the scope of speech-language pathology services for Medicaid recipients.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid recipients because this change only consolidates the scope of speech-language pathology services for Medicaid recipients.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because this change only consolidates the scope of speech-language pathology services for Medicaid recipients.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No effect on business because it does not alter current practice.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-54. Speech-Language Pathology Services.

R414-54-1. Introduction.

The Speech-Language Pathology Services program provides a scope of services for Medicaid recipients in accordance with the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

[R414-54-1. Introduction and Authority.

- ~~_____ (1) This rule governs the provision of speech-language pathology services.~~
- ~~_____ (2) This rule is authorized by Sections 26-18-3 and 26-18-5.~~
- ~~_____ (3) As required by Section 26-18-3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.~~

~~R414-54-2. Definitions.~~

~~_____ (1) The definitions in the Speech-Language Pathology and Audiology Licensing Act, Title 58, Chapter 41, apply to this rule.~~

~~R414-54-3. Services.~~

- ~~_____ (1) Speech-language pathology services are optional.~~
- ~~_____ (2) Speech-language pathology services are limited to services described in the Speech-Language Services Provider Manual.~~
- ~~_____ (3) The Speech-Language Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.~~
- ~~_____ (4) Speech-language pathology services may be provided by licensed speech-language pathologists, or speech-language pathology aides under the supervision of speech-language pathologists.~~

~~R414-54-4. Client Eligibility Requirements.~~

- ~~_____ (1) Speech-language pathology services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.~~
- ~~_____ (2) An individual receiving speech-language pathology services may receive speech-language pathology services as described in the Speech-Language Pathology Provider Manual.~~
- ~~_____ (3) An individual receiving speech-language pathology services must meet the criteria established in the Speech-Language Pathology Provider Manual and obtain prior approval if required.~~

~~R414-54-5. Reimbursement.~~

~~_____ Speech-language pathology services are reimbursed using the fee schedule in the Utah Medicaid State Plan and incorporated by reference in R414-1-5.~~

]
KEY: Medicaid, speech-language pathology services
Date of Enactment or Last Substantive Amendment: [November 15, 2014]2014
Notice of Continuation: January 7, 2014
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-59
Audiology-Hearing Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38614
FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to streamline and consolidate the scope of audiology services for Medicaid recipients.

SUMMARY OF THE RULE OR CHANGE: This amendment consolidates the scope of audiology services by removing sections in the rule text that specify reimbursement, eligibility, and service coverage, and deferring to the scope of services found in the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual and in the Medicaid State Plan. This amendment also changes the title of the rule to "Audiology Services."

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 440.110 and Section 26-18-3 and Section 26-18-5

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only consolidates the scope of audiology services for Medicaid recipients.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide audiology services to Medicaid recipients.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only consolidates the scope of audiology services for Medicaid recipients.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because this change only consolidates the scope of audiology services for Medicaid recipients.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because this change only consolidates the scope of audiology services for Medicaid recipients.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No effect on business as this does not change current practice.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov
- ◆ Nina Baker by phone at 801-538-9127, by FAX at 801-538-6412, or by Internet E-mail at nabaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-59. Audiology[-Hearing] Services.

R414-59. Introduction.

~~Audiology services provide a scope of services for Medicaid recipients in accordance with the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.~~

[R414-59-1. Introduction and Authority.

- ~~(1) This rule governs the provision of audiology-hearing services.~~
- ~~(2) This rule is authorized by Sections 26-18-3 and 26-1-5.~~
- ~~(3) As required by Section 26-18-3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.~~

R414-59-2. Definitions.

- ~~(1) The definitions in the Speech-Language Pathology and Audiology Licensing Act, Title 58, Chapter 41, apply to this rule.~~

R414-59-3. Services.

- ~~(1) Audiology-hearing services are optional services.~~
- ~~(2) Audiology-hearing services are limited to services described in the Audiology Services Provider Manual.~~
- ~~(3) The Audiology Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.~~
- ~~(4) Audiology-hearing services may be provided to an individual only after being referred by a physician. All audiology-hearing services must be provided by a licensed audiologist.~~

R414-59-4. Client Eligibility Requirements.

- ~~(1) Audiology-hearing services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.~~
- ~~(2) An individual receiving audiology-hearing services may receive audiology services as described in the Audiology Services Provider Manual.~~
- ~~(3) An individual receiving audiology-hearing services must meet the criteria established in the Audiology Services Provider Manual and obtain prior approval if required.~~

R414-59-5. Reimbursement.

~~Audiology services are reimbursed using the fee schedule in the Utah Medicaid State Plan and incorporated by reference in R414-1-5.~~

]

KEY: Medicaid, audiology

Date of Enactment or Last Substantive Amendment: [~~November 15, 2011~~]**2014**

Notice of Continuation: October 13, 2010

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Judicial Performance Evaluation Commission, Administration

R597-3

Judicial Performance Evaluations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38595

FILED: 06/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule adds a provision articulating when the commission must post to its website the final retention report on each judge standing for election.

SUMMARY OF THE RULE OR CHANGE: The rule states that the commission must post all retention evaluation reports for judges who will be running for retention to its website no later than 90 days after the filing deadline for the next election.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-201 through 78A-12-208

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The only cost to the state is the time of the DT person who will actually post the reports.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the commission does not regulate or have any dealings with local government.

♦ **SMALL BUSINESSES:** There is no anticipated cost to small businesses because the commission has no authority with respect to small businesses and no dealings with small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are in no way affected by this amendment. The amendment relates only to publication of judges' evaluation reports on the commission's website.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons incur no compliance costs as a result of this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment has no fiscal impact on businesses.

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

JUDICIAL PERFORMANCE EVALUATION
COMMISSION

ADMINISTRATION

ROOM B-330 SENATE BUILDING

420 N STATE ST

SALT LAKE CITY, UT 84114

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Anthony Schofield, Chair

R597. Judicial Performance Evaluation Commission, Administration.

R597-3. Judicial Performance Evaluations.

R597-3-1. Evaluation Cycles.

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends 2 1/2 years later, on June 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends 2 1/2 years later, on June 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends four years later, on June 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the justice's next retention election.

(3) Timing of evaluations within cycles. In order to allow judges time to incorporate feedback from midterm evaluations into their practices, no evaluations shall be conducted during the first six months of the retention cycle.

R597-3-2. Survey.

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, *supra*.

(b) The commission may provide a partial midterm evaluation to any judge whose appointment date precludes the collection of complete midterm evaluation data.

(c) The commission shall post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(d) The commission may select retention survey questions from among the midterm survey questions.

(e) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(f) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle. Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.

(B) In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a single attorney based on an analysis of the Administrative Office of the Courts appearance data at the time of the survey. In no event shall any attorney receive more than nine survey requests.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email

addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

(A) judicial assistants;

(B) case managers;

(C) clerks of court;

(D) trial court executives;

(E) interpreters;

(F) bailiffs;

(G) law clerks;

(H) central staff attorneys;

(I) juvenile probation and intake officers;

(J) other courthouse staff, as appropriate;

(K) Administrative Office of the Courts staff.

(d) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services on a regular basis to the juvenile court.

(iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

R597-3-3. Courtroom Observation.

(1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), *supra*.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

(c) Only the content analysis of the individual courtroom observation reports shall be included in the retention report for each judge.

(2) Courtroom Observers.

(a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(iv) persons lacking computer access or basic computer literacy skills;

(v) persons currently involved in litigation in state or justice courts;

(vi) convicted felons;

(vii) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

(c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall commit to one one-year term of service.

(iii) Courtroom observers may serve up to three one-year terms, subject to annual renewal at the discretion of the commission.

(iv) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

(d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

(A) Orientation and overview of the commission process and the courtroom observation program;

(B) Classroom training addressing each level of court;

(C) In-court group observations, with subsequent classroom discussions, for each level of court;

(D) Training on proper use of observation instrument;

(E) Training on confidentiality and non-disclosure issues;

(F) Such other periodic trainings as are necessary for effective observations.

(3) Courtroom Observation Program.

(a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

(b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(vi) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

- (i) Neutrality, including but not limited to:
 - (A) displaying fairness and impartiality toward all court participants;
 - (B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;
 - (C) explaining transparently and openly how rules are applied and how decisions are reached.
 - (D) listening carefully and impartially;
 - (ii) Respect, including but not limited to:
 - (A) demonstrating courtesy toward attorneys, court staff, and others in the court;
 - (B) treating all people with dignity;
 - (C) helping interested parties understand decisions and what the parties must do as a result;
 - (D) maintaining decorum in the courtroom.
 - (E) demonstrating adequate preparation to hear scheduled cases;
 - (F) acting in the interests of the parties, not out of demonstrated personal prejudices;
 - (G) managing the caseload efficiently and demonstrating awareness of the effect of delay on court participants;
 - (H) demonstrating interest in the needs, problems, and concerns of court participants.
 - (iii) Voice, including but not limited to:
 - (A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;
 - (B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.
 - (C) attending, where appropriate, to the participants' comprehension of the proceedings.
- (c) Courtroom observers may also be asked questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

R597-3-4. Minimum Performance Standards.

- (1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:
- (a) Demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants.
 - (b) Meet all performance standards established by the Judicial Council, including but not limited to:
 - (i) annual judicial education hourly requirement;
 - (ii) case-under-advisement standard; and
 - (iii) physical and mental competence to hold office.
- (2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

R597-3-5. Public Comments.

- (1) Persons desiring to comment about a particular judge with whom they have had first-hand experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than November 1st of the year preceding the election in which the judge's name appears on the ballot.

(3) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

(4) All comments must be based upon first-hand experience with the judge.

R597-3-6. Judicial Retirements and Resignations.

(1) For purposes of judicial performance evaluation, the commission shall evaluate each judge until the judge:

- (a) provides written notice of resignation or retirement to the Governor;
- (b) is removed from office;
- (c) otherwise vacates the judicial office; or
- (d) fails to properly file for retention.

(2) For judges who provide written notice of resignation or retirement after a retention evaluation has been conducted but before it is distributed, the retention evaluation shall be sent to the Judicial Council.

R597-3-7. Publication of Retention Reports.

No later than three months after the filing deadline for a retention election, the commission shall post on its website the retention reports of all judges who have filed for that election.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys

Date of Enactment or Last Substantive Amendment: [~~June 12,~~] 2014

Notice of Continuation: February 17, 2014

Authorizing, and Implemented or Interpreted Law: 78A-12

Natural Resources, Wildlife Resources **R657-3** Collection, Importation, Transportation, and Possession of Animals

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 38616

FILED: 06/16/2014

RULE ANALYSIS

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

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule: 1) set the criteria for lethal removal of American crows; 2) make technical corrections to species identifications; and 3) reorganize Section R657-3-7 for simplicity and ease.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-13-14 and Section 23-14-18 and Section 23-14-19 and Section 23-20-3 and Section 63-30-1

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendment sets necessary criteria for the lethal take of American crows. DWR determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** The amendment sets the criteria for lethal take of American crow, clarifies wording and makes species identifications changes as needed. Therefore, this rule does not impose any additional financial requirements on small businesses, nor generate a cost or saving impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendment sets the criteria for lethal take of American crow, clarifies wording, and makes species identifications changes as needed. Therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendment is for clarification and to establish the criteria for the lethal take of American crows. DWR determines that there are no additional compliance costs associated with this amendment.

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

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.

R657-3. Collection, Importation, Transportation, and Possession of Animals.

R657-3-1. Purpose and Authority.

(1) Under Title 23, Wildlife Resources Code of Utah and in accordance with a memorandum of understanding with the Department of Agriculture and Food, Department of Health, and the Division of Wildlife Resources, this rule governs the collection, importation, exportation, transportation, and possession of animals and their parts.

(2) Nothing in this rule shall be construed as superseding the provisions set forth in Title 23, Wildlife Resources Code of Utah. Any provision of this rule setting forth a criminal violation that overlaps a section of that title is provided in this rule only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

(3) In addition to this rule, the Wildlife Board may allow the collection, importation, transportation, propagation and possession of species of animal species under specific circumstances as provided in Rules R657-4 through R657-6, R657-9 through R657-11, R657-13, R657-14, R657-16, R657-19, R657-20 through R657-22, R657-33, R657-37, R657-38, R657-40, R657-41, R657-43, R657-44, R657-46 and R657-52 through R657-60. Where a more specific provision has been adopted, that provision shall control.

(4) The importation, distribution, relocation, holding in captivity or possession of coyotes and raccoons in Utah is governed by the Agricultural and Wildlife Damage Prevention Board and is prohibited under Section 4-23-11 and Rule R657-14, except as permitted by the Utah Department of Agriculture and Food.

(5) This rule does not apply to division employees acting within the scope of their assigned duties.

(6) The English and scientific names used throughout this rule for animals are, at the time of publication, the most widely accepted names. The English and the scientific names of animals change, and the names used in this rule are to be considered synonymous with names in earlier use and with names that, at any time after publication of this rule, may supersede those used herein.

R657-3-7. Take of Nuisance Birds and Mammals.

(1)(a) A person is not required to obtain a certificate of registration or a federal permit to kill [~~Black-billed Magpies, Cowbirds, House Sparrows, European Starlings, or Domestic Pigeons (Rock Doves) when found damaging personal or real property.~~] a bird belonging to a species listed in Subsection (1)(b) that is committing or about to commit depredations on ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance, provided:

(i) an attempt to control the birds using non-lethal methods occurs prior to using lethal methods;

~~[(i) strict observance of all]~~ (ii) applicable local ~~[-and other
] state and federal laws~~ is adhered to:

~~[(ii)]~~ are strictly complied with; and

~~[(iii) none of the birds killed~~ [pursuant to this section], nor
their plumage, are sold or offered for sale ~~[-and~~

~~[(iii) any person killing Black-billed Magpies, Cowbirds,
House Sparrows, European Starlings, or Domestic Pigeons (Rock
Doves) shall:~~

~~[(A) allow any federal warden or conservation officer
unrestricted access over the premises where Black-billed Magpies,
Cowbirds, House Sparrows, European Starlings, or Domestic Pigeons
(Rock Doves) are killed; and~~

~~[(B) furnish any information concerning the control
operations to the division or federal official upon request].~~

~~[(b) A person may kill Black-billed Magpies, Cowbirds,
House Sparrows, European Starlings, or Domestic Pigeons (Rock
Doves) by any means, excluding bait, explosives or poison, and only
on or over the threatened area.~~

~~[(c) Black-billed Magpies, Cowbirds, House Sparrows,
European Starlings, or Domestic Pigeons (Rock Doves) killed
pursuant to this section including their plumage and other parts may be
retained for noncommercial, personal use;~~

~~[(b) The following bird species are subject to the
provisions of Subsection (1)(a):~~

~~[(i) black-billed magpie (Pica hudsonia);~~

~~[(ii) American crow (Corvus brachyrhynchos);~~

~~[(iii) bronzed cowbird (Molothrus aeneus);~~

~~[(iv) brown-headed cowbird (Molothrus ater); and~~

~~[(v) shiny cowbird (Molothrus bonariensis).~~

~~[(c) Nuisance birds removed under Subsection (1)(a):~~

~~[(i) must be taken over the threatened area;~~

~~[(ii) may not be taken with:~~

~~[(d) Black-billed Magpies, Cowbirds, House Sparrows,
European Starlings, or Domestic Pigeons (Rock Doves) killed
pursuant to this section and disposed of] (A) bait, explosives, or
poison; or~~

~~[(B) ammunition with lead or toxic projectiles, except
when fired from an air rifle, air pistol, or a 22 caliber rimfire,
firearm; and~~

~~[(iii) must be disposed of at a landfill that accepts wildlife
carcasses, or~~ [must be] burned or incinerated.

~~[(e) This subsection incorporates Section 50 CFR 21.41,
21.42 and 21.43, 2007, ed., by reference.~~

~~[(d)(i) Any person that takes a nuisance bird pursuant to
Subsection (1)(a) must provide to the appropriate U.S. Fish and
Wildlife Service, Regional Migratory Bird Permit Office an annual
report for each species taken.~~

~~[(ii) Reports must be submitted by January 31st of the
following year, and include the following information:~~

~~[(A) name, address, phone number, and e-mail address of
the person taking the birds;~~

~~[(B) the species and number of birds taken;~~

~~[(C) the months in which the birds were taken;~~

~~[(D) the county or counties in which the birds were taken;~~

~~and~~

~~[(E) the general purpose for which the birds were taken,
such as protection of agriculture, human health and safety, property,
or natural resources.~~

~~[(e) This Subsection (1) incorporates Section 50 CFR
21.41, 21.42 and 21.43, 2007, ed., by reference.~~

~~[(2)(a) A person is not required to obtain a certificate of
registration or a federal permit to kill a house sparrow (Passer
domesticus), European starling (Sturnus vulgaris), or domestic
pigeon or rock pigeon (Columba livia) when found damaging
personal or real property, or when concentrated in such numbers and
manner as to constitute a health hazard or other nuisance, provided:~~

~~[(i) an attempt to control the birds using non-lethal
methods occurs prior to using lethal methods;~~

~~[(ii) applicable local, state and federal laws are strictly
complied with; and~~

~~[(iii) none of the birds killed, nor their plumage, are sold
or offered for sale.~~

~~[(b) Nuisance birds removed under Subsection (2)(a):~~

~~[(i) must be taken over the threatened area;~~

~~[(ii) may not be taken with bait, explosives, or poisons;
and~~

~~[(iii) must be disposed of at a landfill that accepts wildlife
carcasses, or burned or incinerated.~~

~~[(3) A person that takes a nuisance bird pursuant to
Subsection (1) shall:~~

~~[(a) allow any federal warden or state conservation officer
unrestricted access over the premises where the birds are killed;
and~~

~~[(b) furnish any information concerning the control
operations to the division or federal official upon request.~~

~~[(2)4] A person may kill nongame mammals as provided
in R657-19~~

**KEY: wildlife, animal protection, import restrictions, zoological
animals**

**Date of Enactment or Last Substantive Amendment: [September
10, 2012]2014**

Notice of Continuation: March 5, 2013

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-
14-19; 23-20-3; 23-13-14; 63G-7-101 et seq.**

Natural Resources, Wildlife Resources R657-6 Taking Upland Game

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 38600

FILED: 06/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the upland game program as approved by the Wildlife Board.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) add American Crow as a migratory game bird; 2) correct species identifications; 3) add draw locks and cross bows as legal weapons for the taking of upland game; 4) set the criteria for use of dogs on wildlife management areas; 5) make updates to the list of waterfowl management areas; and 6) make technical corrections.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--This amendment addresses basic housekeeping issues, it does not make any changes that would impact workload or process therefore, the Division of Wildlife Resources (DWR) determines that the proposed changes to the rule do not create a cost or savings impact to the state budget or DWR's budget and can be carried out with current personnel and budget.

◆ **LOCAL GOVERNMENTS:** None--Since this amendment has no negative impact on individual hunters or the local governments, the division finds that this amendment does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment cleans up some language issues, as well as clarifies the use of dogs on waterfowl management areas and therefore does not have the potential to generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment cleans up some language issues, as well as clarifies the use of dogs on waterfowl management areas and therefore does not have the potential to generate a cost or savings impact to sportsmen or other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment cleans up some language issues, as well as clarifies the use of dogs on waterfowl management areas and therefore, DWR determines that this amendment will not create additional costs for those who participate in wildlife-related activities in Utah.

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

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.

R657-6. Taking Upland Game.

R657-6-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-6-2. Definitions.

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

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

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

(c) "Falconry" means the sport of taking quarry by means of a trained raptor.

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

(e) "Migratory game bird" means, for the purposes of this rule, [~~Mourning Dove, White~~]American crow, mourning dove, white-winged [~~Dove~~]dove, [~~Band~~]band-tailed [~~Pigeon~~]pigeon, and Sandhill [~~Crane~~]crane.

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

(g) "Upland game" means pheasant, quail, [~~Chukar Partridge, Hungarian Partridge, Sage-grouse, Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse~~]chukar partridge, gray partridge, greater sage-grouse, ruffed grouse, dusky grouse, sharp-tailed grouse, cottontail rabbit, snowshoe hare, [~~White~~]white-tailed [~~Ptarmigan~~]ptarmigan, and the following migratory game birds: [~~Mourning Dove, White~~]American crow, mourning dove, white-winged [~~Dove~~]dove, [~~Band~~]band-tailed [~~Pigeon~~]pigeon, and Sandhill [~~Crane~~]crane.

R657-6-4. Permits for Band-tailed Pigeon, Greater Sage-grouse, Sharp-tailed Grouse and White-tailed Ptarmigan.

(1)(a) A person may not take or possess:

(i) Band-tailed [~~Pigeon~~]pigeon without first obtaining a Band-tailed [~~Pigeon~~]pigeon permit;

(ii) [~~Sage~~]Greater sage-grouse without first obtaining a [~~Sage~~]Greater sage-grouse permit;

(iii) Sharp-tailed [~~Grouse~~]grouse without first obtaining a Sharp-tailed [~~Grouse~~]grouse permit; or

(iv) White-tailed [~~Ptarmigan~~]ptarmigan without first obtaining a White-tailed [~~Ptarmigan~~]ptarmigan permit.

(b) A person may obtain only one permit for each species listed in Subsection (1)(a), except a falconer with a valid Falconry Certificate of Registration may obtain one additional two-bird [~~Sage~~]Greater sage-grouse permit beginning on the date published in the guidebook of the Wildlife Board for taking upland game and wild turkey, if any permits are remaining.

(2)(a) A limited number of two-bird [~~Sage~~]Greater sage-grouse permits are available in the areas published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(b) A [~~Sage~~]Greater sage-grouse permit may only be used in one of the open areas as published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(c) [~~Sage~~]Greater sage-grouse permits will be issued pursuant to R657-62-~~[22]~~21.

(3)(a) A limited number of two-bird, Sharp-tailed [~~Grouse~~]grouse permits are available.

(b) A Sharp-tailed [~~Grouse~~]grouse permit may only be used in one of open areas as published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(c) Sharp-tailed [~~Grouse~~]grouse permits will be issued pursuant to R657-62-~~[22]~~21.

(4) Band-tailed [~~Pigeon~~]pigeon and White-tailed [~~Ptarmigan~~]ptarmigan permits are available from Division offices, through the mail, and through the Division's Internet address by the first week in August, free of charge.

R657-6-5. Application Procedure for Sandhill Crane.

(1)(a) Sandhill [~~Crane~~]crane permits will be issued pursuant to R657-62-~~[22]~~21.

(b) Residents and nonresidents may apply.

(c) The application period for Sandhill [~~Crane~~]crane is published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(2) A person may obtain only one Sandhill [~~Crane~~]crane permit each year.

R657-6-6. ~~Firearms and Archery Tackle~~ Authorized Weapons.

(1) A person may not use any weapon or device to take upland game except as provided in this section.

(2)(a) Upland game may be taken with archery equipment, including a draw-lock, a crossbow, a shotgun no larger than 10 gauge, or a handgun. Loads for shotguns and handguns must be one-half ounce or more of shot size ranging between no. 2 and no. 8, except:

(i) migratory game birds may not be taken with a handgun, or a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(ii) cottontail rabbit and snowshoe hare may be taken with any firearm not capable of being fired fully automatic; and

(iii) Sandhill [~~Crane~~]crane may be taken with any size of nontoxic shot.

~~[(b) Crossbows are not legal archery equipment for taking upland game, except as provided in Rule R657-12.]~~

(3) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a visible beam of light.

R657-6-7. Nontoxic Shot.

(1) Only nontoxic shot may be used to take Sandhill [~~Crane~~]crane.

(2) Except as provided in Subsection (3), nontoxic shot is not required to take any species of upland game, except Sandhill [~~Crane~~]crane.

(3) A person may not possess or use lead shot or any other shot that has not been approved by the U.S. Fish and Wildlife Service while on federal refuges or the following state waterfowl or wildlife management areas: Bicknell Bottoms, Blue Lake, Browns Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

R657-6-8. Use of Firearms, Crossbows and Archery Tackle on State Wildlife Management Areas.

(1) A person may not possess a firearm, a crossbow, or archery tackle, except during the specified hunting seasons or as authorized by the Division on the following wildlife management areas: Bear River Trenton Property Parcel, Browns Park, Bud Phelps, [~~Castle Dale~~,—]Huntington, James Walter Fitzgerald, [~~Mallard Springs~~]Kevin Conway, Manti Meadows, Montes Creek, Nephi, Pahvant, Redmond Marsh, Roosevelt, Scott M. Matheson Wetland Preserve, Stewart Lake, Vernal, and Willard Bay.

(2) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-9. Use of Firearms, Crossbows, and Archery Tackle on State Waterfowl Management Areas.

(1) A person may not possess a firearm, crossbow or archery tackle, except during the specified waterfowl hunting seasons or as authorized by the Division on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Browns Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, [~~and~~]Stewart Lake, Timpie Springs, and Topaz.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be held in possession.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-10. Shooting Hours.

(1)(a) Except as provided in Subsection (b), shooting hours for upland game are as follows:

(i) ~~[Band]American crow, band-tailed [Pigeon, Mourning Dove, White]pigeon, mourning dove, white-winged [Dove]dove,~~ and Sandhill ~~[Crane]crane~~ may be taken only between one-half hour before official sunrise through official sunset.

(ii) ~~[-Sage]Greater sage-grouse, [Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse, White-tailed Ptarmigan, Chukar Partridge, Hungarian Partridge]ruffed Grouse, dusky grouse, sharp-tailed grouse, white-tailed ptarmigan, chukar partridge, gray partridge,~~ pheasant, quail, cottontail rabbit, and snowshoe hare may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(2) A person may not discharge a firearm on state owned lands adjacent to the Great Salt Lake, state waterfowl management areas or on federal refuges between official sunset through one-half hour before official sunrise.

R657-6-11. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of Parks and Recreation in Rule R651-614-4.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns, crossbow, or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-6-12. Falconry.

(1)(a) Falconers must obtain an annual hunting or combination license and a valid falconry certificate of registration or license to hunt upland game and must also obtain:

(b) a Band-tailed ~~[Pigeon]pigeon~~ permit before taking Band-tailed ~~[Pigeon]pigeon~~;

(c) a ~~[Sage]Greater sage-grouse~~ permit before taking ~~[Sage]Greater sage-grouse~~;

(d) a Sharp-tailed ~~[Grouse]grouse~~ permit before taking Sharp-tailed ~~[Grouse]grouse~~;

(e) a White-tailed ~~[Ptarmigan]ptarmigan~~ permit before taking White-tailed ~~[Ptarmigan]ptarmigan~~; or

(f) a Sandhill ~~[Crane]crane~~ permit before taking Sandhill ~~[Crane]crane~~.

(2) Areas open and bag and possession limits for falconry are provided in the guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-6-13. Baiting.

(1) A person may not hunt upland game by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any upland game, except Sandhill ~~[Crane]crane~~, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-6-16. Tagging Requirements.

(1) The carcass of a Sandhill ~~[Crane;]crane, Greater sage grouse,~~ or Sharp-tailed ~~[Grouse]grouse~~ must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue Sandhill ~~[Crane;]crane, Greater sage grouse,~~ or Sharp-tailed ~~[Grouse]grouse~~ after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-6-18. Waste of Upland Game.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) A person shall not kill or cripple any upland game without making a reasonable effort to retrieve the upland game animal.

R657-6-20. Use of Dogs.

(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in the Wildlife Code, administrative rules issued under Wildlife Code, or a guidebook of the Wildlife Board.

([+2) Dogs may be used to locate and retrieve upland game during open upland game hunting seasons.

(3) Dogs are generally allowed on state wildlife management and waterfowl management areas, subject to the following conditions.

([2) Dogs]a) dogs are not allowed on the following state wildlife management [or]areas and waterfowl management areas[-; except during open hunting seasons] between March 10 and August 31 annually or as posted by the Division[-:];

([3) State wildlife management and waterfowl management areas are listed under Sections R657-6-9 and R657-6-10:]i) Annabella;

(ii) Bear River Trenton Property Parcel;

(iii) Bicknell Bottoms;

- ~~(iv) Blue Lake;~~
- ~~(v) Browns Park;~~
- ~~(vi) Bud Phelps;~~
- ~~(vii) Clear Lake;~~
- ~~(viii) Desert Lake;~~
- ~~(ix) Farmington Bay;~~
- ~~(x) Harold S. Crane;~~
- ~~(xi) Hatt's Ranch~~
- ~~(xii) Howard Slough;~~
- ~~(xiii) Huntington;~~
- ~~(xiv) James Walter Fitzgerald;~~
- ~~(xv) Kevin Conway;~~
- ~~(xvi) Locomotive Springs;~~
- ~~(xvii) Manti Meadows;~~
- ~~(xviii) Mills Meadows;~~
- ~~(xix) Montes Creek;~~
- ~~(xx) Nephi;~~
- ~~(xxi) Ogden Bay;~~
- ~~(xxii) Pahvant;~~
- ~~(xxiv) Public Shooting Grounds;~~
- ~~(xxv) Redmond Marsh;~~
- ~~(xxvi) Richfield;~~
- ~~(xxvii) Roosevelt;~~
- ~~(xxviii) Salt Creek;~~
- ~~(xxix) Scott M. Matheson Wetland Preserve;~~
- ~~(xxx) Steward Lake;~~
- ~~(xxxi) Timpie Springs;~~
- ~~(xxxii) Topaz Slough;~~
- ~~(xxxiii) Vernal; and~~
- ~~(xxxiv) Willard Bay.~~

(b) The Division may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific Division properties and at Regional offices;

(c) Organized events or group gatherings of twenty-five (25) or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in R657-28; and

(d) Dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the Division without a special use permit.

R657-6-21. Closed Areas.

A person may not hunt upland game in any area posted closed by the Division or any of the following areas:

- (1) Salt Lake International Airport boundaries as posted.
- (2) Incorporated municipalities: ~~[Most of the incorporated areas of Alta, a portion of Davis County, Garland City, Layton, Logan, Pleasant View City, South Ogden City, Syracuse City, West Jordan, and West Valley City are closed to]~~ Many incorporated municipalities prohibit the discharge of firearms and other weapons. Check with the respective city officials for specific boundaries[. Other municipalities may have additional firearm restrictions] and limitations.
- (3) Wildlife Management Areas:

(a) Waterfowl management areas ~~[and federal refuges]~~ are open for hunting upland game only during designated waterfowl hunting seasons or as authorized by the Division, including: ~~[Bear River National Wildlife Refuge, Bicknell Bottoms,]~~ Blue Lake~~[-~~

~~Brown's Park]~~, Clear Lake, ~~[Desert Lake,]~~ Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, ~~[Ogden National Wildlife Refuge,]~~ Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to upland game hunting.

(c) Goshen Warm Springs is closed to upland game hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing~~[unless otherwise authorized].~~

KEY: wildlife, birds, rabbits, game laws

Date of Enactment or Last Substantive Change: ~~[September 12, 2011]~~ **2014**

Notice of Continuation: **June 28, 2010**

Authorizing, and Implemented or Interpreted Law: **23-14-18; 23-14-19**

Natural Resources, Wildlife Resources **R657-9** Taking Waterfowl, Common Snipe and Coot

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38605

FILED: 06/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the division's waterfowl program.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) allow the use of draw locks and cross bows as legal weapons for the taking of waterfowl; 2) simplify the list of State Waterfowl Management Areas that allow hunting as set in the guidebook for taking waterfowl; 3) set the criteria for the use of dogs on State Wildlife Management Areas; and 4) make technical corrections.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment clarifies waterfowl management areas that fall under certain restrictions and sets the criteria for the use of dogs it does not make any changes to the process or employee workload therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the

state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

♦ LOCAL GOVERNMENTS: Since this amendment has minimal impact on individual hunters and no impact on the local governments, the division finds that this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ SMALL BUSINESSES: This amendment adds waterfowl management areas to a list of areas with special restrictions and allows for the use of dogs on certain wildlife management areas and therefore does not have the potential to generate a cost or savings impact to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment adds waterfowl management areas to a list of areas with special restrictions and allows for the use of dogs on certain wildlife management areas and therefore does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment will not create additional costs for those who participate in wildlife related activities in Utah.

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

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.
R657-9. Taking Waterfowl, Common Snipe and Coot.
R657-9-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR

27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-4. Permit Applications for Swan.

(1) Swan permits will be issued pursuant to R657-62-[23]22.

R657-9-7. ~~Firearms~~ Authorized Weapons.

(1) Migratory game birds may be taken with a shotgun, crossbow or archery tackle, including a draw lock.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, ~~crossbow, except as provided in Rule R657-12,~~ poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells, except as authorized by the Wildlife Board and specified in the guidebook of the Wildlife Board for taking Waterfowl, Common snipe and Coot.

R657-9-9. Use of ~~Firearms~~ Weapons on State Waterfowl Management Areas.

(1) A person may not possess a firearm, crossbow or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division: [

~~(a) Box Elder County -] Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, [and] Salt Creek;~~

~~(b) Daggett County - Brown's Park;~~

~~(c) Davis County - Farmington Bay, Howard Slough, and Ogden Bay;~~

~~(d) Emery County - Desert Lake;~~

~~(e) Juab County - Mills Meadow;~~

~~(f) Millard County - Clear Lake, Topaz Slough;~~

~~(g) Sanpete County - Manti Meadows;~~

~~(h) Tooele County - Blue Lake and], Stewart Lake, Timpie Springs;~~

~~(i) Uintah County - Stewart Lake;~~

~~(j) Utah County - Powell Slough;~~

~~(k) Wayne County - Bicknell Bottoms;] and Topaz,~~

[~~(l) Weber County - Ogden Bay and Harold S. Crane.~~

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession, except as provided in Rule R657-12.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code,

provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-9-23. Custody of Birds of Another.

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-~~23-~~21.

R657-9-28. Use of Dogs.

~~(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in the Wildlife Code, administrative rules issued under Wildlife Code, or a guidebook of the Wildlife Board.~~

~~(1)2) Dogs may be used to locate and retrieve [migratory game birds]turkey during open turkey hunting seasons.~~

~~(2)3) Dogs are [not]generally allowed on state wildlife management [or]and waterfowl management areas, [except during open hunting seasons or as posted by the division]subject to the following conditions.~~

~~(a) dogs are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the Division:~~

- ~~(i) Annabella;~~
- ~~(ii) Bear River Trenton Property Parcel;~~
- ~~(iii) Bicknell Bottoms;~~
- ~~(iv) Blue Lake;~~
- ~~(v) Browns Park;~~
- ~~(vi) Bud Phelps;~~
- ~~(vii) Clear Lake;~~
- ~~(viii) Desert Lake;~~
- ~~(ix) Farmington Bay;~~
- ~~(x) Harold S. Crane;~~
- ~~(xi) Hatt's Ranch~~
- ~~(xii) Howard Slough;~~
- ~~(xiii) Huntington;~~
- ~~(xiv) James Walter Fitzgerald;~~
- ~~(xv) Kevin Conway;~~
- ~~(xvi) Locomotive Springs;~~
- ~~(xvii) Manti Meadows;~~
- ~~(xviii) Mills Meadows;~~
- ~~(xix) Montes Creek;~~
- ~~(xx) Nephi;~~
- ~~(xxi) Ogden Bay;~~
- ~~(xxii) Pahvant;~~
- ~~(xxiv) Public Shooting Grounds;~~
- ~~(xxv) Redmond Marsh;~~
- ~~(xxvi) Richfield;~~
- ~~(xxvii) Roosevelt;~~
- ~~(xxviii) Salt Creek;~~
- ~~(xxix) Scott M. Matheson Wetland Preserve;~~
- ~~(xxx) Steward Lake;~~
- ~~(xxxi) Timpie Springs;~~
- ~~(xxxii) Topaz Slough;~~
- ~~(xxxiii) Vernal; and~~
- ~~(xxxiv) Willard Bay.~~

~~(b) The Division may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific Division properties and at Regional offices;~~

~~(c) Organized events or group gatherings of twenty-five (25) or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in R657-28; and~~

~~(d) Dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the Division without a special use permit.~~

R657-9-30. Closed Areas.

(1) A person may not trespass on state waterfowl management areas except during prescribed seasons, or for other activities as posted without prior permission from the division.

(2) A person may not participate in activities that are posted as prohibited.

(3) A person may not trespass, take, hunt, shoot at, or rally any waterfowl, snipe, or coot in the following specified areas:

(a) Antelope Island causeway - within 600 feet of either the north or south side.

(b) Brown's Park - That part adjacent to headquarters.

(c) Clear Lake - Spring Lake.

(d) Desert Lake - That part known as "Desert Lake."

(e) Farmington Bay - Headquarters and Learning center area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.

(f) Ogden Bay - Headquarters area.

(g) Public Shooting Grounds - That part as posted lying above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake."

(h) Salt Creek - That part as posted known as "Rest Lake."

(i) Bear River Migratory Bird Refuge - For information contact the refuge manager, U.S. Fish and Wildlife Service, at (435) 723-5887. The entire refuge is closed to the hunting of snipe.

(j) Fish Springs and Ouray National Wildlife Refuges - Waterfowl hunters must register at Fish Springs refuge headquarters prior to hunting. Both refuges are closed to the hunting of swans~~[- and Fish Springs is closed to the hunting of geese].~~

(k) State Parks

Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated open by appropriate signing as provided in Rule R651-614-4.

(l) Great Salt Lake Marina and adjacent areas as posted.

(m) Millard County

Gunnison Bend Reservoir and the inflow upstream to the Southerland Bridge.

(n) Salt Lake International Airport - Hunting and shooting prohibited as posted.

KEY: wildlife, birds, migratory birds, waterfowl

Date of Enactment or Last Substantive Amendment: ~~[November 7, 2013]~~2014

Notice of Continuation: August 16, 2011

Authorizing, and Implemented or Interpreted Law: 23-14-19; 23-14-18; 50 CFR part 20

Natural Resources, Wildlife Resources
R657-46
 The Use of Game Birds in Dog Field
 Trials and Training

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38603

FILED: 06/12/2014

RULE ANALYSIS

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

SUMMARY OF THE RULE OR CHANGE: Provisions of this rule are being amended to reflect proper species names, as well as allow for the consistent use of dogs with Rules R657-6 and R657-9.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19 and Section 23-17-9

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule is being amended reflect current species names, as well as to provide for a consistent use of dogs with Rules R657-6 and R657-9. DWR determines that there is not a cost or savings impact to the state budget or DWR's budget associated with this amendment.

◆ **LOCAL GOVERNMENTS:** None--This filing simply updates species names as well as provides consistency when using dogs throughout Rules R657-6 and R657-9. Therefore, it does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This rule is being amended to allow for correct species names, as well as consistency with the use of dogs throughout this rule and Rules R657-6 and R657-9. This amendment would not generate a savings or cost impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule is being amended to allow for correct species names, as well as consistency with the use of dogs throughout this rule and Rules R657-6 and R657-9. This amendment would not generate a savings or cost impact to persons wishing to participate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule is being amended to reflect proper species names, as well as allow for the consistent use of dogs with Rules R657-6 and R657-9. This does not create a cost or savings impact on those participating with dog training.

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

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

NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.
R657-46. The Use of Game Birds in Dog Field Trials and Training.

R657-46-1. Purpose and Authority.

Under authority of Sections 23-14-18, 23-14-19 and 23-17-9 this rule provides the requirements, standards, and application procedures for the use of game birds in dog field trials and training.

R657-46-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
 - (a) "Field trial" means an organized event where the abilities of dog handlers and their dogs and are evaluated, including the ability of the dogs to hunt or retrieve game birds.
 - (b) "Game bird" means:
 - (i) crane;
 - (ii) [~~blue~~ dusky, ruffed, sage, sharp-tailed, and spruce grouse;
 - (iii) chukar, red-legged, and [~~Hungarian~~ gray] partridges;
 - (iv) pheasant;
 - (v) band-tailed pigeon;
 - (vi) northern bobwhite, California, Gambel's, [~~harlequin~~ Montezuma, mountain, and scaled quail;
 - (vii) waterfowl;

(viii) common ground, Inca, mourning, and white-winged dove;

(ix) wild or pen-reared wild turkey of the following subspecies:

- (A) ~~Eastern;~~eastern;
- (B) Florida or Osceola;
- (C) Gould's;
- (D) Merriam's;
- (E) ~~Ocellated~~ocellated; and
- (F) Rio Grande; and
- (x) ptarmigan.

(c) "Quad flyer test" means throwing pen-reared game birds by hand from four fixed stations and shooting of the pen-reared game birds one immediately after the other.

(d) "Train" or "training" means the informal handling, exercising, teaching, instructing, and disciplining of dogs in the skills and techniques of hunting and retrieving game birds characterized by absence of fees, judging, or awards.

R657-46-3. Application for a Field Trial Certificate of Registration.

(1)(a) A person may conduct a field trial using pen-reared game birds provided that person applies for and obtains a certificate of registration from the Division of Wildlife Resources, except as provided in Subsection (b).

(b) A person may conduct a field trial using pen-reared game birds on a commercial hunting area without obtaining a certificate of registration.

(2) Applications are available at any division office.

(3) The application must include written permission from the owner, lessee, or land management agency of the property where the field trial is to be conducted.

(4)(a) Applications must be submitted to the appropriate regional division office where the field trial is being held.

(b) Applications must be received at least 45 days prior to the date of the field trial.

(5) The division will not approve any application for an area where, in the opinion of the division, the field trial or the release of pen-reared game birds interferes with wildlife, wildlife habitat or wildlife nesting periods.

(6) Field trials may be held only during the dates and within the area specified on the field trial certificate of registration.

R657-46-4. Use of Pen-Reared Game Birds for Field Trials.

(1) Legally acquired pen-reared game birds may be possessed or used for field trials.

(2) Any person using pen-reared game birds must have an invoice or bill of sale in their possession showing lawful personal possession or ownership of such birds.

(3) Pen-reared game birds may not be imported into Utah without a valid veterinary health certificate as required in Rules R58-1 and R657-4.

(4)(a) Each pen reared game bird must be marked with an aluminum leg band or other permanent marking before being released in the field trial, except as provided in Subsection (d).

(b) Aluminum leg bands may be purchased at any division office.

(c) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.

(d) Each pen-reared game bird used in a field trial that is conducted on a commercial hunting area may be released without marking each pen-reared game bird, as with an aluminum leg band.

(5) Pen-reared game birds used for a field trial may be released only on the property specified in the certificate of registration where the field trial is conducted.

(6) After release, pen-reared game birds may be taken:

(a) by the person who released the pen-reared game birds, or by any person participating in the field trial; and

(b) only during the dates of the field trial event as specified in the certificate of registration.

(7) Wild game birds may be taken only during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.

(8) Pen-reared game birds acquired for a field trial that are not released may be held in possession:

(a) no longer than 60 days; or

(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657-4.

(9) Pen-reared game birds that leave the property where the field trial is held at the end of the field trial shall become the property of the state of Utah and may not be taken, except during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.

R657-46-5. Use of Pen-Reared Game Birds for Dog Training.

(1) A person may train a dog using legally acquired pen-reared game birds provided:

(a) the person using the pen-reared game birds has an invoice or bill of sale in their possession showing lawful personal possession or ownership of the pen-reared game birds;

(b) each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released for training, except as provided in Subsection (3)(a);~~and~~

(c) any pheasant released during training must be marked with a visible streamer or tape at least 12 inches in length before being released, and any pheasant killed during training must have the streamer or tape attached when killed~~[-]; and~~

(d) the use of dogs complies with Rules R657-6, R657-9, and R657-54.

(2) Aluminum leg bands may be purchased at any division office.

(3)(a) Each pen-reared game bird used for dog training that is conducted on a commercial hunting area may be released without marking each pen-reared game bird with an aluminum leg band or other permanent marking.

(b) Any pheasant released during training on a commercial hunting area may be released without marking as provided in Subsections (1)(b) and (1)(c).

(4) The training may not consist of more than four dogs at any time, except the training may consist of more than four dogs provided:

(a) the dogs exceeding four in number are eight months of age or younger; and

(b) no live ammunition is in possession of the person or persons engaged in training the dogs.

(5) A person or group of persons may not release more than ten pen-reared game birds per day or three pen-reared game birds per dog per day, whichever is greater.

(6) A person or group of persons may not use more than three firearms at any time, except four firearms may be used when training retrievers using the American Kennel Club quad flyer test.

(7) Pen-reared game birds acquired for training that are not released may be held in possession:

(a) no longer than 60 days; or

(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657-4.

(8) Pen-reared game birds that are not recovered on the day of the training or pen-reared game birds that escape shall become property of the state of Utah and may not be recaptured or taken, except during legal hunting seasons as specified in the Upland Game and Waterfowl proclamations of the Wildlife Board.

(9) A person training dogs on official dog training areas, designated by the division, is not required to comply with Subsection (1)(c) or Subsections (4), (5) or (6).

R657-46-6. Use of Wild Game Birds for Dog Training.

(1) A person may train a dog on wild game birds provided:

(a) the dog, or the person training the dog, may not harass, catch, capture, kill, injure, or at any time, possess any wild game birds, except during legal hunting seasons as provided in the Upland Game or Waterfowl proclamations of the Wildlife Board;

(b) the ~~[dogs are not on any state wildlife management or waterfowl management areas as specified in Rule R657-6, except during open hunting seasons or as posted by the division;]use of dogs complies with Rules R657-6, R657-9, and R657-54;~~

(c) the person training a dog on wild game birds, except during legal hunting seasons:

(i) may not possess a firearm, except a pistol firing blank cartridges;

(ii) must comply with city and county ordinances pertaining to the discharge of any firearm;

(iii) must obtain written permission from the landowner for training on properly posted private property.

(2) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

KEY: wildlife, birds, dogs, training

Date of Enactment or Last Substantive Amendment: ~~[March 5, 2002]~~2014

Notice of Continuation: May 29, 2014

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

Natural Resources, Wildlife Resources

R657-54

Taking Wild Turkey

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38601

FILED: 06/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the wild turkey program as approved by the Wildlife Board.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) remove the landowner turkey program and all definitions associated with it; 2) allow for cross-bows to be used for the taking of turkey; 3) allow for shotgun no smaller than 28 gauge for the taking of turkey; 4) allow for the taking of turkey with falcons; 5) establish a Fall General Season Turkey hunt; 6) set the criteria for the use of dogs on wildlife management areas; and 6) remove the outdated list of cities closed to hunting and replaces the language used to identify closed areas.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This amendment provides additional opportunities for sportsmen wishing to participate in turkey hunting in Utah. All regulations can be implemented using the current budget, therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** Since these amendments will impact only the individual sportsmen wishing to participate in turkey hunting and has no impact on the local governments, the division finds that this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** This amendment increases turkey hunting opportunities with a fall general season hunt and allows for a wider variety of weapon types, it also removes the landowner turkey permit program so DWR determines that these amendments do not have the potential to generate a cost or savings to small business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment increases turkey hunting opportunities with a fall general season hunt and allows for a wider variety of weapon types, it also removes the landowner turkey permit program so DWR determines that the amendments do have the potential to generate a cost to those wishing to participate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment could create additional costs for those who wish to participate in the fall turkey hunt. The cost of a second turkey permit would be required.

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

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.

R657-54. Taking Wild Turkey.

R657-54-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking wild turkey.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-54-2. Definitions.

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

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

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

(c) "[Cleared and planted land" means private land or privately leased state or federal land used to produce a cultivated crop for commercial gain and the cultivated crop is routinely irrigated or routinely mechanically or manually harvested, or is crop residue that has forage value for livestock.]Falconry" means the sport of taking quarry by means of a trained raptor.

[(d) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner's livelihood.

(e) "Essential habitat" means areas where wild turkeys regularly and consistently roost, feed, loaf, nest or winter.

(f) "Immediate family" means the landowner's lessee, or landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.

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

(h) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(i) "Open season" means the days when upland game may lawfully be taken. Each period prescribed as an open season shall include the first and last days thereof.

(j) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

R657-54-3. Application Procedure for Wild Turkey.

(1) Permits for wild turkey will be issued pursuant to R657-62-[26.]25.

R657-54-4. [Landowner Permits.]Authorized Weapons.

[(1)(a) Up to an additional 20 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to private landowners through a drawing.

(2) Landowners interested in obtaining landowner permits must:

(a) contact the regional Division office in their area on the dates published in the guidebook of the Wildlife Board for taking upland game and wild turkey;

(b) obtain and complete a landowner application;

(c) obtain a Division representative's signature on the landowner application; and

(d) submit the landowner application in accordance with Section R657-62-26.

(4)(a) Landowner permit applications that are not signed by the local Division representative will be rejected.

(5)(a) Only one eligible landowner may submit an application for the same parcel of land within the respective regional hunt boundary area.

(b) In cases where more than one application is received for the same parcel of land, all applications will be rejected.

(6) Applications must include:

(a) description of total acres owned within the respective regional hunt boundary;

(b) evidence of property ownership, including a copy of a title, deed, or tax notice indicating the applicant is the owner of the property; and

(c) the signature of the landowner.

(i) The signature on the application will serve as an affidavit certifying land ownership.

(7)(a) A landowner is eligible to participate in the drawing for available landowner turkey permits provided the landowner owns:

~~(i) at least 640 acres of essential habitat, or 40 acres of essential habitat that is cleared and planted land, in an open unit designated as a Merriam's unit that supports wild turkeys; or~~

~~(ii) at least 20 acres of essential habitat in an open unit designated as a Rio Grande unit that supports wild turkeys.~~

~~(b) Land qualifying as essential habitat, or cleared and planted land, and owned by more than one landowner may qualify for a landowner permit. However, the landowners who own the qualifying land must determine the landowner who will be participating in the drawing.~~

~~(8)(a) A landowner who applies for a landowner permit may:~~

~~(i) be issued the permit; or~~

~~(ii) designate a member of the landowner's immediate family or landowner's regular full-time employee to receive the permit.~~

~~(b) At the time of application, the landowner must identify the designee who will receive the permit.~~

~~(c) The landowner permit may be used only on the open limited entry area in which the landowner's property is located during the open season established for hunting wild turkeys.~~

~~(d) A person may not apply for or obtain a landowner permit without possessing a Utah hunting or combination license.~~

~~(9) Applicants will be notified by mail or e-mail of the drawing results for landowner permits by the date published in the guidebook of the Wildlife Board for taking upland game and wild turkey.~~

~~(10)(a) Any landowner permits remaining after the landowner drawing shall be converted to public limited entry permits for that specific unit.~~

~~(b) These permits shall be issued through the limited entry drawing. Therefore, the number of public permits listed in the guidebook of the Wildlife Board for taking upland game and wild turkey, may increase.~~

~~(11)(a) A waiting period does not apply to landowners applying for landowner permits.~~

~~(b) A landowner may apply once annually for a landowner permit and a limited entry permit, but may only draw or obtain one permit.~~

R657-54-5. Firearms and Archery Tackle.]

Wild turkey may be taken only with

(a) Archery equipment, including a draw-lock, or a crossbow using broadhead tipped arrows or bolts; or

(b) [Wild turkey may be taken only with a bow and broadhead tipped arrows or] a shotgun no larger than 10 gauge and no smaller than [20]28 gauge, firing shot sizes ranging between BB and no. 8.

R657-54-[6-]5. Shooting Hours.

(1) Wild turkey may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-54-[7-]6. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of Parks and Recreation in Rule R651-614-4.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns, crossbows or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-54-7. Falconry.

Falconers may not release a raptor on wild turkeys during the spring seasons. Falconers may release a raptor on wild turkeys during the fall season, as published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-54-8. [Falconry.

~~Falconers may not release a raptor on wild turkey.~~

R657-54-9.]Live Decoys and Electronic Calls.

A person may not take a wild turkey by the use or aid of live decoys, records or tapes of turkey calls or sounds, or electronically amplified imitations of turkey calls.

R657-54-[10-]9. Baiting.

A person may not hunt turkey using bait, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. An area is considered baited for 10 days after bait is removed, or 10 days after bait in an area is eaten.

R657-54-[11-]10. Sitting or Roosting Turkeys.

A person may not take or attempt to take any turkey sitting or roosting in a tree.

R657-54-[12-]11. Tagging Requirements.

(1) The carcass of a turkey must be tagged before the carcass is moved from, or the hunter leaves, the site of kill.

(2) To tag a carcass, a person shall:

(a) completely detach the tag from the license or permit;

(b) completely remove the appropriate notches to correspond with:

(i) the date the animal was taken;

(ii) the sex of the animal; and

(c) attach the tag to the carcass so that the tag remains securely fastened and visible.

(3) A person may not:

(a) remove more than one notch indicating date or sex; or

(b) tag more than one carcass using the same tag.

(4) A person may not hunt or pursue turkey after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-54-[13-]12. Identification of Species and Sex.

(1)[The] During the spring seasons the head and beard must remain attached to the carcass of wild turkey while being transported.

~~(2) During the fall season only the head must remain attached to the carcass of wild turkey while being transported.~~

~~[R657-54-14.]~~**R657-54-13. Use of Dogs.**

~~(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in the Wildlife Code, administrative rules issued under Wildlife Code, or a guidebook of the Wildlife Board.~~

~~(1)2) Dogs may be used to locate and retrieve [wild-] turkey during open turkey hunting seasons.~~

~~(2)3) Dogs are [not]generally allowed on state wildlife management [or]and waterfowl management areas, [except during open hunting seasons or as posted by the Division]subject to the following conditions.~~

~~(a) dogs are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the Division:~~

- ~~(i) Annabella;~~
- ~~(ii) Bear River Trenton Property Parcel;~~
- ~~(iii) Bicknell Bottoms;~~
- ~~(iv) Blue Lake;~~
- ~~(v) Browns Park;~~
- ~~(vi) Bud Phelps;~~
- ~~(vii) Clear Lake;~~
- ~~(viii) Desert Lake;~~
- ~~(ix) Farmington Bay;~~
- ~~(x) Harold S. Crane;~~
- ~~(xi) Hatt's Ranch;~~
- ~~(xii) Howard Slough;~~
- ~~(xiii) Huntington;~~
- ~~(xiv) James Walter Fitzgerald;~~
- ~~(xv) Kevin Conway;~~
- ~~(xvi) Locomotive Springs;~~
- ~~(xvii) Manti Meadows;~~
- ~~(xviii) Mills Meadows;~~
- ~~(xix) Montes Creek;~~
- ~~(xx) Nephi;~~
- ~~(xxi) Ogden Bay;~~
- ~~(xxii) Pahvant;~~
- ~~(xxiv) Public Shooting Grounds;~~
- ~~(xxv) Redmond Marsh;~~
- ~~(xxvi) Richfield;~~
- ~~(xxvii) Roosevelt;~~
- ~~(xxviii) Salt Creek;~~
- ~~(xxix) Scott M. Matheson Wetland Preserve;~~
- ~~(xxx) Steward Lake;~~
- ~~(xxxi) Timpie Springs;~~
- ~~(xxxii) Topaz Slough;~~
- ~~(xxxiii) Vernal; and~~
- ~~(xxxiv) Willard Bay.~~

~~(b) The Division may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific Division properties and at Regional offices;~~

~~(c) Organized events or group gatherings of twenty-five (25) or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in R657-28; and~~

~~(d) Dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the Division without a special use permit.~~

~~[R657-54-15.]~~**R657-54-14. Closed Areas.**

A person may not hunt wild turkey in any area posted closed by the Division or any of the following areas:

- ~~(1) Salt Lake Airport boundaries as posted.~~
- ~~(2) Incorporated municipalities: [Most of the incorporated areas of Alta, a portion of Davis County, Garland City, Layton, Logan, Pleasant View City, South Ogden City, West Jordan, and West Valley City are closed to]Many incorporated municipalities prohibit the discharge of firearms and other weapons. Check with the respective city officials for specific boundaries[Other municipalities may have additional firearm restrictions] and limitations.~~
- ~~(3) All State Waterfowl Management Areas except [Brown's]Browns Park and Stewart Lake~~
- ~~(4) All National Wildlife Refuges unless declared open by the managing authority.~~
- ~~(5) Military installations, including Camp Williams, are closed to hunting and trespassing[unless otherwise authorized].~~

~~R657-54-16.]~~**R657-54-15. Possession of Live Protected Wildlife.**

It is unlawful for any person to hold in captivity at any time any protected wildlife, except as provided by Title 23, Wildlife Resources Code or any rules and regulations of the Wildlife Board. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

~~R657-54-17.]~~**R657-54-16. Spotighting.**

- ~~(1) Except as provided in Section 23-13-17:~~
- ~~(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and~~
- ~~(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.~~
- ~~(2) The provisions of this section do not apply to:~~
- ~~(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or~~
- ~~(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.~~

~~R657-54-18.]~~**R657-54-17. Exporting Wild Turkey from Utah.**

A person may export wild turkey or their parts from Utah only if:

- ~~(1) the person who harvested the turkey accompanies it and possess a valid permit corresponding to the tag; or~~
- ~~(2) the person exporting the turkey or its parts, if it is not the person who harvested the turkey, has obtained a shipping permit from the Division.~~

R657-54-[19-]18. Waste of Game.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) A person shall not kill or cripple any wild turkey without making a reasonable effort to retrieve the turkey.

R657-54-[20-]19. Wild Turkey Poaching Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a wild turkey under Section 23-20-4, within any limited entry area may receive a permit from the Division to hunt wild turkey in the following year on the same limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a Poaching-Reported Reward Permit would exceed 5 percent of the total number of limited entry permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the Division may issue a permit as outlined in Subsection (b).

(b) A permit for a wild turkey, on an alternative limited entry area that has been allocated more than 20 permits, may be issued.

(3)(a) The Division may issue only one Poaching-Reported Reward Permit for any one wild turkey illegally taken.

(b) No more than one Poaching-Reported Reward Permit shall be issued to any one person per successful prosecution.

(c) No more than one Poaching-Reported Reward Permit shall be issued to any one person in any one calendar year.

(d) A person must possess a Utah hunting or combination license to receive a Poaching-Reported Reward Permit.

(4)(a) Poaching-Reported Reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the Division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the Poaching-Reported Reward Permit.

(5) Any person who receives a Poaching-Reported Reward Permit must be eligible to hunt and obtain wild turkey permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

R657-54-[21-]20. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking wild turkey are provided in the guidebook of the Wildlife Board for taking upland game and wild turkey.

KEY: wildlife, wild turkey, game laws

Date of Enactment or Last Substantive Amendment: [September 12, 2011]2014

Notice of Continuation: November 30, 2009

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-1

Natural Resources, Wildlife Resources R657-62 Drawing Application Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38604

FILED: 06/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's drawing application process.

SUMMARY OF THE RULE OR CHANGE: This rule is being amended to: 1) change the youth age from 15 to 17 for upland game species, big game, and turkey; 2) add language setting the criteria to participate in the management of the buck deer hunt for youth and senior hunters; 3) revise the draw order of big game permits; 4) allow for the taking of two turkeys in one calendar year; 5) allow group applications for limited entry turkey permits; and 6) make technical corrections.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule amendment allows for more youth opportunity and provides technical corrections to the draw order and species identifications, revising these requirements does not create a cost or savings to the division. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment simplifies existing criteria and allows for increased opportunity to hunts that have already been set by rule this filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amended rule will increase youth opportunity and clarify the draw order for big game, there are no additional requirements being added so it is determined that it would not generate a cost or saving impact to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amended rule will increase youth opportunity and clarify the draw order for big game, there are no additional requirements being added so it is determined that it would not generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amended rule will increase youth opportunity and clarify the draw order for big game, there are no additional requirements being added so DWR determines that this amendment will not create a cost or savings impact to individuals who participate in hunting in Utah.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.

R657-62. Drawing Application Procedures.

R657-62-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

R657-62-3. Scope of Rule.

(1) This rule sets forth the procedures and requirements for completing and filing applications to receive the following hunting permits and/or certificates of registrations:

- (a) Dedicated Hunter certificate of registrations;
- (b) limited-entry deer;
- (c) limited-entry elk;

- (d) limited-entry pronghorn;
- (e) once-in-a-lifetime;
- (f) public cooperative wildlife management unit;
- (g) general season deer and youth elk;
- (h) bear;
- (i) bear pursuit;
- (j) antlerless big game;
- (k) sandhill crane;
- (l) sharp-tail and greater sage grouse;
- (m) swan
- (n) cougar;
- (o) sportsman; and
- (p) turkey.

R657-62-9. Preference Points.

(1) Preference points are used in the applicable drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

- (i) each valid, unsuccessful application of the first-choice hunt when applying for a general buck deer permit; or
- (ii) each valid unsuccessful application when applying for an antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, Greater sage grouse or Swan permit; or
- (iii) each valid application when applying only for a preference point in the applicable drawings.

(b) Preference points are awarded by species for:

- (i) general buck deer;
- (ii) antlerless deer;
- (iii) antlerless elk;
- (iv) doe pronghorn;
- (v) Sandhill Crane;
- (vi) Sharp-tailed Grouse;
- (vii) Greater sage grouse; and
- (viii) Swan.

(3)(a) A person may not apply in the drawing for both a preference point and a permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits.

(4) Preference points are forfeited if:

- (a) a person obtains a first-choice hunt general buck deer permit through the drawing;
- (b) a person obtains an antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, Greater sage grouse or Swan permit through the drawing;

(5) Preference points are not transferable.

(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2000 to the current applicable drawings for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be submitted within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference point obtained by fraud, deceit, misrepresentation, or in violation of law.

R657-62-18. Big Game.

(1) Permit Applications

(a) Limited entry, Cooperative Wildlife Management Unit, Once-in-a-Lifetime, Management Bull Elk, Management Buck Deer, General Buck Deer, and Youth General Any Bull Elk permit applications.

(i) A person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(ii) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-5.

(iii) A person may obtain only one permit per species of big game, including limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) A resident may apply in the big game drawing for the following permits:

(i) only one of the following:

(A) buck deer - limited entry and cooperative wildlife management unit;

(B) bull elk - limited entry and cooperative wildlife management unit; or

(C) buck pronghorn - limited entry and cooperative wildlife management unit; and

(ii) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits.

(c) A nonresident may apply in the big game drawing for the following permits:

(i) all of the following:

(A) buck deer -limited entry;

(B) bull elk - limited entry;

(C) buck pronghorn - limited entry; and

(D) all once-in-a-lifetime species.

(ii) Nonresidents may not apply for cooperative management units through the big game drawing.

(d) A resident or nonresident may apply in the big game drawing by unit for:

(i) a statewide general archery buck deer permit; or

(ii) for general any weapon buck deer; or

(iii) for general muzzleloader buck deer; or

(iv) a dedicated hunter certificate of registration.

(2) Youth

(a) For purposes of this section "youth" means any person ~~[+8]17~~ years of age or younger on ~~[the opening day of the general archery buck deer season.]~~ July 31.

(b) Youth applicants who apply for a general buck deer permit

(i) will automatically be considered in the youth drawing based upon their birth date.

(ii) 20% of general buck deer permits in each unit are reserved for youth hunters.

(iii) Up to four youth may apply together for youth general deer permits.

(iv) Preference points shall be used when applying.

~~(e)y~~ Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

~~(c) Youth applicants who apply for a management buck deer permit~~

~~(i) will automatically be considered in the youth drawing based upon their birth date.~~

~~(ii) 30% of management buck deer permits in each unit are reserved for youth hunters.~~

~~(iii) Bonus points shall be used when applying~~

~~(iv) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the management buck deer drawing.~~

~~(3) Senior~~

~~(a) For purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.~~

~~(b) Senior applicants who apply for a management buck deer permit~~

~~(i) will automatically be considered in the senior drawing based upon their birth date.~~

~~(ii) 30% of management buck deer permits in each unit are reserved for senior hunters.~~

~~(iii) Bonus points shall be used when applying.~~

~~(c) Any reserved permits remaining and any senior applicants who were not selected for reserved permits shall be returned to the management buck deer drawing.~~

~~(4) Drawing Order~~

~~(a) Permits for the big game drawing shall be drawn in the following order:~~

~~(i) limited entry, cooperative wildlife management unit and management buck deer;~~

~~(ii) limited entry, cooperative wildlife management unit and management bull elk;~~

~~(iii) limited entry and cooperative wildlife management unit buck pronghorn;~~

~~(iv) once-in-a-lifetime;~~

~~(v) general buck deer - lifetime license;~~

~~(vi) general buck deer - dedicated hunter [certificate of registration];~~

~~[(vi) youth general buck deer;~~

~~] (vii) general buck deer [and general buck/bull combo] youth;~~

~~(viii) general buck deer; and~~

~~(ix) youth general any bull elk.~~

~~(b) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:~~

~~(i) limited entry, Cooperative Wildlife Management unit or management buck deer;~~

~~(ii) limited entry, Cooperative Wildlife Management unit or management bull elk; or~~

~~(iii) a limited entry or Cooperative Wildlife Management unit buck pronghorn.~~

(c) If any permits listed in Subsection (a)(i) through (a) (iii) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(4) Groups

(a) Limited Entry

(i) Up to four people may apply together for limited entry deer, elk or pronghorn; or resident cooperative wildlife management unit permits.

(b) Group applications are not accepted for management buck deer or bull elk permits.

(c) Group applications are not accepted for Once-in-a-lifetime permits.

(d) General season

(i) Up to four people may apply together for general deer permits.

(ii) Up to two youth may apply together for youth general any bull elk permits.

(iii) Up to four youth may apply together for youth general deer permits.

(5) Waiting Periods

(a) Deer waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit buck deer permit through the big game drawing process may not apply for or receive any of these permits again for a period of two seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

(b) Elk waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit bull elk permit through the big game drawing process may not apply for or receive any of these permits for a period of five seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

(c) Pronghorn waiting period.

(i) Any person who draws or obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing may not apply for or receive any of these permits thereafter for a period of two seasons.

(ii) A waiting period does not apply to:

(A) conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

(d) Once-in-a-lifetime species waiting period.

(i) Any person who draws or obtains a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or Rocky Mountain goat may not apply for or receive an once-in-a-

lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(ii) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

(e) Cooperative Wildlife Management Unit and landowner permits.

(i) Waiting periods and once-in-a-lifetime restrictions do not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (ii).

(ii) Waiting periods are incurred and applied for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-62-20. Antlerless Species.

(1) Permit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain an antlerless permit.

(b) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-5.

(c) A person may apply in the drawing for and draw the following permits, except as provided in Subsection (d):

(i) antlerless deer;

(ii) antlerless elk;

(iii) doe pronghorn; and

(iv) antlerless moose, if available.

(d) Any person who has obtained a buck pronghorn permit or a bull moose permit may not apply in the same year for a doe pronghorn permit or antlerless moose permit, respectively, except for permits remaining after the drawing as provided in R657-62-15.

(e) Applicants may select up to five hunt choices when applying for antlerless deer, antlerless elk and antlerless pronghorn.

(f) Applicants may select up to two hunt choices when applying for antlerless moose.

(g) Hunt unit choices must be listed in order of preference.

(h) A person may not submit more than one application in the antlerless drawing per species.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person ~~[18]~~17 years of age or younger on ~~[the opening day of the general archery buck deer season.]~~July 31.

(b) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(c) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Drawing Order

(a) Permits are drawn in the order listed in the guidebook of the Wildlife Board for taking big game.

(b) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(c) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(4) Group Applications

(a) Up to four hunters can apply together for antlerless deer, antlerless elk and doe pronghorn

(b) Group applications are not accepted for antlerless moose.

(c) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(5) Waiting Periods

(a) Antlerless moose waiting period.

(i) Any person who draws or obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process, may not apply for or receive an antlerless moose permit thereafter for a period of five seasons.

(ii) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

R657-62-21. Sandhill Crane, Sharp-Tailed and Greater Sage Grouse.

(1) Permit applications.

(a) A person may obtain only one Sandhill Crane permit each year.

(b) A hunting or combination license is required when taking Sandhill Crane, Sharp-Tailed and Greater Sage Grouse and may be purchased when applying for the permit.

(c) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(d) Applicants may select up to four hunt choices. Hunt unit choices must be listed in order of preference.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 17 years of age or younger on July 31 for the purpose of obtaining Sharp-tailed grouse and Greater Sage grouse permits, and 15 years of age or younger on the [opening day of a particular upland game hunt] Youth Waterfowl hunt, as [posted in the guidebook of the Wildlife Board for taking upland game and turkey], for the purpose of obtaining a Sandhill Crane permit.

(b) Fifteen percent of the Sandhill Crane, Sharp-tailed grouse and Greater sage grouse permits are reserved for youth hunters.

(c) Youth applicants who apply for a Sandhill Crane, Sharp-tailed grouse or Greater sage grouse permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Group applications.

(a) Up to four people may apply together.

(b) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(4) Waiting Periods do not apply.

R657-62-22. Swan.

(1) Permit applications.

(a) A person may obtain only one swan permit each year.

(i) A person may not apply more than once annually.

(b) A Utah hunting or combination license is required when hunting Swan and may be purchased when applying for the permit.

(c) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(i) The division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.

(ii) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.

(iii) Withheld swan permits shall be used to correct division errors reported to or discovered by the division on or before the fifth day preceding the opening day of the swan hunt.

(iv) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.

(d) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-6(3)(b).

(i) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(e) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 15 years of age or younger on the ~~[opening day of the swan] Youth Waterfowl Day hunt [as posted in the guidebook of the Wildlife Board for taking waterfowl].~~

(b) Fifteen percent of the Swan permits are reserved for youth hunters.

(c) Youth who apply for a [~~turkey~~]swan permit will automatically be considered in the youth permit drawing based on their birth date.

(3) Group applications.

(a) Up to four people may apply together in a Group Application.

(b) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(4) Waiting period does not apply.

R657-62-25. Turkey.

(1) Permit applications.

(a) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

(b) A person may obtain only one limited entry or general spring wild turkey permit each year~~[, except a]~~. A person may obtain wild turkey conservation permits in addition to obtaining one limited entry or ~~[remaining]~~spring wild turkey permit as well as a fall general season permit.

(c) Applicants may select up to five hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(d) A turkey permit allows a person, using any legal weapon as provided in Section R657-54-7, to take one bearded turkey within the area and season specified on the permit.

(2) Group ~~[Applications are not accepted.]~~ applications.

(a) Up to four people may apply together in a Group Application.

(b) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(3) Waiting period does not apply.

(4) Youth permits

(a) Up to 15 percent of the limited entry permits and fall general season permits are available to youth hunters.

(b) For purposes of this section "youth" means any person who is [15]17 years of age or younger on [the posting date of the wild turkey drawing.]July 31.

(c) Youth who apply for a turkey permit will automatically be considered in the youth permit drawing based on their birth date.

(d) Bonus points shall be used when applying for youth turkey permits.

(5) Landowner turkey permits shall be issued pursuant to rule R657-54-]e) Youth who are successful in obtaining a limited entry turkey permit but unsuccessful in harvesting a bird during the limited entry hunt season, may use the limited entry turkey permit to participate in the youth 3-day turkey hunt and the spring general season turkey hunt provided no more than one bird is harvested.

KEY: wildlife, permits

Date of Enactment or Last Substantive Amendment: [July 9, 2012]2014

Notice of Continuation: April 14, 2014

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

Natural Resources, Wildlife Resources R657-68 Trial Hunting Authorization

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38602

FILED: 06/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Pursuant to Sections 23-14-18 and 23-14-19, this rule implements the trial hunting authorization program established in Section 23-19-4.6 to expand public participation in hunting sports by allowing a person to temporarily obtain specified hunting licenses and permits and participate in hunting activities on a trial basis without first satisfying regular hunter education requirements.

SUMMARY OF THE RULE OR CHANGE: This rule sets the criteria for which the Trial Hunter Authorization will be established and operated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19 and Section 23-19-4.6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This new rule outlines the criteria for the Trial Hunting Authorization program and establishes the criteria for which it will be administered under. The Division of Wildlife Resources (DWR) determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** This new rule outlines the criteria for the Trial Hunting Authorization program and establishes the criteria for which it will be administered under. Local governments will not be directly or indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** Since this new rule outlines the criteria for the Trial Hunting Authorization program and establishes the criteria for which it will be administered under and does not incur an additional cost to participate, this filing does not have the potential to create a direct cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Since this new rule outlines the criteria for the Trial Hunting Authorization program and establishes the criteria for which it will be administered under and does not incur an additional cost to participate, this filing does not have the potential to create a direct cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this new rule will not create a cost or savings impact to individuals in Utah wishing to participate in the Trial Hunting Authorization program.

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

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

NATURAL RESOURCES

WILDLIFE RESOURCES

1594 W NORTH TEMPLE

SALT LAKE CITY, UT 84116-3154

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.

R657-68. Trial Hunting Authorization.

R657-68-1. Purpose and Authority.

Pursuant to Sections 23-14-18 and 23-14-19, this rule implements the trial hunting authorization program established in Section 23-19-4.6 to expand public participation in hunting sports by allowing a person to temporarily obtain specified hunting licenses and permits and participate in hunting activities on a trial basis without first satisfying regular hunter education requirements.

R657-68-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
- (a) "Commercial hunting area" means a parcel of land where privately owned game birds are released under Section 23-17-6 and R657-22 for the purpose of allowing hunters to take them for a fee.
- (b) "Division drawing" means a random selection process administered by the division or under its authority for the purpose of allocating hunting permits to the public.
- (i) "Division drawing" includes the wildlife convention permit drawing administered under R657-55.
- (c) "Multi-year license" means a license issued by the division under R657-45-3 that is valid for a period exceeding 365 days.
- (d) "Supervising hunter" means a person qualified under R657-68-5(1)(b) that accompanies a trial hunter while participating in hunting activities.
- (e) "Trial hunter" means a person who possesses a valid hunting license or permit obtained with a trial hunting authorization pursuant to this rule.
- (f) "Trial hunting authorization" means a document issued by the division authorizing the holder to obtain and use specified hunting licenses and permits without having completed an approved hunter education course, subject to the qualifications, requirements and limitations set forth in this rule.
- (g) "Written consent" means a written or typed document containing the:
- (i) full name, date of birth, and home address of the trial hunter;
- (ii) full name, home address, and phone number of the supervising hunter;
- (iii) nature of the planned hunting activity and the general area where it will occur;
- (iv) parent or legal guardian's consent for the:
- (A) trial hunter to participate in the described hunting activity; and
- (B) supervising hunter to transport and accompany the trial hunter in the activity; and
- (v) name, signature, and phone number of the authorizing parent or legal guardian.

R657-68-3. Obtaining a Trial Hunting Authorization.

- (1) Upon application, the division may issue a trial hunting authorization to a resident or nonresident who:
- (a) is 11 years of age or older at the time of application;
- (b) is eligible under state and federal law to possess a firearm, muzzleloader, bow and arrow, or crossbow;
- (c) is born after December 31, 1965 and has not completed an approved hunter education course; and
- (d) successfully completes an abbreviated online course on trial hunting program requirements and hunting ethics and safety.
- (2) The division may charge a handling fee for a trial hunting authorization.

R657-68-4. Effect and Term of a Trial Hunting Authorization.

- (1)(a) A person who obtains a trial hunting authorization will receive an accompanying registration number to be used in lieu of a hunter education number when applying for or purchasing a hunting license or permit authorized in Subsection (b).
- (b) A person who possesses a trial hunting authorization may apply for and purchase the following Utah hunting licenses and permits, notwithstanding the hunter education requirements in Section 23-19-11 and R657-23:
- (i) hunting license, excluding multi-year licenses;
- (ii) combination license, excluding multi-year licenses;
- (iii) all hunting permits, excluding the following big game permits allocated through a division drawing:
- (A) premium limited entry;
- (B) limited entry;
- (C) once-in-a-lifetime;
- (D) cooperative wildlife management unit;
- (E) dedicated hunter; and
- (F) sportsman.
- (2)(a) A trial hunting authorization:
- (i) is valid for a single, three year term, except as provided in Subsection (6); and
- (ii) shall immediately terminate upon the holder successfully completing an approved hunter education course, as provided in Section 23-19-11 and R657-23.
- (b) A person may not obtain more than one trial hunting authorization in a lifetime.
- (3) A trial hunting authorization shall be considered an "approved hunter education course" under Section 23-17-6(3)(a)(ii) for the exclusive and limited purpose of hunting on a commercial hunting area.
- (a) A person who hunts on a commercial hunting area with a trial hunting authorization is subject to the requirements in R657-68-5.
- (4)(a) A person who possesses a current trial hunting authorization may not participate in the Hunter Mentoring Program (R657-67) as a hunting mentor.
- (b) A person who possesses a current trial hunting authorization may participate in the Hunter Mentoring Program (R657-67) as a qualifying minor, as hereafter provided.
- (i) A trial hunting authorization will be recognized by the division as a "hunter education program" under R657-67-3(1)(b) for the exclusive and limited purpose of a qualifying minor participating in the Hunter Mentoring Program.

(ii) Notwithstanding the big game permit limitations in Subsection R657-68-4(1)(b)(iii), a qualifying minor possessing a current trial hunting authorization may share any big game permit authorized in the Hunter Mentoring Program rule.

(iii) Both the qualifying minor and hunting mentor are subject to the provisions of this rule and the Hunter Mentoring Program rule when a hunting permit is shared under R657-67-3 with a qualifying minor possessing a current trial hunting authorization.

(5) A person that applies for a big game hunting permit with a trial hunting authorization is subject to the minimum age requirements set forth in Section 23-19-22.

(6)(a) A trial hunting authorization that expires after a hunting permit application is filed in a division drawing shall remain valid to the date the permit is issued for the exclusive purpose of receiving and using the permit.

(i) A trial hunting authorization extended under Subsection (6)(a) beyond the prescribed three year term may not be used during the extension period to obtain any other hunting license or permit.

(b) A person that obtains a license or permit with a valid trial hunting authorization that thereafter expires prior to the conclusion of the hunting season assigned to that license or permit may use the license or permit through the entire season, subject to the limitations and conditions set forth in R657-68-5.

(c) A person that successfully completes an approved hunter education course prior to using a hunting license or permit obtained with a trial hunting authorization is not subject to the limitations and conditions set forth in R657-68-5, provided proof of hunter education compliance is carried on the person while hunting.

R657-68-5. Using a Hunting License or Permit Obtained with a Trial Hunting Authorization.

(1) A person that obtains a hunting license or permit with a trial hunting authorization issued under R657-68-3 may use the license or permit, provided they are:

(a) 12 years of age or older; and

(b) accompanied, as defined in Section 23-20-20(1), in the field at all times while hunting by a resident or nonresident, supervising hunter who:

(i) is 21 years of age or older;

(ii) is eligible under state and federal law to possess a firearm and archery equipment;

(iii) possesses a current Utah hunting or combination license;

(iv) has satisfied applicable hunter education requirements under Section 23-19-11; and

(v) obtains the written consent of the parent or legal guardian when accompanying a trial hunter that is under 18 years of age.

R657-68-6. Supervising Hunter Responsibilities.

(1) A supervising hunter that escorts a trial hunter under R657-68-5(1)(b) shall:

(a) accompany, as defined in Section 23-20-20(1), the trial hunter at all times in the field while hunting;

(b) not accompany more than two trial hunters in the field at any point in time;

(c) provide the trial hunter direct supervision and instruction on hunting regulations, ethics and safety; and

(d) possess on their person a valid Utah hunting or combination license issued in their name; and

(e) possess the written consent of the parent or legal guardian when accompanying a trial hunter under 18 years of age.

R657-68-7. Violation and Discipline.

(1)(a) A trial hunter may not take protected wildlife under authority of a license or permit obtained with a trial hunting authorization, unless accompanied at all times in the field by a supervising hunter satisfying the requirements of R657-68-5(1)(b).

(b) A person may not take game birds on a commercial hunting area under authority of a trial hunting authorization, unless accompanied at all times in the field by a supervising hunter satisfying the requirements of R657-68-5(1)(b).

(2) The division may refuse to issue a trial hunting authorization to a person that:

(a) fails to satisfy the eligibility criteria in R657-68-3 or R657-68-5(1)(a);

(b) provides false or misleading information in the application for a trial hunting authorization; or

(c) has engaged in conduct that results in a conviction, no contest plea, plea held in abeyance, or diversion agreement to a:

(i) violation of the Wildlife Resources Code, or the rules and guidebooks of the Wildlife Board; or

(ii) crime that when considered with the privileges granted in a trial hunting authorization bears a reasonable relationship to the person's ability or willingness to safely and responsibly participate in the program.

(3) A hunting license or permit is invalid when obtained with a trial hunting authorization that is acquired by fraud, deceit, or misrepresentation.

KEY: wildlife, game laws, hunter education

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implementing or Interpreting Law: 23-14-18, 23-14-19, 23-19-4.6

**Pardons (Board of), Administration
R671-309-1
Ex-Parte Communications**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38629

FILED: 06/16/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify that hearing officers assigned to a case may not receive ex parte communication. Board members may not receive ex parte communication that could be perceived as an attempt to influence the Board's decision. Unwritten ex parte

communication with staff will be summarized in writing and disclosed to the offender. The existing rule has no subnumbering. This amendment will number the rule.

SUMMARY OF THE RULE OR CHANGE: The existing rule prohibits ex parte communication. The amendment clarifies that the rule refers to hearing officers currently assigned to a case and contact with Board members that could be perceived as an attempt to influence the Board's decision. Unwritten ex parte communication with staff will be summarized in writing and disclosed to the offender.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-5 and Section 77-27-7 and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No change in cost or savings to the state budget. The proposed rule change does not create an additional duty but clarifies that contacts from victims, offenders or the public will be directed to designated staff rather than to Board members or the hearing officer assigned to a case. Just as in judicial proceedings, the Board must avoid ex parte communication which can give the appearance that a decision was unfairly influenced by information submitted without the knowledge of the other parties.

◆ **LOCAL GOVERNMENTS:** No change in cost or savings to local governments. This proposed rule change does not create or change any procedure or action by a local government.

◆ **SMALL BUSINESSES:** No change in cost or savings to small business. The proposed rule change does not restrict the small business from inquiring about a case or submitting information. The rule change clarifies that those inquires will be directed to designated staff rather than the Board member or hearing officer assigned to decide the case.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The existing rule prohibits ex parte communication. Ex parte communication can give the appearance that a person is attempting to influence the Board member or hearing officer making a decision about the case without the knowledge of the other parties. This amendment clarifies the duty of staff, hearing officers and Board members to disallow ex parte communication and to summarize any attempted ex parte communications in writing. This proposed rule change does not limit a person from inquiring about a case nor does it create a financial bar to submitting information to the Board.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The existing rule prohibits ex parte communication. This amendment clarifies the duty of staff, hearing officers, and Board members but does not increase compliance costs for members of the public submitting information to the Board.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule amendment does not fiscally impact businesses.

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

PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at gregjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/18/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 08/18/2014 08:00 AM, 448 E Winchester, Suite 300, Murray, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/25/2014

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-309. Impartial Hearings.

R671-309-1. Ex[-]Parte Communications.

(1) Offenders are entitled to an impartial hearing before the Board. The Board therefore discourages any [direct outside]ex parte contact with [individual Board Members regarding specific cases. This also applies to Hearing Officers designated to conduct the hearing. Any such contact should be made with the Board's designated staff member.]

(a) individual Board Members at any time; or
(b) hearing Officers once the Hearing Officer has been assigned to conduct a hearing for a specific offender.

(2) All contacts by offenders, victims of crime, their family members or any other person outside the staff of the Board regarding a specific case shall be referred, whenever possible, to a staff member designated by the Board who is not [directly involved in hearing the case. If circumstances dictate, the designated Board staff member shall prepare a memorandum for the file containing the substance of the contact. If the contact is by a victim wishing to make a statement for the Board's consideration, the Board's rule on Victim Input and Notification shall apply]currently directly involved in hearing the case.

[No board](a) If information provided by any person outside of a hearing could materially affect the Board's decision, the designated staff member shall prepare a memorandum for the file containing the substance of the contact.

(b) If the contact is by a victim wishing to make a statement for the Board's consideration, Rule 671-203 on Victim Input and [no hearing officer]Notification shall apply.

(c) Any inquiries or input from attorneys, public officials, or members of the public, regarding case facts or substantive

matters, shall be submitted in writing. Unwritten inquiries shall be documented and responded to in writing.

(3)(a) A Board Member or Hearing Officer assigned to a case [shall]may not initiate, permit, or consider ex[-]_parte communications concerning the substance of a pending [or-impending-]matter.

(b) A Board Member may not permit, consider, or be a party to any ex parte communication regarding a specific offender under Board jurisdiction if the object, intent, or substance of the communication is, or reasonably could be perceived to be, an attempt to impart information or opinion not contained in the offender's file, or to otherwise influence, change, or modify a Board decision or a Board Member's deliberations, decision, or vote.

(c) In situations where such ex[-]_parte communication does occur, the Board member or [hearing officer]Hearing Officer shall immediately take steps to terminate the communication, and shall thereafter reduce the substance of the communication to a written memorandum for the Board file, including copies of any writings that formed any part of the ex[-]_parte communication. Such memorandum shall thereafter be disclosed to the [parties]offender.

(4) This rule [shall]may not preclude contact regarding procedural matters so long as such contact is not for the purpose of influencing the decision of [an individual]the Board or any Board Member on any particular case or hearing.

(5) Attorneys may submit information for the Board to consider. The information shall be submitted in writing and directed to the Administrative Coordinator or designee.

KEY: parole, inmates

Date of Enactment or Last Substantive Amendment: [October 4, 2012]2014

Notice of Continuation: January 31, 2012

Authorizing, and Implemented or Interpreted Law: 63G-3-201(3); 77-27-1 et seq.; 77-27-5; 77-27-7; 77-27-9(4)(a)

Tax Commission, Auditing
R865-19S-54
Governmental Exemption Pursuant to
Utah Code Ann. Section 59-12-104

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 38596
 FILED: 06/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The provisions of this section are unnecessary. Statutory provisions adequately describe the state and its political subdivisions that receive the state sales tax exemption. No rule is necessary to allow federal entities a state sales tax exemption. In addition, examples of federal entities are contained in Tax Commission sales tax publications. Accordingly, this section is removed.

SUMMARY OF THE RULE OR CHANGE: This section is removed since it is unnecessary.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-104

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The removal of this section has no impact on practice.
- ◆ LOCAL GOVERNMENTS: None--The removal of this section has no impact on practice.
- ◆ SMALL BUSINESSES: None--The removal of this section has no impact on practice.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The removal of this section has no impact on practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The removal of this section has no impact on whether an entity qualifies for this sales tax exemption.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The removal of this section has no impact on whether an entity qualifies for this sales tax exemption.

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

TAX COMMISSION
 AUDITING
 210 N 1950 W
 SALT LAKE CITY, UT 84134
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Robert Pero by phone at 801-297-3800, or by Internet E-mail at rpero@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Robert Pero, Commissioner

R865. Tax Commission, Auditing.

R865-19S. Sales and Use Tax.

~~**Governmental Exemption Pursuant to Utah Code Ann. Section 59-12-104.**~~

~~A. Tax does not apply to sales to the state of Utah, or to any political subdivision of the state, where such property is for use in the exercise of an essential governmental function. Also, certain sales are not taxed because of federal law or the United States Constitution.~~

~~B. Sales to the following state and federal agencies, institutions, and instrumentalities are exempt:~~

- ~~1. federal agencies and instrumentalities~~

- ~~2. state institutions and departments~~
- ~~3. counties~~
- ~~4. municipalities~~
- ~~5. school districts, public schools~~
- ~~6. special taxing districts~~
- ~~7. federal land banks~~
- ~~8. federal reserve banks~~
- ~~9. activity funds within the armed services~~
- ~~10. post exchanges~~
- ~~11. Federally chartered credit unions~~
- ~~C. The following are taxable:~~
 - ~~1. national banks~~
 - ~~2. federal building and loan associations~~
 - ~~3. joint stock land banks~~
 - ~~4. state banks (whether or not members of the Federal Reserve System)~~
 - ~~5. state building and loan associations~~
 - ~~6. private irrigation companies~~
 - ~~7. rural electrification projects~~
 - ~~8. sales to officers or employees of exempt instrumentalities~~
- ~~D. No sales tax immunity exists solely by virtue of the fact that the sale was made on federal property.~~
- ~~E. Sales made by governmental units are subject to sales tax.~~

]KEY: charities, tax exemptions, religious activities, sales tax
Date of Enactment or Last Substantive Amendment:]July 26, 2012]2014
Notice of Continuation: January 3, 2012
Authorizing, and Implemented or Interpreted Law: 9-2-1702; 9-2-1703; 10-1-303; 10-1-306; 10-1-307; 10-1-405; 19-6-808; 26-32a-101 through 26-32a-113; 59-1-210; 59-12; 59-12-102; 59-12-103; 59-12-104; 59-12-105; 59-12-106; 59-12-107; 59-12-108; 59-12-118; 59-12-301; 59-12-352; 59-12-353

Tax Commission, Auditing
R865-19S-83
Pollution Control Facilities Pursuant to
Utah Code Ann. Section 59-12-104

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 38597
 FILED: 06/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 31 from the 2014 General Legislative Session codifies the language of this section. Since this section is no longer necessary, it is removed.

SUMMARY OF THE RULE OR CHANGE: This section is removed since it is superseded by H.B. 31 (2014).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-104

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--The provisions of this section have been codified into statute.
- ◆ **LOCAL GOVERNMENTS:** None--The provisions of this section have been codified into statute.
- ◆ **SMALL BUSINESSES:** None--The provisions of this section have been codified into statute.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The provisions of this section have been codified into statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The provisions of this section have been codified into statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The provisions of this section has been codified into statute and therefore, the section is being removed.

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

TAX COMMISSION
 AUDITING
 210 N 1950 W
 SALT LAKE CITY, UT 84134
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Robert Pero, Commissioner

R865. Tax Commission, Auditing.

R865-19S. Sales and Use Tax.

~~]R865-19S-83. Pollution Control Facilities Pursuant to Utah Code Ann. Section 59-12-104.~~

~~A. Since certification of a pollution control facility may not occur until a firm contract has been entered into or construction has begun, tax should be paid on all purchases of tangible personal property or taxable services that become part of a pollution control facility until the facility is certified, and invoices and records should be retained to show the amount of tax paid. Upon verification of the amount of tax paid for pollution control facilities and verification that a certificate has been obtained, the Tax Commission will refund the taxes paid on these purchases.~~

~~1. Claims for refund of tax paid prior to certification must be filed within 180 days after certification of a facility. Refund claims filed within this time period will have interest added at the rate prescribed in Section 59-1-402 from the date of the overpayment.~~

~~2. If claims for refund are not filed within 180 days after certification of a facility, it is assumed the delay was for investment purposes, and interest shall be added at the rate prescribed in Section 59-1-402 however, interest will not begin to accrue until 30 days after receipt of the refund request.~~

~~B. After the facility is certified, qualifying purchases should be made without paying tax by providing an exemption certificate to the vendor.~~

~~1. If sales tax is paid on qualifying purchases for certified pollution control facilities, it will be deemed that the overpayment was made for the purpose of investment. Accordingly, interest, at the rate prescribed in Section 59-1-402, will not begin to accrue until 30 days after receipt of the refund request.~~

~~C. In the event part of the pollution control facility is constructed under a real property contract by someone other than the owner, the owner should obtain a statement from the contractor certifying the amount of Utah sales and use tax paid by the contractor and the location of the vendors to whom tax was paid, and the owner will then be entitled to a refund of the tax paid and included in the contract.~~

~~D. The owner shall apply to the Tax Commission for a refund using forms furnished by the Tax Commission. The claim for refund must contain sufficient information to support the amount claimed for credit and show that the tax has in fact been paid.~~

~~E. The owner shall retain records to support the claim that the project is qualified for the exemption.~~

]KEY: charities, tax exemptions, religious activities, sales tax
Date of Enactment or Last Substantive Amendment: [July 26, 2012]2014

Notice of Continuation: January 3, 2012

Authorizing, and Implemented or Interpreted Law: 9-2-1702; 9-2-1703; 10-1-303; 10-1-306; 10-1-307; 10-1-405; 19-6-808; 26-32a-101 through 26-32a-113; 59-1-210; 59-12; 59-12-102; 59-12-103; 59-12-104; 59-12-105; 59-12-106; 59-12-107; 59-12-108; 59-12-118; 59-12-301; 59-12-352; 59-12-353

Tax Commission, Property Tax **R884-24P-73**

Urban Farming Assessment Pursuant to Utah Code Ann. Section 59-2-1703

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38598

FILED: 06/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is removed since it is superseded by S.B. 237 from the 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: S.B. 237 (2014) provides new statutory language for determining whether land is actively devoted to urban farming. Since this section is no longer necessary, it is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-1703

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--Any fiscal impact was considered in S.B. 237 (2014).

♦ **LOCAL GOVERNMENTS:** None--Any fiscal impact was considered in S.B. 237 (2014).

♦ **SMALL BUSINESSES:** None--Any fiscal impact was considered in S.B. 237 (2014).

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Any fiscal impact was considered in S.B. 237 (2014).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any fiscal impact was considered in S.B. 237 (2014).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: S.B. 237 (2014) provides new statutory language for determining whether land is actively devoted to urban farming making this section no longer necessary and therefore, this section is removed.

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

TAX COMMISSION

PROPERTY TAX

210 N 1950 W

SALT LAKE CITY, UT 84134

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Robert Pero, Commissioner

R884. Tax Commission.

R884-24P. Property Tax.

~~[R884-24P-73. Urban Farming Assessment Pursuant to Utah Code Ann. Section 59-2-1703.~~

~~_____ (1) For purposes of the property tax assessment for land used for urban farming, land is actively devoted to urban farming under Subsection 59-2-1703(2)(a)(iii) if the production per acre for a given area and a given type of land meets the productive capabilities of land classified as Irrigated I.~~

~~_____ (2) The value of land qualifying for valuation under Section 59-2-1703 shall be determined by reference to Table I, Irrigated I, in R884-24P-53.~~

]KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment: [January 1,]2014

Notice of Continuation: January 3, 2012

Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Division of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

Education, Administration
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

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 38585

FILED: 06/09/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of Section R277-419-9 is to provide direction to local education agencies (LEAs) about student membership and enrollment documentation for the 2014-2015 school year. Section R277-419-9 also requires State Superintendent of Public Instruction approval of nontraditional programs managed solely by third party contractors. It also requires LEAs to establish written monitoring plan to ensure compliance with law and Utah State Board of Education

(Board) administrative rules for a nontraditional program managed by a contractor.

SUMMARY OF THE RULE OR CHANGE: Section R277-419-9 provides language: describing traditional and nontraditional programs, differentiated by the instruction methods and delivery methods; requiring all LEAs and all programs to comply with the provisions of Rule R277-419; requiring LEAS with nontraditional programs to establish a written policy developing a "continuing enrollment measurement" by 08/29/2014 which shall be monitored by LEA employees to satisfy the requirements of Rule R277-419; requiring all LEA nontraditional programs, which are solely managed by a third party, to submit documentation demonstrating compliance with law and Board rule as required by the Board by 07/15/2014; requiring the superintendent to approve or issue corrective action letters and timelines specific to compliance issues -- programs that are not approved or do not complete corrective action objectives by the timeline may not qualify for some or all minimum school program funds; and requiring LEAs that contract with third parties to develop supervision and monitoring plans for vendors, and retain documentation of the implementation of their plans.

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

EMERGENCY RULE REASON AND JUSTIFICATION:
REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: Public schools receive per pupil funding from the state. Rule R277-419 requires schools/LEAs to monitor students' school attendance and not claim students for funding if they miss 10 consecutive days/periods. The Utah State Office of Education (USOE) has information that many schools do not comply with this "10 day" provision. This emergency section of Rule R277-419 will allow the USOE to gather reliable data to assure that LEAs are claiming only students who are actually attending public schools. Section R277-419-9 will also provides for LEA documentation that schools/LEAs are adequately supervising third party vendors that provide services to students.

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Specific Utah State Office of Education employees will have increased responsibilities as a result of Section R277-419-9. Additional responsibilities will be accomplished by existing staff and within existing budgets.
- ◆ **LOCAL GOVERNMENTS:** Specific school/LEA employees will have increased responsibilities as a result of Section R277-419-9. Additional responsibilities will be accomplished by existing staff and within existing budgets.
- ◆ **SMALL BUSINESSES:** Section R277-419-9 provides direction to LEAs about student membership and enrollment documentation which likely will not result in a cost or savings to small businesses so long as businesses are serving students consistent with the law.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Section R277-419-9 provides direction to LEAs about student membership and enrollment documentation 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: LEAs and the USOE will have responsibilities--individual persons have no specific duties.

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

EFFECTIVE: 06/09/2014

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

R277. Education, Administration.

R277-419 Pupil Accounting.

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.

A. R277-419-1 through 8 provide direction for student enrollment and eligibility criteria for both traditional and nontraditional schools and programs.

B. A traditional program is a public school program that consists of eligible public education students who physically attend school in classrooms.

C. A nontraditional program is a public school program that consists of eligible, enrolled public education students where students primarily receive instruction either online or through a distance learning program.

D. Home school courses shall not qualify for public education funding for both traditional and nontraditional programs. Home school courses are courses taught by a student's parent, guardian, or other non-LEA employee, outside of an established LEA program. Curriculum for these courses is established by the parent, guardian, or non LEA employee and is not adopted or approved by the LEA.

E. For the 2014-2015 school year, all LEAs that enroll students shall maintain documentation of the following:

(1) that the LEA complied with all provisions of R277-419-1 through 8;

(2) that the LEA complied with all educator licensure requirements of R277-502;

(3) that the LEA complied with all fingerprint and background check requirements for educators, employees and volunteers consistent with Section 53A-3-410, 53A-1a-512.5, R277-516, and R277-520;

(4) that the LEA established a school schedule consistent with R277-419-4A(1);

(5) that the LEA only enrolled students who met the eligibility requirements of R277-419-5A(1) (a-e);

(6) that the LEA directed the instruction of the core curriculum consistent with Section 53A-1-402(1)(a) and R277-700; and

(7) that the LEA scheduled and gave all statewide assessments, as required under Sections 53A-1-606.6 through 53A-1-611 and R277-404.

F. In addition to R277-419-9D, LEAs that enroll students in traditional programs shall also satisfy the requirements of R277-419-5A(1)(f) for the 2014-2015 school year.

G. In addition to R277-419-9D, LEAs that enroll students in nontraditional programs shall also maintain documentation that the LEA did the following in the 2014-2015 school year:

(1) adopted, before August 29, 2014, a written policy that designates a continuing enrollment measurement to document the continuing membership or enrollment status for individual students consistent with R277-419-5A(1)(c);

(2) measured and documented each student's continued enrollment using the adopted continuing enrollment measurement every ten consecutive school days;

(3) documented that LEA employees confirmed students' continued enrollment consistent with R277-419-9F(2) and updated student membership records in the student information system; and

(4) documented that the LEA adjusted the student membership information for students that did not meet the continuing enrollment measurement, consistent with R277-419-5A(1)(c).

H. The continuing enrollment measurement may include some or all of the following components, in addition to other components, as determined by the nontraditional LEA:

(1) a minimum student login or teacher contact requirement;

(2) required periodic contact with a licensed educator;

(3) a minimum hourly requirement, per day or week, that students were engaged in course work; and

(4) required timelines for a student to provide or demonstrate completed assignments, coursework or progress toward academic goals.

I. LEAs enrolling students in nontraditional programs for the 2014-15 school year, where these programs are administered by third party vendors contracted for total education services, shall submit documentation of compliance with law and Board rules (as prescribed by the Board) to the Superintendent's office for review before July 15, 2014. A nontraditional program, that is managed by a third party vendor, and does not receive approval or notice of timelines required for corrective action from the Superintendent's office for the 2014-2015 school year, may not qualify for some or all Minimum School Program funds.

J. An LEA that contracts with a third party vendor to provide total education services to students for nontraditional programs shall monitor and supervise the vendor throughout the

administration of the services and ensure compliance with, at a minimum, the following:

(1) all student eligibility and membership/enrollment requirements of R277-419 are met;

(2) all educator licensure requirements of R277-502 were satisfied;

(3) all fingerprint and background check requirements for educators, employees and volunteers consistent with Section 53A-3-410, 53A-1a-512.5, R277-516, and R277-520 were met;

(4) the Utah State Board-directed core standards were used in student instruction, consistent with Section 53A-1-402(1)(a) and R277-700;

(5) all required statewide assessments were given, as required under Sections 53A-1-606.6 through 53A-1-611 and R277-404;

(6) LEA has developed a written supervision plan for the vendor administration of services; and

(7) LEA has maintained documentation of supervisory activities ensuring compliance with the written supervision plan (copy of the agreement, assignment of supervising personnel by title, meeting notes, correspondence with vendor) consistent with the LEA's administrative records retention schedule.

K. Consistent with R277-114, the Board may withhold funds from traditional or nontraditional public education programs for non-compliance with R277-419.

KEY: education finance, school enrollment

Date of Enactment or Last Substantive Amendment: June 9, 2014

Notice of Continuation: September 14, 2012

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(e); 53A-1-404(2); 53A-1-301(3)(d); 53A-3-404; 53A-3-410

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to 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.

Administrative Services, Facilities Construction and Management

R23-23

Health Reform -- Health Insurance Coverage in State Contracts -- Implementation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38587
FILED: 06/10/2014

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: This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management, as well as Section 63A-5-205 which requires this rule related to health insurance provisions in certain design and/or construction contracts.

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 either supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued because it needs to comply with the provisions of Section 63A-5-205,

Contracting Powers of Director -- Retainage -- Health insurance coverage.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov
- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov

AUTHORIZED BY: Joshua Haines, Director

EFFECTIVE: 06/10/2014

Administrative Services, Records Committee

R35-1

State Records Committee Appeal Hearing Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38572
FILED: 06/03/2014

**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: Under Subsection 63G-2-502(2) (a), the State Records Committee may make rules to govern its own proceedings as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act. The committee has through the authorized rules established procedures for conducting hearings. The rules ensure that the concerns of each petitioner and respondent are heard and considered fairly in a hearing.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received about the rule authorizing the committee to establish procedures for hearings. It is necessary for the conducting of the committee's business that procedures be established. This rule functions as a guide to the committee and is consistent as membership on the committee changes.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule that establishes procedures for hearings is justified and important to maintain the integrity of the committee's decisions and orders. These consistent guidelines for hearings ensure that the hearings are conducted according to legal and fair principles and that each case before the committee is heard with equal attention to the concerns of the parties. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

AUTHORIZED BY: Lex Hemphill, Chair, State Records Committee

EFFECTIVE: 06/03/2014

**Administrative Services, Records
Committee**

R35-1a

State Records Committee Definitions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38573

FILED: 06/03/2014

**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: Terms defined in Section 63G-2-103 are supplemented in this section by definitions particular to the terms used in Section 63G-2-501 which establishes the creation, composition, terms, and expenses of the State Records Committee. Also terms used in Section 63G-2-403 and in Section 63G-2-205 are defined in terms of their use related to the State Records Committee.

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 definitions in this section have not been challenged by any interested parties during the last five-year period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As no comments in opposition to the rule have been received, the agency supports the continued use of the rule and the definitions contained therein.

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

ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

AUTHORIZED BY: Lex Hemphill, Chair, State Records Committee

EFFECTIVE: 06/03/2014

**Administrative Services, Records
Committee**

R35-2

Declining Appeal Hearings

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38574
FILED: 06/03/2014

**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: In accordance with Section 63G-2-502 and Subsection 63G-2-403(4), this rule establishes the procedure by which the executive secretary of the committee may deny or decline to schedule hearings before the State Records Committee.

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 opposition to the rule has been received. The application of the rule has been under Subsection 63G-2-403(4), the procedures for denying a hearing are outlined. The committee secretary is guided by this rule and consults with the chair on decisions to deny a hearing. The committee may, upon a majority vote, reverse the decision of the executive secretary. Denial of a hearing may be appealed to district court. Reasons for a hearing to be denied, as well as procedures and documentation of denials are outlined in this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule continues to guide the committee and the executive secretary in an appropriate way. The procedures for declining to schedule a hearing are necessary and give clear guidelines as to when and how this may be done. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

AUTHORIZED BY: Lex Hemphill, Chair, State Records Committee

EFFECTIVE: 06/03/2014

**Administrative Services, Records
Committee**

R35-3

Prehearing Conferences

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38575
FILED: 06/03/2014

**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: In facilitating access to records under Section 63G-2-403, and in keeping with the procedures for hearings before the State Records Committee, this rule authorizes and establishes the procedures for prehearing conferences.

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 about prehearing conferences in reference to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The authority and purpose for prehearing conferences in the process of settling appeals to the committee are defined in this rule. In keeping with the objectives of Section 63G-2-403 in establishing hearing procedures and resolving disputes, this rule continued to be effective during most of the last five-year period. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

AUTHORIZED BY: Lex Hemphill, Chair, State Records Committee

EFFECTIVE: 06/03/2014

**Administrative Services, Records
 Committee
 R35-4**

**Compliance with State Records
 Committee Decisions and Orders**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 38576
 FILED: 06/03/2014

**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: In accordance with Subsection 63G-2-403(14), this rule establishes the procedure for complying with an order of the State Records Committee.

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 comment on the rule has been received in opposition or support.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule continues to provide a way for governmental entities to demonstrate compliance to an order of the committee and a timeline by which to judge the compliance. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
 RECORDS COMMITTEE
 ARCHIVES BUILDING
 346 S RIO GRANDE
 SALT LAKE CITY, UT 84101-1106
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

AUTHORIZED BY: Lex Hemphill, Chair, State Records Committee

EFFECTIVE: 06/03/2014

**Administrative Services, Records
 Committee
 R35-5
 Subpoenas Issued by the Records
 Committee**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 38577
 FILED: 06/03/2014

**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: In accordance with Subsection 63G-2-403(10), this rule establishes the procedures for issuing subpoenas by the Records Committee.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments in support or opposition to this rule 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: There is established by this rule a procedure to subpoena a witness in support of a party before the State Records Committee even though hearsay is available. The chair of the committee shall review each request for a subpoena and weigh the need for the witness to appear before the committee. A subpoenaed witness is entitled to fees and may file a motion to quash the subpoena. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
 RECORDS COMMITTEE
 ARCHIVES BUILDING
 346 S RIO GRANDE
 SALT LAKE CITY, UT 84101-1106
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

AUTHORIZED BY: Lex Hemphill, Chair, State Records Committee

EFFECTIVE: 06/03/2014

**Administrative Services, Records
Committee
R35-6
Expedited Hearing**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
DAR FILE NO.: 38578
FILED: 06/03/2014**

**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: In accordance with Subsection 63G-2-403(4)(a)(i), this rule establishes the procedure for requesting and scheduling an expedited hearing.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments in support or opposition of this rule have not 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: A party appealing to the State Records Committee may request in writing that a hearing be scheduled prior to 10 business days after filing a notice of appeal. After consulting with the chair, the executive secretary may schedule an expedited hearing for good cause after determining a date when a quorum of the committee will be available. An expedited hearing may be justified by a request from a representative of the media in the case of a breaking news story or urgent matter involving government records. This rule allows and provides for that possibility. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

AUTHORIZED BY: Lex Hemphill, Chair, State Records Committee

EFFECTIVE: 06/03/2014

**Education, Administration
R277-462
Comprehensive Counseling and
Guidance Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
DAR FILE NO.: 38591
FILED: 06/10/2014**

**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 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards and procedures for entities applying for state career and technical education funds appropriated for comprehensive counseling and guidance programs administered by the Board. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 06/10/2014

**Education, Administration
 R277-463**

Class Size Average and Pupil-Teacher Ratio Reporting

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38590
 FILED: 06/10/2014

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 53A-3-602.5 directs the Utah State Board of Education (Board) to establish rules for uniform class size reporting and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides uniform class size and pupil-teacher ratio reporting procedures, as requested by the Legislature. Therefore, this rule should be continued.

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

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

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

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

EFFECTIVE: 06/10/2014

**Education, Administration
 R277-472**

Charter School Student Enrollment and Transfers and School District Capacity Information

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38589
 FILED: 06/10/2014

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 53A-1a-506.5(2) directs the Utah State Board of Education (Board) to make rules for students transferring between charter schools and district schools and enrolling and withdrawing from charter schools, and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides procedures and timelines for students transferring between district public schools and charter schools. Therefore, this rule should be continued.

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

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

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

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

EFFECTIVE: 06/10/2014

**Education, Administration
R277-480
Charter School Revolving Account**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38588
FILED: 06/10/2014

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 53A-1a-522(2)(b) requires the Utah State Board of Education (Board) to administer the Charter School Revolving Account, and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides procedures for administering and monitoring the Charter School Revolving Account. Therefore, this rule should be continued.

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

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

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

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

EFFECTIVE: 06/10/2014

**Education, Administration
R277-516**

Education Employee Required Reports of Arrests and Required Background Check Policies for Non-licensed Employees

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38594
FILED: 06/10/2014

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: Subsections 53A-1-402(1)(a)(i) and (iii) direct the Utah State Board of Education (Board) to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and the evaluation of instructional personnel.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides procedures for public education employees to report arrest information and also requires that local education agencies have background check policies for non-licensed employees. Therefore, this rule should be continued.

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

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

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

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

EFFECTIVE: 06/10/2014

EFFECTIVE: 06/10/2014

Education, Administration

R277-714

Dissemination of Information About
Juvenile Offenders

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38593
FILED: 06/10/2014

**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 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities and Section 53A-11-1103 directs the Board to make rules governing the dissemination of information about juvenile offenders.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides procedures for local education agencies to follow in notifying school personnel of offenders in their schools and for protecting the confidentiality of the information. Therefore, this rule should be continued.

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

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

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

Education, Administration

R277-800

Utah Schools for the Deaf and the Blind

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38592
FILED: 06/10/2014

**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 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards and procedures for the operation of the Utah Schools for the Deaf and the Blind (USDB) and the USDB outreach programs and services. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 06/10/2014

Health, Administration
R380-25
Submission of Data Through an
Electronic Data Interchange

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38586
FILED: 06/09/2014

**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: Rule R380-25 provides for the submission of information to the Department of Health through an electronic data interchange (EDI). Subsections 26-1-30(2)(d), 26-1-30(2)(e), 26-1-30(2)(f), 26-1-30(2)(g), 26-1-30(2)(p), and 26-1-30(2)(w), as well as Sections 26-3-5 and 26-3-6 authorize this rule. Subsections 26-1-30(2)(d) through (g), (p), and (w) refer to the Department of Health's core missions to collect specific health-related information for reporting, analysis, program management and other public health related activities. Sections 26-3-5 and 26-3-6 authorize the department to coordinate data collection and to cooperate with other entities to implement standards for data exchange. Rule R380-25 provides for the use of an electronic data exchange, using established standards, to act as a conduit for reporting information to the department in furtherance of the department's public health mission.

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 is an opportunity for this rule to be updated so that it does not conflict with the current HIPAA Laws. Section R380-25-3 speaks to Confidentiality and Subsection R380-25-3(3) talks about not inspecting health data: the definition of health data in Subsection 26-3-1(2) includes claims data. Today UHIN needs to inspect the contents for the level 2 criterion for compliance to the HIPAA Transactions. The Department recommends that this section be updated to either reference HIPAA Privacy and Security or remove Subsection R380-25-3(3). It also might be a good time to update some of the terms to more current terms.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The agency agrees with the above comments and will amend the rule after its continuation. If this rule was removed, any entity wanting to be a conduit for data submissions to the Department of Health would not have the appropriate authority. Therefore, this rule should be continued.

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

HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jeff Duncan by phone at 801-538-7023, by FAX at 801-538-7012, or by Internet E-mail at jduncan@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 06/09/2014

Insurance, Administration
R590-244
Individual and Agency Licensing
Requirements

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38620
FILED: 06/16/2014

**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 31A-2-201(3) authorizes the commissioner to adopt rules to implement the provisions of the Utah Insurance Code. Subsections 31A-23a-104(2), 31A-23a-110(1), 31A-25-201(1), 31A-26-202(1), 31A-23b-203(2), 31A-23b-208(1), 31A-35-104, 301(1) and 401(2) authorize the commissioner to prescribe the forms and manner in which an initial or renewal individual or agency license application under Chapters 23a, 23b, 25, 26, and 35 is to be made to the commissioner. Subsections 31A-23a-111(10), 31A-23b-401(9), 31A-25-208(9), 31A-26-213(10), and 31A-35-406(1) authorize the commissioner to adopt a rule prescribing license renewal and reinstatement requirements for individual and agency licensees under Chapters 23a, 23b, 25, 26, and 35. Subsections 31A-23a-108(1), 31A-23b-205(2) and (3), and 31A-26-207(1) authorize the commissioner to adopt a rule prescribing how examination and training requirements may administered to licensees under Chapters 23a, 23b, and 26. Subsection 31A-23a-115(1) authorizes the commissioner to adopt a rule prescribing reporting requirements to be utilized by an insurer for the initial appointment or the termination of appointment of a person authorized to act on behalf of the insurer under

Chapter 23a. Subsection 31A-23a-203.5(3) authorizes the commissioner to adopt a rule prescribing the terms and conditions of any required legal liability insurance coverage to be maintained by or on behalf of a licensed resident individual producer. Subsection 31A-23b-207(1) authorizes the commissioner to adopt a rule prescribing the amount of any surety bond required to be maintained by a licensed navigator to cover the legal liability of a navigator as the result of an erroneous act or failure to act in the navigator's capacity as a navigator. Subsections 31A-23a-302(2), 31A-23b-209(3), and 31A-26-210(1) authorize the commissioner to adopt a rule prescribing reporting requirements to be utilized by an agency for the initial designation or the termination of designation of a person authorized to act on behalf of the agency under Chapters 23a, 23b, and 26.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

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 important to provide standards for the licensing of individuals and agencies; and to make other amendments to a license as needed. Standardized licensing requirements are important so that everyone who want to apply will know what the standards and the consumer will know that if a person is licensed they have had the education and background checks required. Therefore, this rule should be continued.

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

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 06/16/2014

**Insurance, Title and Escrow
 Commission
 R592-6
 Unfair Inducements and Marketing
 Practices in Obtaining Title Insurance
 Business**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 38612

FILED: 06/13/2014

**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 31A-2-404(2) authorizes the Title and Escrow Commission to make rules for the administration of the Insurance Code related to title insurance, including rules related to standards of conduct for a title insurer, agency, or producer.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received by the department in the past five years regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides guidance to title agents and agencies regarding those actions that are considered unfair inducements and unfair marketing practices. The rule is meant to maintain fair competition among licensees and to protect insurance consumers against unfair practices used to obtain their business. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 INSURANCE
 TITLE AND ESCROW COMMISSION
 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

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 06/13/2014

**Insurance, Title and Escrow
 Commission
 R592-7**

**Title Insurance Continuing Education
 Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 38606
 FILED: 06/13/2014

**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: Subsections 31A-2-404(2)(a) and (g) direct the Title and Escrow Commission to make rules for the administration of the provisions in this title related to title insurance and the approval of continuing education (CE) programs related to title insurance.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department received one written comment from Hunter Finch of GOMB in the past five years. Hunter thought the citation "31A-2-402(3)" used in the "Definition" section of the rule was incorrect. Mr. Finch was right and a nonsubstantive change was made to correct 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: The rule delegates from the Commission to the commissioner the provisional authority to approve CE programs related to title insurance. The rule also sets up a process for the Commission to review and approve or disapprove the CE course report. The rule sets a procedure to follow in the event the Commission disapproves any of the approved courses. It is important to allow the Department to provide this service for the Commission to alleviate the burden from the Commission who may not know all the rules and have the time to delegate to this process. It is important

to leave this duty with the Department since they have a process and the personnel in place to review, approve or disapprove CE courses in a timely and efficient way. Therefore, this rule should be continued.

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

INSURANCE
 TITLE AND ESCROW COMMISSION
 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

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 06/13/2014

**Insurance, Title and Escrow
 Commission
 R592-8**

**Application Process for an Attorney
 Exemption for Agency Title Insurance
 Producer Licensing**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 38607
 FILED: 06/13/2014

**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: This rule was created by the Title and Escrow Commission. Section 31A-2-404 authorizes the Commission to make rules for the administration of the provisions in this title related to title insurance. Section 31A-23a-204 authorizes the Commission to make a rule to exempt attorneys with real estate experience from the three-year licensing requirement to license an agency title insurance producer.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule in the past five years.

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 delegates the preliminary process of approving or denying requests from an attorney for exemption from the licensing requirement in Subsection 31A-23a-204(1) (a). The rule also provides a process to apply for the exemption request and to appeal a denial of the request. Without this rule the Commission would be responsible for the handling of attorney exemptions, which they would be unable to do on their own without a budget to hire people to handle. This rule is also necessary in providing attorneys with the process of filing for an exemption and appealing a denial if that should occur. Therefore, this rule should be continued.

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

INSURANCE
TITLE AND ESCROW COMMISSION
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

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 06/13/2014

**Insurance, Title and Escrow
Commission
R592-9**

**Title Insurance Recovery, Education,
and Research Fund Assessment Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 38608
FILED: 06/13/2014

**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 31A-41-202 requires the Title and Escrow Commission to determine the assessments required from individual title insurance producers and agency title insurance producers to provide funding for the Recovery, Education, and Research Fund.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received by the department in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Recovery, Education and Research Fund pays for claims related to an illegal transaction by a title licensee. Money is used to investigate violations by title licensees, conduct education and research, or to examine licensees. The fund pays for the education of staff who handle title issues. The amount to be taken from the account due to fraudulent acts of licensees can only be determined by a court of law. Without this fund, an individual who has a claim against a licensee who has defrauded, misrepresented or deceived him/her, would have no other recourse for reimbursement of his or her loss. Therefore, this rule should be continued.

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

INSURANCE
TITLE AND ESCROW COMMISSION
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

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 06/13/2014

**Transportation, Motor Carrier
R909-2
Utah Size and Weight Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 38619
FILED: 06/16/2014

**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: This rule is enacted under the authority of Section 72-7-406 which permits the Department

of Transportation to regulate all commercial motor vehicle operators and motor carriers engaged in the movement of over-dimensional and overweight vehicles and loads.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during or since the last five-year review of Rule R909-2.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Size and Weight rule contains provisions related to legal size and weight dimensions, general permit provisions, tire loads, variable load axles, restrictions, divisible and non-divisible provisions, longer combinations vehicles, overweight vehicles, mobile and manufactured homes, pilot escort requirements for training and drivers, farmers, special mobile equipment, special truck equipment, and by-pass provision. The continuing purpose of Rule R909-2 is to protect and preserve Utah's highway

infrastructure and regulate the movement of over-dimensional and overweight vehicles in Utah. Therefore, this rule should be continued.

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

TRANSPORTATION
MOTOR CARRIER
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 06/16/2014

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. 38425 (R&R): R23-29. Across the Board Delegation
Published: 05/01/2014
Effective: 06/09/2014

Education

Administration
No. 38432 (AMD): R277-105. Recognizing Constitutional Freedoms in the Schools
Published: 05/01/2014
Effective: 06/09/2014

No. 38433 (NEW): R277-118. LEA Post-employment Benefits Plans
Published: 05/01/2014
Effective: 06/09/2014

No. 38434 (AMD): R277-410-5. Accreditation Procedures
Published: 05/01/2014
Effective: 06/09/2014

No. 38435 (AMD): R277-503-4. Licensing Routes
Published: 05/01/2014
Effective: 06/09/2014

No. 38436 (AMD): R277-601-3. Standards
Published: 05/01/2014
Effective: 06/09/2014

No. 38437 (AMD): R277-725. Electronic High School
Published: 05/01/2014
Effective: 06/09/2014

Environmental Quality

Water Quality
No. 38387 (AMD): R317-550. Rules for Waste Disposal By Liquid Scavenger Operations
Published: 04/15/2014
Effective: 07/30/2014

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 38430 (AMD): R414-10A-6. Prior Authorization
Published: 05/01/2014
Effective: 06/11/2014

No. 38431 (REP): R414-45. Personal Supervision by a Physician
Published: 05/01/2014
Effective: 06/11/2014

Judicial Performance Evaluation Commission

Administration
No. 38438 (AMD): R597-3. Judicial Performance Evaluations
Published: 05/01/2014
Effective: 06/12/2014

No. 38440 (NEW): R597-4. Justice Courts
Published: 05/01/2014
Effective: 06/12/2014

Natural Resources

Parks and Recreation
No. 38444 (AMD): R651-205. Zoned Waters
Published: 05/01/2014
Effective: 06/09/2014

No. 38443 (AMD): R651-213. Dealer Numbers and Registrations
Published: 05/01/2014
Effective: 06/09/2014

No. 38439 (AMD): R651-608. Events of Special Uses
Published: 05/01/2014
Effective: 06/09/2014

No. 38441 (AMD): R651-409. Minimum Amounts of Liability Insurance Coverage for an Organized Practice or Sanctioned Race
Published: 05/01/2014
Effective: 06/09/2014

No. 38442 (AMD): R651-619. Possession of Alcoholic Beverages or Controlled Substances
Published: 05/01/2014
Effective: 06/09/2014

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2014 through June 16, 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)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administration</u>					
R13-2	Access to Records	38570	5YR	06/02/2014	2014-12/53
<u>Child Welfare Parental Defense (Office of)</u>					
R19-1	Parental Defense Counsel Training	38547	5YR	05/21/2014	2014-12/53
<u>Debt Collection</u>					
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
<u>Facilities Construction and Management</u>					
R23-3	Planning and Programming for Capital Projects	38405	5YR	04/03/2014	2014-9/49
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	38587	5YR	06/10/2014	Not Printed
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
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	38175	AMD	02/07/2014	2014-1/4
<u>Fleet Operations</u>					
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
<u>Purchasing and General Services</u>					
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
R33-7	Cost Principles	38219	EXT	01/02/2014	2014-3/57
R33-7	Cost Principles	38447	5YR	04/17/2014	2014-10/111
R33-9	Insurance Procurement	38220	EXT	01/02/2014	2014-3/57
R33-9	Insurance Procurement	38448	5YR	04/17/2014	2014-10/112
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures	38572	5YR	06/03/2014	Not Printed

R35-1a	State Records Committee Definitions	38573	5YR	06/03/2014	Not Printed
R35-2	Declining Appeal Hearings	38574	5YR	06/03/2014	Not Printed
R35-3	Prehearing Conferences	38575	5YR	06/03/2014	Not Printed
R35-4	Compliance with State Records Committee Decisions and Orders	38576	5YR	06/03/2014	Not Printed
R35-5	Subpoenas Issued by the Records Committee	38577	5YR	06/03/2014	Not Printed
R35-6	Expedited Hearing	38578	5YR	06/03/2014	Not Printed
<u>Risk Management</u>					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	38250	AMD	04/30/2014	2014-4/4
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
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
<u>Conservation Commission</u>					
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
<u>Marketing and Development</u>					
R65-12	Utah Small Grains and Oilseeds Marketing Order	38287	NEW	04/16/2014	2014-5/5
<u>Regulatory Services</u>					
R70-310	Grade A Pasteurized Milk	38467	NSC	05/16/2014	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					
<u>Administration</u>					
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					
<u>Administration</u>					
R105-2	Records Access and Management	38245	NSC	01/30/2014	Not Printed
CAPITOL PRESERVATION BOARD (STATE)					
<u>Administration</u>					
R131-4	Capitol Preservation Board General Procurement Rule	38546	EMR	05/21/2014	2014-12/49
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	38476	5YR	05/01/2014	2014-10/113
COMMERCE					
<u>Consumer Protection</u>					
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
<u>Corporations and Commercial Code</u>					
R154-2	Utah Uniform Commercial Code, Revised Article 9 Rules	38320	R&R	04/21/2014	2014-6/9

RULES INDEX

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
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	38279	AMD	04/08/2014	2014-5/7
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
R156-42a	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
R156-61	Psychologist Licensing Act Rule	38233	5YR	01/13/2014	2014-3/49
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
R156-69	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
R156-80a	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
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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

R277-102	Adjudicative Proceedings	38408	5YR	04/04/2014	2014-9/51
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	Not Printed
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	Not Printed
R277-463	Class Size Average and Pupil-Teacher Ratio Reporting	38590	5YR	06/10/2014	Not Printed
R277-470-6	Charter School Mentoring Program	38186	AMD	02/07/2014	2014-1/14
R277-472	Charter School Student Enrollment and Transfers and School District Capacity Information	38589	5YR	06/10/2014	Not Printed
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	Not Printed
R277-481	Charter School Oversight, Monitoring and Appeals	38187	AMD	02/07/2014	2014-1/15
R277-486	Professional Staff Cost Program	38348	5YR	03/14/2014	2014-7/89
R277-486	Professional Staff Cost Program	38356	NSC	04/01/2014	Not Printed
R277-495	Required Policies for Electronic Devices in Public Schools	38301	AMD	04/07/2014	2014-5/20
R277-497	School Grading System	38111	AMD	01/08/2014	2013-23/8
R277-503	Licensing Routes	38240	AMD	03/10/2014	2014-3/4
R277-503-4	Licensing Routes	38435	AMD	06/09/2014	2014-9/14
R277-510-4	NCLB Highly Qualified Assignments - Elementary Teachers 1-8	38289	NSC	02/27/2014	Not Printed
R277-516	Education Employee Required Reports of Arrests and Required Background Check Policies for Non-licensed Employees	38594	5YR	06/10/2014	Not Printed
R277-518	Career and Technical Education Licenses	38241	AMD	03/10/2014	2014-3/8
R277-524	Paraprofessional/Paraeducator Programs, Assignments, and Qualifications	38349	5YR	03/14/2014	2014-7/90
R277-524	Paraprofessional/Paraeducator Programs, Assignments, and Qualifications	38358	AMD	05/08/2014	2014-7/8
R277-525	Special Educator Stipends	38114	AMD	01/08/2014	2013-23/9
R277-526	Paraeducator to Teacher Scholarship Program	38302	AMD	04/07/2014	2014-5/23
R277-527	International Guest Teachers	38190	AMD	02/07/2014	2014-1/18
R277-528	Use of Public Education Job Enhancement Program (PEJEP) Funds	38242	NEW	03/10/2014	2014-3/12
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
R277-704	Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports	38113	AMD	01/08/2014	2013-23/11
R277-709	Education Programs Serving Youth in Custody	38116	AMD	01/14/2014	2013-23/13
R277-709-11	Coordinating Council	38359	AMD	05/08/2014	2014-7/10
R277-714	Dissemination of Information About Juvenile Offenders	38593	5YR	06/10/2014	Not Printed
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
R277-725	Electronic High School	38411	5YR	04/04/2014	2014-9/52
R277-725	Electronic High School	38437	AMD	06/09/2014	2014-9/18

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R277-735	Corrections Education Programs	38352	5YR	03/14/2014	2014-7/91
R277-735	Corrections Education Programs	38360	AMD	05/08/2014	2014-7/11
R277-800	Utah Schools for the Deaf and the Blind	38592	5YR	06/10/2014	Not Printed
R277-916	Career and Technical Education Introduction and Work-Based Learning Programs	38412	5YR	04/04/2014	2014-9/53
<u>Rehabilitation</u>					
R280-150	Adjudicative Proceedings Under the Vocational Rehabilitation Act	38538	5YR	05/15/2014	2014-11/172
R280-202	USOR Procedures for Individuals with the Most Severe Disabilities	38353	5YR	03/14/2014	2014-7/91
R280-202	USOR Procedures for Individuals with the Most Severe Disabilities	38361	AMD	05/08/2014	2014-7/14
R280-202-3	Eligibility Criteria	38540	NSC	05/29/2014	Not Printed
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WORKFORCE SERVICES

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R986-100-117	Disqualification For Fraud (Intentional Program Violations or IPVs)	38268	AMD	04/15/2014	2014-4/45
R986-200-204	Eligibility Requirements	38140	AMD	01/14/2014	2013-23/50
R986-700	Child Care Assistance	38159	AMD	03/01/2014	2013-24/38
R986-700	Child Care Assistance	38269	AMD	04/15/2014	2014-4/46

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ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>abortion</u> Health, Health Care Financing, Coverage and Reimbursement Policy	38369	R414-1B	5YR	03/18/2014	2014-8/39
<u>acceptable use</u> Technology Services, Administration	38428	R895-7	5YR	04/15/2014	2014-9/60
<u>access to information</u> Administrative Services, Administration	38570	R13-2	5YR	06/02/2014	2014-12/53
<u>accidents</u> Administrative Services, Fleet Operations	38073	R27-7-3	AMD	03/11/2014	2013-22/14

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Crime Victim Reparations, Administration	38258	R270-3	EXT	01/27/2014	2014-4/75
	38498	R270-3	5YR	05/12/2014	2014-11/171
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<u>adjudicative process</u>					
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	38193	R602-2-5	AMD	02/21/2014	2014-2/7
	38327	R602-7	5YR	03/05/2014	2014-7/94
	38328	R602-8	5YR	03/05/2014	2014-7/94
Public Safety, Driver License	38487	R708-7	NSC	05/29/2014	Not Printed
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Environmental Quality, Solid and Hazardous Waste	38335	R315-12	NSC	04/01/2014	Not Printed
Public Safety, Driver License	38406	R708-22	5YR	04/03/2014	2014-9/59
	38485	R708-22	NSC	05/29/2014	Not Printed
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	38217	R512-43	AMD	03/10/2014	2014-3/15
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	38252	R307-103-1	NSC	01/31/2014	Not Printed
	38061	R307-110-17	AMD	01/09/2014	2013-21/8
	38261	R307-150	5YR	01/28/2014	2014-4/70
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	38105	R307-214-3	AMD	03/06/2014	2013-23/18
	38166	R307-302	AMD	03/06/2014	2014-1/20
	37829	R307-335	AMD	06/02/2014	2013-15/23
	37829	R307-335	CPR	06/02/2014	2013-23/54
	37829	R307-335	CPR	06/02/2014	2014-7/85
	37829	R307-335	CPR	06/02/2014	2014-9/46
	38332	R307-357-4	AMD	05/08/2014	2014-7/16
	38495	R307-357-4	NSC	05/29/2014	Not Printed
	37833	R307-401-19	AMD	01/06/2014	2013-15/29
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	38260	R307-405	5YR	01/28/2014	2014-4/70

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	38323	R81-1-32	AMD	04/29/2014	2014-6/7	
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	38276	R81-10b	AMD	03/25/2014	2014-4/14	
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	38435	R277-503-4	AMD	06/09/2014	2014-9/14	
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	38342	R590-229-9	AMD	05/27/2014	2014-7/72	
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	38291	R590-227-5	AMD	04/09/2014	2014-5/49	
	38424	R590-227-5	NSC	05/01/2014	Not Printed	
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Environmental Quality, Air Quality	37833	R307-401-19	AMD	01/06/2014	2013-15/29	
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	38246	R592-8-5	AMD	03/10/2014	2014-3/20	
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	38340	R398-10	NSC	04/01/2014	Not Printed	
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	38292	R523-4	NEW	04/07/2014	2014-5/36	
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	38232	R657-43	AMD	03/11/2014	2014-3/30	
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<u>certifications</u> Agriculture and Food, Conservation Commission	38071 38071	R64-3 R64-3	NEW CPR	05/08/2014 05/08/2014	2013-22/15 2014-7/82
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	38550	R527-332	5YR	05/22/2014	2014-12/55
	38551	R527-394	5YR	05/22/2014	2014-12/56

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	38217	R512-43	AMD	03/10/2014	2014-3/15

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	38400	R382-10	AMD	06/01/2014	2014-8/18

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	38495	R307-357-4	NSC	05/29/2014	Not Printed

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	38125	R152-26	AMD	01/07/2014	2013-23/4	
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	38151	R156-55a	AMD	01/21/2014	2013-24/10	
	38380	R156-55a-301	NSC	04/14/2014	Not Printed	
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	38360	R277-735	AMD	05/08/2014	2014-7/11	
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	37829	R307-335	CPR	06/02/2014	2013-23/54	
	37829	R307-335	CPR	06/02/2014	2014-7/85	
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	38426	R277-400-5	NSC	04/29/2014	Not Printed	

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	38575	R35-3	5YR	06/03/2014	Not Printed
	38576	R35-4	5YR	06/03/2014	Not Printed
	38577	R35-5	5YR	06/03/2014	Not Printed
	38578	R35-6	5YR	06/03/2014	Not Printed

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	38361	R280-202	AMD	05/08/2014	2014-7/14
	38540	R280-202-3	NSC	05/29/2014	Not Printed

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	38340	R398-10	NSC	04/01/2014	Not Printed

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	38300	R277-400	AMD	04/07/2014	2014-5/17	
	38426	R277-400-5	NSC	04/29/2014	Not Printed	
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	38378	R616-3-3	AMD	05/22/2014	2014-8/31	
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	38300	R277-400	AMD	04/07/2014	2014-5/17	
	38426	R277-400-5	NSC	04/29/2014	Not Printed	
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	38389	R162-2g	AMD	05/22/2014	2014-8/8	
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	38327	R602-7	5YR	03/05/2014	2014-7/94
	38328	R602-8	5YR	03/05/2014	2014-7/94
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	37829	R307-335	CPR	06/02/2014	2014-7/85
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	38575	R35-3	5YR	06/03/2014	Not Printed	
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