

# UTAH STATE BULLETIN

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

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-359-0759. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

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

Division of Administrative Rules, Salt Lake City 84114

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## EDITOR'S NOTES

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### **Publication Error on Section R865-9I-13 under DAR No. 33645 in the June 1, 2010, Utah State Bulletin**

Due to a processing error, the "statutory or constitutional authorization" citations for the amendment to Section R865-9I-13 under DAR No. 33645 in the June 1, 2010, issue of the Utah State Bulletin were not published. The keywords were duplicated in this section.

The citations are: Section -10-116; Section 59-10-117; Section 59-10-118; Section 59-10-1403.2; and Section 59-10-1405.

*Questions concerning this error may be addressed to: Nancy Lancaster, Publications Editor, Division of Administrative Rules by phone: 801-538-3218; by FAX: 801-359-0759; or by email: [nllancaster@utah.gov](mailto:nllancaster@utah.gov)*

**End of the Editor's Notes Section**



# **SPECIAL NOTICES**

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## **Alcoholic Beverage Control Administration**

### **Public Notice 2011 Alcohol Beverage Control Commission Meeting Schedule**

Public notice is hereby given of the proposed 2011 calendar year meeting schedule for the Utah Alcoholic Beverage Control (ABC) Commission. The Commission meets monthly at the department's administrative office located at 1625 South 900 West in Salt Lake City, Utah. Meetings are normally held the fourth Tuesday of each month at 9:00 a.m. with the meetings in November and December held the third Tuesday at 9:00 a.m. to accommodate for the holiday season. Meetings dates and times are subject to change.

ABC Commission meetings are open to the public.

*To confirm meeting dates and times, contact Vickie Ashby at 801-977-6800.*

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## **Health Health Care Financing, Coverage and Reimbursement Policy**

### **Notice for January 2011 Medicaid Rate Changes**

Effective January 1, 2011, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, potential adjustments to existing codes, and nursing home rate changes to case mix components consistent with adopted payment methodology. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

**End of the Special Notices Section**



## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between November 16, 2010, 12:00 a.m., and December 01, 2010, 11:59 p.m. are included in this, the December 15, 2010 issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least January 14, 2011. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through April 14, 2011, 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 and the agency must start the process over.

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

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

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**The Proposed Rules Begin on the Following Page**

**Administrative Services, Fleet  
Operations  
R27-3  
Vehicle Use Standards**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34256

FILED: 11/29/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule change prohibits smoking in all state vehicles and eliminates the requirement for date of birth as part of the driver authorization procedure.

**SUMMARY OF THE RULE OR CHANGE:** This rule change updates the language to prohibit smoking in all state vehicles, not just multi-user vehicles. It also eliminates language requiring a date of birth for driver authorization.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63A-9-401(1)(d)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This rule change will result in a slight savings to the state budget by reducing the cleaning costs of vehicles.
- ◆ **LOCAL GOVERNMENTS:** This rule change only affects state vehicles and will not result in any anticipated aggregate cost of savings to local government.
- ◆ **SMALL BUSINESSES:** This rule change only affects state vehicles and will not result in any anticipated aggregate cost of savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule change only affects state vehicles and will not result in any anticipated aggregate cost of savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule change bans smoking in state vehicles and will not result in any compliance costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ADMINISTRATIVE SERVICES  
FLEET OPERATIONS  
ROOM 4120 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Brian Fay by phone at 801-538-3502, by FAX at 801-359-0759, or by Internet E-mail at bfay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2011

AUTHORIZED BY: Sam Lee, Director

**R27. Administrative Services, Fleet Operations.**

**R27-3. Vehicle Use Standards.**

**R27-3-3. Agency Authorization of Drivers.**

(1) Agencies authorized to enter information into DFO's fleet information system shall, for each employee, as defined in section 63G-7-102(2), Utah Governmental Immunity Act, to whom the agency has granted the authority to operate a state vehicle, directly enter into DFO's fleet information system, the following information:

- (a) Driver's name[~~and date of birth~~];
- (b) Driver license number;
- (c) State that issued the driver license;
- (d) Each Risk Management-approved driver training program(s) taken;
- (e) Date each driver safety program(s) was completed;
- (f) The type vehicle that each safety program is geared towards.

(2) Agencies without authorization to enter information into DFO's fleet information system shall provide the information required in paragraph 1 to DFO for entry into DFO's fleet information system.

(3) For the purposes of this rule, any employee, as defined in section 63G-7-102(2), whose fleet information system record does not have all the information required in paragraph 1 shall be deemed not to have the authority to drive state vehicles and shall not be allowed to drive either a monthly or a daily lease vehicle.

(4) To operate a state vehicle, employees, as defined in section 63G-7-102(2), whose names have been entered into DFO's fleet information system as authorized drivers shall have:

- (a) a valid driver license for the type and class of vehicle being operated;

(b) completed the driver safety course required by DFO and the Division of Risk Management for the type or class of vehicle being operated; and

(c) met the age restrictions imposed by DFO and the Division of Risk Management for the type or class of vehicle being operated.

(5) Agencies shall develop and establish procedures to ensure that any individual listed as an authorized driver is not allowed to operate a state vehicle when the individual:

(a) does not have a valid driver license for the type or class of vehicle being operated; or

(b) has not completed all training and/or safety programs required by either DFO or the Division of Risk Management for the type or class of vehicle being operated; or

(c) does not meet the age restrictions imposed by either DFO or the Division of Risk Management for the type or class of vehicle being operated.

(6) A driver license verification check shall be conducted on a regular basis in order to verify the status of the driver license of each employee, as defined in section 63G-7-102(2), whose name appears in the DFO fleet information system as an authorized driver.

(7) In the event that an authorized driver is found not to have a valid driver license, the agency shall be notified, in writing, of the results of the driver license verification check.

(8) Any individual who has been found not to have a valid driver license shall have his or her authority to operate a state vehicle immediately withdrawn.

(9) Any employee, as defined in section 63G-7-102(2), who has been found not to have a valid driver license shall not have the authority to operate a state vehicle reinstated until such time as the individual provides proof that his or her driver license is once again valid.

(10) Authorized drivers shall operate a state vehicle in accordance with the restrictions or limitations imposed upon their respective driver license.

(11) Agencies shall comply with the requirements set forth in Risk Management General Rules, R37-1-8 (3) to R37-1-8 (9).

#### **R27-3-17. Smoking in State Vehicles.**

(1) All[~~multiple-user~~] state vehicles are designated as "nonsmoking". Agencies shall be assessed fees for any damage incurred as a result of smoking in vehicles.[

~~(2) Agencies that allow smoking in exclusive use vehicles shall be responsible for the cost of necessary repairs to, or refurbishment of, any vehicle in which smoking has been permitted to insure that the vehicle is suitable for reassignment, reallocation or sale when the vehicle reaches the applicable replacement criteria.]~~

**KEY: state vehicle use**

**Date of Enactment or Last Substantive Amendment:** ~~June 17, 2008~~**2011**

**Notice of Continuation:** November 29, 2010

**Authorizing, and Implemented or Interpreted Law:** 63A-9-401(1)(d)

## Administrative Services, Fleet Operations **R27-4-11** Capital Credit or Reservation of Vehicle Allocation for Surrendered Vehicles

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34257

FILED: 11/29/2010

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule change will increase the amount of time that the Division of Fleet Operations (DFO) will maintain the capital credit for a vehicle voluntarily surrendered by an agency from one year to five years.

**SUMMARY OF THE RULE OR CHANGE:** Subsection R27-4-11(4) is changed to increase the amount of time capital credit is held by DFO for an agency from one year to five years.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63A-9-401(1)(a) and Subsection 63A-9-401(1)(d) and Subsection 63A-9-401(4)(ii)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Vehicles voluntarily surrendered by state agencies may save money, but there is no anticipated savings.

◆ **LOCAL GOVERNMENTS:** This rule change only affects the state fleet and will have no cost or savings changes to local government.

◆ **SMALL BUSINESSES:** This rule change only affects the state fleet and will have no cost or savings changes to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule change only affects the state fleet and will have no cost or savings changes to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule change only lengthens the amount of time which capital credit will be held. There will be no compliance costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change will only affect state agencies and will have no fiscal impact on businesses.

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

ADMINISTRATIVE SERVICES  
FLEET OPERATIONS  
ROOM 4120 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Brian Fay by phone at 801-538-3502, by FAX at 801-359-0759, or by Internet E-mail at bfay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON  
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO  
LATER THAN AT 5:00 PM ON 01/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2011

AUTHORIZED BY: Sam Lee, Director

#### **R27. Administrative Services, Fleet Operations.**

##### **R27-4. Vehicle Replacement and Expansion of State Fleet.**

##### **R27-4-11. Capital Credit or Reservation of Vehicle Allocation for Surrendered Vehicles.**

(1) This section implements that part of Item 59 of S.B. 1 of the 2002 General Session which requires the Division of Fleet Operations to "create a capitalization credit program that will allow agencies to divest themselves of vehicles without seeing a future capitalization cost if programs require replacement of the vehicle."

(2) In the event that an agency voluntarily surrenders a vehicle to DFO under the capitalization credit program, the agency shall receive a capital credit equal to: the total depreciation collected by DFO on the vehicle (D), plus the estimated salvage value for the vehicle (S), for use towards the purchase of the replacement vehicle.

(3) Prior to the purchase of the replacement vehicle, the surrendering agency shall pay DFO, an amount equal to the difference between the purchase price of the replacement vehicle and amount of the capital credit.

(4) DFO shall, in the event that an agency voluntarily surrenders a vehicle to DFO, hold the vehicle allocation open, or maintain the capital credit for the surrendering agency, for a period not to exceed the remainder of the fiscal year within which the surrender took place, plus an additional five fiscal ~~year~~ years.

(5) The surrendering agency's failure to request the return of the vehicle surrendered prior to the end of the period established in R27-4-11(4), above, shall result in the removal of the surrendered vehicle or allotment from the state fleet, the loss of the agency's capital credit, and effect a reduction in state fleet size.

(6) DFO shall not hold vehicle allocations or provide capital credit to an agency when the vehicle that is being surrendered:

(a) has been identified for removal from the state fleet in order to comply with legislatively mandated reductions in state fleet size; or

(b) is identified as a "do not replace" vehicle in the fleet information system; or

(c) is a state vehicle not purchased by DFO; or

(d) is a seasonal vehicle that has already been replaced.

(7) Any agency that fails to request the return of a voluntarily surrendered vehicle prior to the end of the period set forth in R27-4-11(4), above, must comply with the requirements of R27-4-5, Fleet Expansion, to obtain a vehicle to replace the one surrendered.

#### **KEY: fleet expansion, vehicle replacement**

**Date of Enactment or Last Substantive Amendment:** ~~October 8, 2009~~ 2011

**Notice of Continuation:** July 25, 2007

**Authorizing, and Implemented or Interpreted Law:**  
63A-9-401(1)(a); 63A-9-401(1)(d)(v); 63A-9-401(1)(d)(ix);  
63A-9-401(1)(d)(x); 63A-9-401(1)(d)(xi); 63A-9-401(1)(d)(xii);  
63A-9-401(4)(ii)

## Environmental Quality, Drinking Water **R309-520** Facility Design and Operation: Disinfection

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34244

FILED: 11/16/2010

### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Some portions of the language in the current Rule R309-520 are outdated and lack specificity with regard to emerging disinfection treatment technologies. It is necessary to make substantial revisions to Rule R309-520 in order to bring Utah's standards up to date.

**SUMMARY OF THE RULE OR CHANGE:** The changes for Rule R309-520 addresses specific design and construction standards of the following treatment technologies: 1) gaseous chlorine disinfection; 2) sodium hypochlorite disinfection; 3) calcium hypochlorite disinfection; 4) sodium hypochlorite on-site generation; 5) ultraviolet light disinfection; 6) ozone disinfection; and 7) chlorine dioxide disinfection.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 1-4-104

### **MATERIALS INCORPORATED BY REFERENCES:**

♦ Adds Ultraviolet Disinfection Guidance Manual for the Final Long Term 2 Enhanced Surface Water Treatment Rules, published by Environmental Protection Agency, 2006

## ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There should be no significant cost or savings from this rule change to the state budget. This is because this amendment adds optional disinfection procedures that water systems may choose to implement. The amendment itself carries no cost or savings.
- ◆ LOCAL GOVERNMENTS: There should be no significant cost or savings from this rule change to local government. This is because this amendment adds optional disinfection procedures that water systems may choose to implement. The amendment itself carries no cost or savings.
- ◆ SMALL BUSINESSES: There should be no significant cost or savings from this rule change to small businesses. This is because this amendment adds optional disinfection procedures that water systems may choose to implement. The amendment itself carries no cost or savings.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There should be no significant cost or savings from this rule change to other entities. This is because this amendment adds optional disinfection procedures that water systems may choose to implement. The amendment itself carries no cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no significant cost or savings to public drinking water systems from this rule change. This rule change assists systems seeking to modify or revise their disinfection practices. It should make it easier for systems who wish to change their disinfection practices to emerging disinfection treatment technologies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change should help drinking water systems who wish to revise or update their disinfection practices to one of the emerging disinfection treatment technologies. This may be necessary in order for systems to comply with the new EPA disinfection byproducts regulations.

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

ENVIRONMENTAL QUALITY  
DRINKING WATER  
ROOM THIRD FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Bob Hart by phone at 801-536-0054, by FAX at 801-536-4211, or by Internet E-mail at bhart@utah.gov
- ◆ Ying-Ying Macauley by phone at 801-536-4188, by FAX at 801-536-4211, or by Internet E-mail at ymacauley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2011

AUTHORIZED BY: Ken Bousfield, Director

**R309. Environmental Quality, Drinking Water.****R309-520. Facility Design and Operation: Disinfection.****R309-520-1. Purpose.**

This rule specifies requirements for facilities ~~[which]~~that disinfect public drinking water. It is ~~[intended]~~to be applied in conjunction with Rule Series 500, Drinking Water Facility Construction, Design, and Operation, namely R309-500 through R309-550. Collectively, these ~~[rules]~~Rules govern the design, construction, and operation and maintenance of public drinking water system facilities. These ~~[rules]~~Rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water ~~[which]~~that consistently meet applicable drinking water quality requirements and do ~~[not pose a threat]~~no harm to general public health.

**R309-520-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

**R309-520-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

**R309-520-4. ~~[General]~~Primary Disinfectants.**

~~[Continuous]~~Primary disinfection ~~[shall be required of all ground water sources not consistently meeting standards of bacteriologic quality. Surface water sources or ground water sources under direct influence of surface water shall be disinfected during]~~is the [course of required conventional surface water]means to provide adequate levels of inactivation of pathogenic micro organisms within the treatment [or alternative surface water treatment. Disinfection shall not be considered a substitute for inadequate collection facilities. Systems having only sources classified]process. The effectiveness of chemical disinfectants is measured as [ground water (see R309-505-8)]a function of the concentration and [which disinfect shall meet the requirements]time of contact, a "CT" value in units such as mg/L-min. The effectiveness of [R309]UV disinfection is determined through validation testing of the same UV reactor design as proposed, as described in R309-520-[105-10(1)]8.

Only four disinfectants: chlorine (i.e., gas, hypochlorite solution, and hypochlorite tablets), ozone, ultraviolet light, and chlorine dioxide are approved herein as allowable primary disinfectants of drinking water.

**R309-520-5. ~~[Allowable Primary]~~Secondary Disinfectants.**

~~[Primary]~~Secondary disinfection ~~is [defined as] the means [for providing adequate levels of inactivation of pathogenic micro organisms within the treatment process]to provide an adequate disinfectant residual in the distribution system to maintain a~~

~~chemical barrier and to control bacteriological quality of treated water. [Its]~~

~~The effectiveness of secondary chemical disinfection is measured through maintaining a detectable disinfectant residual throughout the ["CT"]distribution [values]system. [Only]Allowable [four]secondary disinfectants[;] are chlorine ([gaseous]gas, hypochlorite solution, and [liquid]hypochlorite [hypochlorites]tablets)[, ozone, ultraviolet light,] and [chlorine dioxide are allowable for primary disinfection]chloramine.~~

**R309-520-6. [Allowable Secondary Disinfectants.]General.**

**(1) Continuous Disinfection.**

~~[Secondary]Continuous disinfection is [intended to] provide an adequate disinfectant residual in the distribution system to maintain the bacteriological quality[required of [treated]all ground water sources that do not otherwise continuously meet standards of bacteriologic quality. [Its effectiveness]Intermittent or batch disinfection, commonly used for disinfecting new water tanks, waterlines, well casings, etc., is [measured through maintaining a detectable disinfectant residual throughout the distribution system. Allowable disinfectants are chlorine (gaseous]not acceptable for ongoing drinking water delivery service. Surface water sources, and [liquid hypochlorites), chloramine, and chlorine dioxide.]ground water sources under direct influence (UDI) of surface water, shall be disinfected as a part of the treatment requirements for conventional surface water treatment or alternative surface water treatment.~~

~~Disinfection is not an acceptable remedy to inadequate drinking water system facilities. Systems that practice source disinfection, and whose sources are exclusively ground water sources, as defined in R309-505-8, shall meet the requirements of R309-105-10(1), Chemical Addition.~~

**(2) ANSI/NSF Standard 60 Certification.**

~~All chemicals, including chlorine (i.e., gas, hypochlorite solution, hypochlorite tablets, granules, and powder), chloramines, and chemicals used to generate chlorine dioxide, added to drinking water supplied by a public water system shall be certified as complying with ANSI/NSF Standard 60, Drinking Water Treatment Chemicals.~~

**R309-520-7. Appropriate Uses of Chemical Disinfectants.]**

**(3) Appropriate Use of Primary and Secondary Disinfectants.**

~~Surface water, or groundwater under the direct influence of surface water, shall be filtered and disinfected.~~

~~[Chemical disinfection alone is appropriate only for groundwater]Only ground water not under the influence of surface water[. Surface water] can be adequately disinfected with primary disinfectants, or [groundwater]primary and secondary disinfectants, alone. Surface waters, as well as ground water under the direct influence of surface water, [shall be coagulated and filtered in addition to being disinfected. For criteria to be used in determining required levels of]require conventional surface water treatment [refer to R309-200-5(7)].or alternative surface water treatment methods.~~

**R309-520-8. Required Chemical Dosing and Contact Time.]**

**(4) Required Disinfectant Dose and Contact Time.**

~~Minimum [levels]cyst and virus reductions for that approved primary[and secondary disinfection] chemical disinfectants must achieve are specified in R309-200-5[(7)](a). Disinfection, and reiterated in R309-200-7(2), namely 4-log virus removal or inactivation, 3-log Giardia lamblia cyst removal or inactivation, and 2-log Cryptosporidium removal or inactivation for water sources in bin 1 classification per [~~

**R309-520-9. Siting-**

~~215-15(11)(c). Minimum doses and contact times for primary chemical disinfectants are standardized as "CT" values as defined in R309-110-4, Definitions.~~

**(5) Site Selection.**

~~Disinfection installations shall be sited to permit convenient [access through the entire year as well as considerations of safety (i.e. proximity)]year-round access. These installations shall initially be sited with due consideration of possible danger to nearby population [or]and of possible jeopardy from seismic fault zones[.]~~

**[R309-520-10.]R309-520-7. Chlorine.**

~~(1) General Requirements for all Chlorination Installations.~~

**(a) Chemical Types.**

~~Disinfection by chlorination shall be accomplished by gaseous chlorine or liquid solutions of calcium hypochlorite or sodium [hypochlorites]hypochlorite.~~

**(b) [Feeding]Feed Equipment.**

~~Solution-feed gas type chlorinators, direct-feed gas type chlorinators or hypochlorite liquid feeders of a positive displacement type shall be provided. Solution-feed gas type chlorinators are preferred. However, for small supplies requiring less than four pounds per day, liquid [hypochlorinators]hypochlorite feed systems are advised.~~

**(c) Chlorine Feed Capacity.**

~~The design of each chlorinator shall permit:~~

~~(i) the chlorinator capacity to be such that a free chlorine residual of at least 2 mg/l can be maintained in the system after 30 minutes of contact time during peak demand. The equipment shall be of such design that it will operate accurately over a feeding range of 0.2 mg/l to 2 mg/l.~~

~~(ii) assurance that a detectable residual, either combined or free, can be maintained at all times, at all points within the intended area in the distribution system.~~

**(d) Automatic Proportioning.**

~~Automatic proportioning chlorinators shall be required where the rate of flow of the water to be treated or chlorine demand of the water to be treated is not reasonably constant.~~

**(e) Injector/diffuser.**

~~(i) Location. The chlorine solution injector/diffuser shall be compatible with the point of application to provide a rapid and thorough mix with all the water being treated. The center of a pipeline is the preferred application point.~~

~~(ii) Equipment. Each injector selected shall be appropriate to the intended point of application with particular attention given to the quantity of chlorine to be added, the maximum injector water flow, the back pressure of the to-be-treated water flow, the injector operating pressure, and the size of the chlorine solution line. Gauges for measuring water pressure at the inlet and outlet of each injector shall be provided.~~

(iii) Protection. A suitable screen to prevent small debris from clogging a chlorine injector shall be provided on each water feed line. Provision for flushing of the screen is required.

(f) Contact Time and Point of Application.

(i) Due consideration shall be given to the contact time of the chlorine in water with relation to pH, ammonia, taste producing substances, temperature, biological quality, and other pertinent factors.

(ii) Where possible, the design shall minimize the formation of chloro-organic compounds. At plants treating surface water or ground water under the direct influence of surface water, provisions shall be made for applying chlorine to raw water, applied water, filtered water, and water entering the distribution system.

(iii) When treating ground water, provisions shall be made for applying chlorine to at least a reservoir inlet or transmission pipeline which will provide ~~[maximum]~~ sufficient contact time.

(iv) Care must be taken to assure that the point of application will, in conjunction with the pipe and tank configuration of the water system, allow required CT values to be achieved prior to the first consumer connection.

(g) Minimization of Chlorinated Overflow.

The chlorinator and associated water delivery facilities shall be designed so as to minimize the ~~[unnecessary]~~ release of chlorinated water into the environment, for example, discharge chlorinated water from tank overflows ~~[-(see also)]~~. Such release must comply with rules of Division of Water Quality ~~[pertaining]that pertains~~ to discharge or pollution~~[-]~~.

(h) ~~[Chlorinator]~~ Feed Water Piping.

The chlorinator water supply piping shall be designed to prevent contamination of the treated water supply by ~~[sources]~~ make-up water of ~~[questionable]~~ lesser quality. At all facilities treating surface water, pre-chlorination and post-chlorination systems shall be independent where pre-chlorination chlorine solution make-up water is not finished water. All ~~[chlorinator]~~ chlorine solution make-up water shall be at least of equal quality to the water receiving the chlorine solution.

(i) ~~[Water]~~ Flow Measurement.

~~[A]~~ The chlorination system design shall have a means to measure [water]the flow[-to-be] rate of treated [shall-be-provided]water, which is critical to operation of flow-proportioned disinfectant dosing.

(j) Residual Testing Equipment.

Chlorine residual test equipment~~[-recognized]~~, in accordance with the ~~[latest edition of]~~ analytical methods in "Standard Methods for the Examination of Water and Wastewater," shall be provided and shall be capable of measuring residuals to the nearest 0.1 mg/l in the range below 0.5 mg/l, to the nearest 0.3 mg/l between 0.5 mg/l and 1.0 mg/l and to the nearest 0.5 mg/l above 1.0 mg/l.

(k) Standby and Backup Equipment.

A spare parts kit shall be provided and maintained for all chlorinators to repair parts subject to wear and breakage. If there ~~[is]~~ could be a large difference in feed rates between routine and emergency dosages, ~~[a]~~ multiple gas metering ~~[tube]~~ tubes shall be provided, at least one for each dose range, to ~~[ensure]~~ assure accurate control of the chlorine feed under both routine and emergency conditions. Where chlorination is required for ~~[protection]~~ disinfection of ~~[the]~~ a water supply, standby equipment

of sufficient capacity shall be available to replace the largest unit in the event of its failure. Standby power shall be available, during power outages, for operation of chlorinators where ~~[protection]~~ disinfection of the water supply is required.

(l) Heating, Lighting, Ventilation.

Chlorinator houses shall be heated, lighted and ventilated as necessary to assure proper operation of the equipment~~[-]~~ and to facilitate its serviceability.

(m) Bypass-to-Waste Capability of Chlorine Disinfection Systems.

A chlorinator bypass, with appropriate turn-out of unchlorinated water, shall be provided to allow the flow to waste for periods ~~[during chlorinator servicing and power outages]~~ when the chlorination system is not operational. This is necessary to prevent unchlorinated water from entering the distribution system. The flow to waste shall be designed such that it does not result in unintended consequences such as flooding or property damage.

(n) Isolation Capability.

Chlorinator isolation plumbing shall be provided such that each chlorinator can be removed from the process train (e.g., during maintenance, power outage, other shutdown, etc.) without allowing otherwise unchlorinated water to bypass the unit and be delivered to the public for consumption.

(2) Additional Requirement for Gas Chlorinators.

(a) Automatic Switch over.

Automatic Switch over of chlorine cylinders shall be provided, where necessary, to assure continuous disinfection.

(b) Injector and Educator.

Each injector or educator shall be selected for the point of application with particular attention given to the quantity of chlorine to be added, the maximum injector ~~[water flow]~~ or educator water flow, the total discharge back pressure, the injector operating pressure, and the size of the chlorine solution line. Gauges for measuring water pressure at the inlet and outlet of each injector shall be provided.

(c) Gas Scrubbers.

Gas chlorine facilities shall conform with the Uniform Fire Code, Article 80 and the Uniform Building Code, Chapter 9 as they are applied by local jurisdictions in the state. Furthermore, local toxic gas ordinances shall be complied with if they exist.

(d) Heat.

The design of the chlorination room shall assure that the temperature in the room will never fall below 32 degrees F or that temperature required for proper operation of the chlorinator, whichever is greater.

(e) Ventilation.

Chlorination equipment rooms which contain chlorine cylinders, ~~[or]~~ tanks, equipment and ~~[-lines with]~~ gaseous chlorine lines under pressure shall have at least one exhaust fan and shall be [vented]constructed and equipped such that:

(i) ~~[when]~~ chlorine room exhaust fan(s), [are]when operating, ~~[suction will]~~ shall provide at least one complete room air change per minute;

~~[(ii) the ventilating fan(s) take suction near the floor, as far as practical from the door and air inlet, with the point of discharge so located as not to contaminate air inlets of any rooms or structures]~~ (ii) chlorine room ventilating fan(s) shall take suction inside the chlorine room near the floor, as far as practical from the door and air inlet, and exhaust air out of the room with the point of

discharge so located as not to contaminate air inlets of any other rooms or any structures;

(iii) ~~[-air inlets are through louvers near the-]chlorine room air entryways shall be through wall louvers near the ceiling;~~

~~[-(iv) louvers for chlorine room air intake and exhaust facilitate airtight closure;~~

(iv) chlorine room air entryway louvers and air exit-way louvers (e.g., on outside faceplate of any floor level exhaust fan) shall have air-tight closure;

(iv) separate switches for the chlorine room fans and lights ~~[are]shall be~~ outside of the chlorine room; ~~[#]near~~ the entrance to the ~~[chlorination equipment-]room~~. ~~[-Outside-]~~ ~~[switches]and~~ shall be protected from vandalism; and

(v) vents from feeders and storage discharge above grade to the outside atmosphere; ~~[-and-]~~.

~~[-(vi) floor drains are discouraged. Where provided, the floor drains shall discharge to the outside of the building and shall not be connected to other internal or external drainage systems.~~

(f) Feeder Vent ~~[Hose]Line~~.

The vent hose from the feeder shall discharge to the outside atmosphere above grade at a point least susceptible to vandalism and shall have the end covered with a No. 14 mesh non-corrodible screen.

(g) Housing.

Adequate housing shall be provided for the chlorination equipment and for storing the chlorine (see R309-520-10(1)(l) above).

(h) Housing at Water Treatment Plants.

[Separate rooms for]A separate room, referred to as the chlorine room, for chlorine cylinders and feed equipment, shall be provided at all water treatment plants. Chlorine gas feed and storage shall be enclosed in the chlorine room and separated from other operating areas. The chlorine room shall [be]have:

(i) ~~[provided with a-]shatter resistant inspection window(s)~~ installed in an interior wall and preferably located so that an operator may read the weighing scales without entering the chlorine room,

(ii) ~~[constructed in a manner]construction such~~ that all openings between the chlorine room and the remainder of the plant are sealed, and

(iii) ~~[provided with]outward-opening doors equipped with panic [hardware assuring ready]bars to facilitate a means of easy and rapid exit [and opening only-]to the building exterior.~~

(iv) floor drains shall be discouraged but, where provided, these floor drains shall discharge to the outside of the building and shall not be connected to other internal or external drain systems.

(i) Cylinder Security.

Full and empty cylinders of liquefied chlorine gas and ammonia gas shall be stored in rooms separate from each other, and shall be:

(i) isolated from operating areas;

(ii) restrained in position to prevent upset from accidental bumping ~~[or a]~~, seismic event or other such circumstance;

(iii) stored in ~~[rooms separated from ammonia storage-]~~ and

~~[-(iv) stored in-]areas not in direct sunlight or not exposed to excessive heat.~~

(j) Feed Line Routing.

Chlorine feed lines shall not carry pressurized chlorine gas beyond the chlorinator room. Only vacuum lines may be routed to other portions of the building outside the chlorine room ~~[-and any-]~~. Any openings for these lines must be adequately sealed.

(k) Weighing Scales.

Scales shall be provided for ~~[weighing-]~~ eylinders] determining chlorine cylinder weight. Scales should be of a corrosion resistant material and should be placed in a location remote from any moisture. Scales shall be accurate enough to indicate loss of weight to the nearest one pound for 150 pound cylinders and to the nearest 10 pounds for one ton cylinders.

(l) Pressure Gauges.

Pressure gauges shall be provided on the inlet and outlet of each chlorine injector ~~[-as indicated in R309-520-10(2)(b)-]~~. Water pressures at the inlet and outlet of each chlorine injector shall be accurately measured. The preferred location is on the water feed line immediately before the inlet of the chlorine injector and at a point on the water main just ahead of chlorine injection. These locations should give accurate pressure readings while not being subjected to corrosive chlorinated water.

(m) Injector Protection.

A suitable screen to prevent small debris from clogging a chlorine injector shall be provided on the water feed line. Provision for flushing of the screen is required.

(n) Chlorine Vent Line Protection.

A non-corrodible fine mesh (No. 14 or finer) screen shall be placed over the discharge ends of all vent lines. All vent lines shall discharge to the outside atmosphere above grade and at locations least susceptible to vandalism.

(o) Gas Masks.

(i) Respiratory protection equipment, meeting the requirements of the National Institute for Occupational Safety and Health (NIOSH) shall be available where chlorine gas in one-ton cylinders is handled, and shall be stored at a convenient location, but not inside any room where chlorine is used or stored. The units shall use compressed air, have at least a 30 minute capacity, and be compatible with ~~[or exactly the same as-]~~ units used by the fire department responsible for the plant.

(ii) Where smaller chlorine cylinders are used, suitable gas masks must be provided.

(p) Chlorine Leak Detection and Repair.

A bottle of Ammonium Hydroxide, 56% ammonia solution, shall be available for chlorine leak detection; where ton containers are used, a leak repair kit approved by the Chlorine Institute shall be provided. Continuous chlorine leak detection equipment is recommended. Where a leak detector is provided, it shall be equipped with both an audible alarm and a warning light.

(3) Additional Requirement for Hypochlorite Systems.

Disinfection by free chlorine shall be accomplished with stock hypochlorite solutions, hypochlorite solution produced by an on-site generator, or hypochlorite solutions prepared from hypochlorite tablets.

(a) Concentrated Sodium Hypochlorite Solutions.

(i) The concentrated sodium hypochlorite solutions used for drinking water treatment shall be certified as meeting the ANSI/NSF Standard 60.

(ii) Emergency eyewash stations or showers shall be provided at all hypochlorite installations where concentrated (e.g.,

above 5.25% strength) hypochlorite solutions are handled for dilution by operators or other personnel.

(iii) The storage and injection areas shall be designed to minimize the decay of the strength of the concentrated hypochlorite solution over time, such as minimize excessive heat or direct sunlight.

(b) On-Site Hypochlorite Solutions Generation.

The on-site hypochlorite generation systems used for drinking water treatment shall be certified as meeting the NSF/ANSI Standard 61. Manufacturer recommendations for safety with respect to equipment electrical power and other considerations for the ANSI/NSF Standard 61 certified on-site chlorine generation system shall be followed.

(c) Calcium Hypochlorite.

(i) The calcium hypochlorite tablets, granules, and powder forms, used for drinking water treatment shall be certified as meeting ANSI/NSF Standard 60.

(ii) The calcium hypochlorite dissolution systems for drinking water treatment shall be certified as meeting the ANSI/NSF Standard 61. The Executive Secretary may grant an exception to this requirement on a case by case basis.

(iii) The design shall allow the calcium hypochlorite tablets to be stored in accordance with safety guidelines by the vendor or manufacturer, for example, in their original containers in a cool, dry, well-ventilated area. The calcium hypochlorite tablets shall not be stored near combustible materials and acids to avoid fire or the release of toxic gases.

(d) Hypochlorite Feed Equipment.

(i) Hypochlorite feed equipment shall generally conform with R309-525-11, Chemical Addition; with R309-525-6 for storage and safe handling; with R309-525-7 for feeder design, location, and control; with R309-525-8 for feeder appurtenances such as pumps, day tanks, bulk storage tanks, and feed lines; and R309-525-9 for make-up water supply and protection.

(ii) The hypochlorite feed equipment for drinking water treatment shall be certified meeting the ANSI/NSF Standard 61. The Executive Secretary may grant an exception to this requirement on a case by case basis.

**R309-520-8. Ultraviolet Light.**

(1) General Requirements.

This rule shall apply to the public drinking water systems that use ultraviolet (UV) disinfection for inactivation of *Cryptosporidium*, *Giardia*, and virus. The Executive Secretary may reduce the requirements of validation testing, monitoring and reporting on a case by case basis for the water systems that use UV as ancillary means of disinfection and do not claim credit for UV disinfection or the water systems with UV facility of limited capacity.

Terminology used in this rule is based on the definitions in the EPA Ultraviolet Disinfection Guidance Manual for the Final Long Term 2 Enhanced Surface Water Treatment Rule (2006 Final UVDGM).

(a) Water systems using surface water or ground water under the influence of surface water shall not use UV as the sole means of disinfection. For these types of water systems, at least one alternative primary disinfectant must be used for virus disinfection, and a secondary disinfectant shall be provided to maintain a disinfectant residual in the distribution system.

(b) The following requirements apply to the water systems that wish to receive credit for UV disinfection:

(i) The water system shall submit a UV plan which clearly identifies the dose monitoring strategy, such as the UV intensity setpoint approach, the calculated dose approach or an alternative approach.

(ii) The water system shall identify the goals for the UV facility as part of a comprehensive disinfection strategy, including target pathogens, target log inactivation, and corresponding required UV dose per Table 215-5 in R309-215-15(19)(d).

(iii) The water system shall submit a UV reactor validation report in accordance with R309-520-8(2), to the Executive Secretary for review prior to obtaining approval for installation of UV facility.

(iv) The water system must demonstrate that the reactor is delivering the required UV dose using a validated dose monitoring system and continue to comply with the monitoring and reporting requirements specified in R309-215-15(19) and (20).

(2) Validation Testing.

Validation testing must conform to the guidelines in Chapter 5 Validation of UV Reactors of the EPA Ultraviolet Disinfection Guidance Manual for the Final Long Term 2 Enhanced Surface Water Treatment Rule (2006 Final UVDGM).

The Executive Secretary may accept a validation report that was conducted based on the 2003 draft UV Disinfection Guidance Manual on a case-by-case basis.

(a) Each type of UV reactor must undergo off-site, full-scale validation testing by an independent third party test facility prior to being approved for use. The validation testing shall be conducted in qualified test facilities that are deemed acceptable by NSF, EPA, or the Executive Secretary.

(b) Validation testing results shall provide data, including calculations and tables or graphical plots, on dose delivery by the UV reactor under design conditions of flow rate, UV transmittance (UVT), UV intensity, lamp status, power ballast setting, as well as consideration of lamp aging and lamp fouling. The validation report shall demonstrate that the monitoring algorithm is valid over the range expected with the application. The data is used to define the dose monitoring algorithm for the UV reactor and the operating conditions that can be monitored by a utility to ensure that the UV dose required for a given pathogen inactivation credit is delivered.

(c) The UV reactor validation report shall include:

(i) Description of the reactor and validation test set-up, including general arrangement and layout drawings of the reactor and validation test piping arrangement.

(ii) Description of the methods used to empirically validate the reactor.

(iii) Description of the dose monitoring equation for the reactor to achieve the target pathogen inactivation credit and related graphical plots showing how the equation was derived from measured doses obtained through validation testing under varying test conditions.

(iv) Range of validated conditions for flow, UVT, UV dose, and lamp status.

(v) Description and rationale for selecting the challenge organism used in validation testing, and analysis to define operating dose for pathogen inactivation credit.

(vi) Tabulated data, analysis, and Quality assurance/quality control (QA/OC) measures during validation testing.

(vii) A licensed professional engineer's third party oversight certification indicating that the testing and data analyses in the validation report are conducted in a technically sound manner and without bias.

(viii) The validation report shall be companioned with completed Checklists 5.1 through 5.5 included in the EPA Ultraviolet Disinfection Guidance Manual for the Final Long Term 2 Enhanced Surface Water Treatment Rule (2006 Final UVDGM).

(3) Design Criteria

(a) A water system considering UV disinfection shall gather sufficient water quality data prior to design. The water samples shall be representative of the source water to be treated by the UV facility. Frequent testing may be required if significant variation or seasonal trending in water quality is expected.

(b) The following water quality parameters should be considered in UV facility planning:

(i) UV Transmittance or UV Absorbance

(ii) Calcium

(iii) Alkalinity

(iv) Hardness

(v) Iron

(vi) Manganese

(vii) Turbidity

(viii) pH

(ix) Oxidation-Reduction Potential (ORP)

(x) Particle content and algae

(c) The design flow rate and UVT used to size the UV system shall be selected to provide the required dose at least 95 percent of the time, accounting for seasonal variations of flow and UVT combinations. Specifying a matrix of flow and UVT conditions for the UV reactors may be necessary.

(d) The water system may consider increasing the delivered dose beyond the required UV dose listed in Table 215-5 in R309-215-15(19)(d) to provide flexibility and conservatism.

(e) UV reactor inlet and outlet configurations shall meet the validated hydraulic distribution of flow conditions or be more hydraulically conservative. This can be achieved using one of the following approaches:

(i) The inlet and outlet configuration shall meet one of the conditions specified in Section 3.6.2 of the 2006 Final UVDGM.

(ii) Computational fluid dynamics (CFD)-based modeling may be used to demonstrate that the given conditions of inlet and outlet piping with the UV installation provides equal or greater dose delivery. The CFD modeling shall be conducted at the minimum and maximum values of the validated range of flow, UVT, and lamp status.

(f) The UV disinfection system shall be capable of applying the required design dose with a failed or out-of-service reactor. The design shall account for an on-line backup UV reactor or an operating scheme to apply the design dose with one reactor out of service.

(g) It shall be possible to isolate each reactor for maintenance.

(h) Signals and alarms shall be provided for the operation of the UV facility for the parameters necessary for dose monitoring algorithm, such as low UV dose, high flow rate, low UVT, UVT

monitoring failure, UV sensor failure, off specification event, Ground Fault Interrupt (GFI), high water temperature, and low water level.

(i) All materials used in constructing or coating the UV reactors that come in contact with water shall be certified NSF Standard 61 - Drinking Water System Components - Health Effects.

(j) Any chemicals used in the cleaning of the UV reactor components in contact with the drinking water such as quartz sleeves shall be certified as meeting the ANSI/NSF Standard 60 - Drinking Water Treatment Chemicals - Health Effects.

(k) A flow or time delay shall be provided to permit a sufficient time for tube warm-up, per manufacturer recommendations, before water flows from the unit upon start up. The flow or time delay shall be included in the design so they do not result in excessive off specification conditions.

(l) To ensure a continuous supply of power, a backup power supply of sufficient capacity shall be provided for the UV disinfection system. If power quality problems, such as frequent power interruptions or brownouts, or remote location with unknown power quality, is anticipated, power conditioning equipment, such as uninterruptible power supply (UPS), shall be included in the design.

(m) The design shall include a redundant disinfection mechanism that will apply an approved primary disinfectant to achieve the CT or log removal/inactivation required for compliance if a UV facility is off specification or offline within a maximum response time of 15 minutes. One example of such response is to shut down the off- specification UV train and either bring a parallel UV train on line or initiate a back-up primary disinfection system within 15 minutes, so the continuous duration of an off-specification event is limited to no more than 15 minutes.

(n) UV disinfection units rated at 30 gallons per minute or less shall be certified as meeting the ANSI/NSF Standard 55, Class A.

(o) The dose monitoring approach used for UV facility must be reviewed and accepted by the Executive Secretary. Typically the calculated dose approach is suitable for large systems or systems with significant flow variation, and the UV intensity setpoint approach is for small systems or systems with fixed flow rate. The dose monitoring approaches need to be consistent with the guidelines stated in the 2006 Final UVDGM.

(p) If Programmable Logic Controller (PLC) or SCADA interface is used for UV reactor's process control, the programming shall be in accordance with the validated dose monitoring algorithm and the validated conditions. The algorithm shall use inputs of flow, UV intensity sensor readings, lamps status, and/or UVT equal to or more conservative than values measured during the operation of the UV system. If the measured UVT is above the validated range, the maximum validated UVT shall be used as the input to the dose algorithm. If the measured flow rate is below the validated range, the minimum validated flow rate shall be used as the input to the dose algorithm. If the dose algorithm uses relative lamp output determined from the UV intensity sensor readings as an input, the relative lamp output should be based on the measured UVT, even if it exceeds the maximum validated UVT.

(q) The UV reactor's PLC or microprocessor shall be programmed to record off specification events for the following conditions:

(i) Delivered UV dose less than the required dose,

- (ii) Flow greater than the validated range.
- (iii) UVT less than the validated range.
- (iv) Lamp status outside the validated range.
- (v) Failure of UV sensors, flow meters, or on-line UVT monitors used in the dose calculation.

(4) Operation and Maintenance

The operation and maintenance tasks and the frequency of performing them can be specific to the UV equipment installed. The water systems with approved UV installations should follow the manufacturer's recommendation or the operation and maintenance guidelines stated in Section 6.2 through 6.5 of the 2006 Final UVDGM.

(a) Startup testing.

(i) The UV reactor manufacturer must provide a site-specific operation and maintenance manual, which shall include the procedure for starting up and shutting down the UV treatment system.

(ii) Provide schedules and performance standards for start-up testing and initial operation. Schedules shall include anticipated start-up date and proposed testing duration. Performance standards should reference applicable regulations and specific equipment capabilities.

(iii) Operators shall receive site-specific training on the operation of the UV disinfection system.

(b) An incident plan shall be developed to address lamp breakage and release of mercury, response to alarms, power supply interruptions, activation of standby equipment, failure of systems, etc.

(c) To verify that the UV reactors are operated within the validated limits, selected parameters should be monitored. The routine operation and maintenance shall include the monitoring and calibration requirements listed in R309-215-15(19) and (20) and are in accordance with the monitoring and reporting protocol approved by the Executive Secretary. For very small UV systems, the Executive Secretary may consider granting exception to allow reduced monitoring and reporting on a case-by-case basis.

**R309-520-[41;]9. Ozone.**

~~[Proposals for use of ozone-](1) General Requirements.~~

~~(a) Ozone is approved as a primary disinfectant, but is not approved as a secondary disinfectant for the distribution system because of its rapid decomposition in aqueous solution. A different disinfectant approved for secondary disinfection [shall] must be [discussed with the Division prior to] used if a minimum disinfection residual is required in the [preparation of final plans] distribution system. Ozone may also be used for taste and [specifications].~~

~~Part 4, Section 4.3.7, Ozone, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition is hereby incorporated by reference [odor control, oxidation of inorganic and [shall govern the design and operation of disinfection facilities utilizing ozone. This document is published by the Great Lakes Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.]organic compounds and for enhanced performance of other water treatment processes such as microflocculation and filtration. Some of the requirements of this section may not be applicable if ozone is used only for reasons other than primary disinfection.~~

(b) Pilot studies or bench scale studies shall be conducted for all surface waters unless there is sufficient data available from other studies performed on the same water source. The studies shall determine the initial ozone demand, the rate of ozone decay, the minimum and maximum ozone dosages for the range of water conditions for disinfection "CT" compliance, and the ozone dosage required for other desired benefits. Pilot studies or bench scale studies shall take into account the seasonal and other variations of the source water. Plans for pilot studies or bench scale studies shall be reviewed and accepted by the Executive Secretary prior to commencement of the studies.

(2) Ozone Generation.

(a) The ozone system should be designed with backup capability such that required inactivation can be achieved with one generator out of service.

(b) The ozone generators shall be housed in an enclosed temperature controlled building for protection. Adequate ventilation shall be provided in the building, and be capable of providing six or more air changes per hour when needed in case of an ozone leak.

(c) The ozone generators shall be of the medium or high frequency type.

(d) The power supply units for the ozone generators shall have a backup electrical power source, normally an emergency generator, or the system shall have an alternate primary disinfection system that may be used in case of an electrical power outage.

(e) The ozone generators shall be water-cooled with a maximum increase in cooling water temperature of 10 degrees F (5.6 degrees C). If necessary, the cooling water should be treated to minimize corrosion, scaling, and microbiological fouling of the water side of the tubes. A closed-loop cooling water system may be used to assure proper water conditions are maintained. The power supply units to the ozone generators may also be water cooled.

(f) The ozone generators shall comply with Section 3705 of Chapter 37, "Ozone Gas Generators," of the 2006 International Fire Code.

(3) Ozone Generator Feed Gas.

(a) Feed gas may be air, vaporized high purity liquid oxygen, or oxygen enriched air. Oxygen may be generated on-site or delivered in bulk. Oxygen-enriched air is typically generated on-site.

(b) The design of the feed gas system must ensure that the maximum dew point of the feed gas of -76 degrees F (-60 degrees C) is not exceeded at any time.

(c) Liquid Oxygen Feed Gas Systems.

(i) Liquid oxygen storage tanks shall be sized to provide a minimum of a 7-day supply to the ozone generators at the maximum operating rate.

(ii) There shall be two or more vaporizers to convert liquid oxygen to the gaseous form. Vaporizers must be capable of maintaining oxygen flow at the minimum design air temperature with one unit on standby.

(iii) Liquid oxygen storage tanks and system shall comply with Chapters 40, "Oxidizers," of the 2006 International Fire Code.

(d) Air or Oxygen Enriched Air Feed Gas Systems.

(i) There shall be two or more air compressors to supply air. The capacity of the compressors shall be such that the demand during maximum ozone production and for other compressed air

uses at the treatment plant can be met when the largest compressor is out of service.

(ii) Entrainment separators, refrigeration dryers, desiccant dryers, and filters shall be used as necessary to provide a sufficiently dried, dust-free, and oil-free feed gas to the ozone generators. Multiple units of this equipment shall be used so that the ozone generation is not interrupted in the event of a breakdown.

(4) Ozone Contactors.

(a) An ozone contactor shall consist of two or more chambers to provide for introduction of ozone into the water and contact time. In a water treatment plant, ozone may be introduced in the raw water, or ozone may be introduced later in the process, such as to settled water after solids have been removed. An ozone contactor must be a closed vessel that is kept under less than atmospheric pressure to prevent escape of ozone gas. The materials of construction must be ozone-resistant to prevent premature failure of the contactor.

(b) Ozone gas may be injected into the water under positive pressure through bubble diffusers using porous-tube or dome diffusers. Alternatively, ozone gas may be injected into the water using side stream injection. This is where ozone gas is drawn into the side stream using negative pressure, which is generated in a pipe section with a venturi.

(c) An ozone contactor shall be designed to achieve a minimum transfer efficiency of 85 percent.

(d) Multiple sampling points shall be provided in an ozone contactor to enable sampling of treated water for purposes of determining an accurate measure of the concentration to be used in the "CT" disinfection calculation.

(e) A recommended minimum disinfection contact time is ten minutes.

(f) Ozone contactors shall have provision for cleaning, maintenance, and drainage of the contactor. Each contactor chamber shall be equipped with an access hatchway or other means of entry.

(g) An ozone contactor shall have an emergency off-gas pressure/vacuum relief system to prevent damage to the unit.

(h) A system must be provided for worker safety at the end of the ozone contactor for compliance with OSHA standards. Specifically, ozone levels in the gas space above treated water that has exited the contactor must not exceed the established OSHA 8-hour exposure limit of 0.1 ppm. This system may be an ozone residual quenching system where a chemical is used to destroy remaining ozone in the water, or this system may be a monitoring system that provides sufficient time to lower the residual ozone level in the water by natural decay to an acceptable level. Any chemical used to quench residual ozone shall comply with ANSI/NSF Standard 60.

(5) Off-Gas Destruction Units.

(a) A system for treating the final off-gas from each ozone contactor must be provided in order to meet safety standards. Systems using thermal destruction or catalytic destruction may be used. At least two units shall be provided which are each capable of handling the entire off-gas flow.

(b) Exhaust blowers shall be provided in order to draw off-gas from the contactor into the destruction units.

(c) Provisions must be made to drain water from condensation in the off-gas piping and to protect the destruction

units and piping from moisture and other impurities that may cause damage.

(d) The maximum allowable ozone concentration in the gas discharge from a destruction unit is 0.1 ppm by volume. Provisions may be made for temporary transient concentration spikes that may exceed this limit.

(6) Piping and Connections.

(a) Because ozone is a strong oxidant, consideration shall be given to piping materials used in ozone service. Generally, only low carbon 304L and 316L stainless steel should be used for ozone gas service.

(b) Connections on piping used for ozone service should be welded where possible. Threaded connections should be avoided for ozone gas piping because of their tendency to leak. Connections with meters, valves, or other equipment should be made with flanged joints with ozone-resistant gaskets.

(c) A positive-closing 90-degree turn isolation valve, or other equivalent means, shall be provided in the piping between an ozone generator and a contactor to prevent moisture from reaching the ozone generator during shutdowns.

(7) Instrumentation and Monitoring.

(a) A flow meter shall be provided to measure the flow rate of the water being treated. A temperature gauge or transmitter shall also be provided to measure the temperature of the water being treated. The pH should also be measured to indicate changes in the water being treated.

(b) An ozone gas analyzer, a flow meter, and a temperature measurement shall be provided on the gaseous ozone feed line going to the ozone injection point.

(c) Ozone aqueous residual analyzers shall be provided to measure the ozone residual concentration in the water being treated in order to determine "CT" credit.

(d) An ozone gas analyzer shall be provided on the gas discharge of each ozone destruction unit, or combined vent gas discharge, to determine the exiting ozone concentration.

(e) Ambient ozone monitors shall be installed in the vicinity of the ozone generators, the ozone contactors, the ozone destruction units, and other areas where ozone gas may accumulate.

(f) A continuous dew point monitor shall be provided on the feed gas line to the ozone generators.

(g) Instrumentation such as pressure gauges, temperature gauges, flow meters, and power meters shall be provided as necessary to monitor the feed gas system, ozone generators, power supply units, and cooling water to protect the equipment and monitor performance.

(8) Alarms and Shutdowns.

(a) An ambient ozone monitor shall be provided.

(b) The design shall include alarms and shutdowns.

(9) Safety.

(a) Training shall be provided to the operators of ozone systems by the manufacturers of the ozone equipment, or other professionals with experience in ozone treatment, to promote the safe operation of the systems.

(b) Appropriate signs shall be installed around ozone and liquid oxygen equipment to warn operators, emergency responders, and others of the potential dangers.

(c) A means shall be provided, such as portable purge air blowers and portable monitors, to reduce residual ozone levels in an

ozone contactor or other equipment to safe levels prior to entry for repair, maintenance, or emergency.

(10) Operation and Maintenance.

(a) An ambient ozone monitor should activate an alarm when the ozone level exceeds 0.1 ppm. Because the natural ozone levels can exceed 0.1 ppm under certain atmospheric conditions, it is permissible to set the alarm level at a slightly higher level to avoid nuisance alarms. Ozone generator shutdown should occur when ambient levels exceed 0.3 ppm in the vicinity of an ozone generator or a contactor. Operators of the water treatment system may set the alarm level and the shutdown level lower at their discretion. It is recommended that an ozone ambient monitor activates a local audible alarm and/or flashing light warning, in addition to an alarm at the operator control system panel.

(b) There should be an alarm/shutdown to prevent the dew point of the feed gas exceeding the maximum of -76 degrees F (-60 degrees C).

(c) Alarms and shutdowns should be programmed based on the pressure gauges, temperature gauges, flow meters, and power meters, to protect the feed gas system, ozone generators, power supply units, and cooling water system.

**R309-520-[42;10. Chlorine Dioxide.**

The public water systems must take into consideration that chlorine dioxide and its byproducts may have similar effects as chloramines and the impact on sensitive population. Chlorine dioxide should not be intentionally used as a secondary disinfectant. The water system must monitor the chlorine dioxide residuals and byproducts in the distribution system. If chlorine dioxide residual enters the distribution system and may result in impact on sensitive population, the public water system shall notify the public of the change and/or the schedule for the change, particularly notification to sensitive populations such as hospitals and kidney dialysis facilities serving dialysis patients and fisheries.

(1) Pre-design Proposal.

Proposals for the use of [~~Chlorine Dioxide as a disinfectant~~]chlorine dioxide shall be discussed with the Division prior to the preparation of final plans and specifications. [~~The "CT" values~~]A water system must submit a detailed written proposal to the Executive Secretary for [~~the inactivation of Giardia cysts using chlorine dioxide are independent of pH~~]review, [~~with only temperature affecting the value. For~~]including:

(a) The make, model, and specifications for proposed chlorine dioxide [~~a 3-log inactivation of Giardia cysts will generally result in greater than 4-log virus inactivation, and assure meeting~~] generator

(b) References of other U.S. potable water installations of the proposed unit

(c) Information on the operational and maintenance training program

(d) The expected total applied dosage of chlorine dioxide and other disinfectants as well as the points of application for all disinfectants and the type and amount of residuals and by-products expected in the distribution system

(2) Chlorine dioxide generators

(a) Chlorine dioxide generation should be designed to be efficient compared to industry standard, and production of excess chlorine should be minimized.

(b) The generator shall not produce a solution with chlorine dioxide concentration more than 6,000 mg/L to minimize the explosion hazard.

(c) The design shall include capability to measure concentrations of chlorine dioxide, chlorite, chlorate, and free chlorine of the solution leaving the generator.

(d) The chlorine dioxide generator shall be equipped with a chlorine dioxide analyzer to measure the strength of the solution leaving the generator.

(e) Generators which use solid chlorite will not be allowed.

(3) Chlorine Dioxide Feed and Storage System

(a) Chlorine Dioxide Feed system.

(i) Use fiberglass reinforced vinyl ester plastic (FRP) or high density linear polyethylene (HDLPE) tanks with no insulation.

(ii) If centrifugal pumps are used, provide Teflon packing material. Pump motors must be totally enclosed, fan-cooled, equipped with permanently sealed bearings, and equipped with double mechanical seals or other means to prevent leakage.

(iii) Provide chlorinated PVC, vinyl ester or Teflon piping material. Do not use carbon steel or stainless steel piping systems.

(iv) Provide glass view ports for the reactor if it is not made of transparent material.

(v) Provide flow monitoring on all chemical feed lines, dilution water lines, and chlorine dioxide solution lines.

(vi) Provide a means to verify calibrated feed flow to each application feed point.

(vii) Control air contact with chlorine dioxide solution to limit potential for explosive concentrations building up within the feed facility.

(viii) All chlorite solutions shall have concentrations less than 30%. Higher strength solutions are susceptible to crystallization and stratification.

(b) Chlorine Dioxide Storage and Operating Area. The following requirements [~~However, for~~] apply to the chlorite storage and chlorine dioxide [~~unlike chlorine where this relationship always hold true, at certain temperatures, the 4-log virus CT may be higher than the 3-log Giardia cyst CT~~]. day tank area.

(i) The chlorine dioxide facility shall be physically located in a separate room from other water treatment plant operating areas.

(ii) The chlorine dioxide area should have a ventilation system separate from other operating areas.

(iii) Provision shall be made to ventilate the chlorine dioxide facility area and maintain the ambient air chlorine dioxide concentrations below the Permissible Exposure Limit (PEL).

(A) The ventilating fan(s) take suction near the floor, as far as practical from the door and air inlet, with the point of discharge so located as not to contaminate air inlets of any rooms or structures.

(B) Air inlets are provided near the ceiling.

(C) Air inlets and outlets shall be louvered.

(D) Separate switches for the fans are outside and near the entrance of the facility.

(iv) The area housing chlorine dioxide facility shall be constructed of non-combustible materials such as concrete.

(v) There shall be an ambient air chlorine dioxide sensor in the vicinity of the chlorine dioxide operating area. The ambient air chlorine dioxide readouts and alarm or warning light shall be audible and visible in the operating area and on the outside of the door to the operating area. The design should include distinguishing audible alarms that are triggered by the ambient air chlorine dioxide sensor readings.

(vi) There shall be observation windows through which the operating area can be observed from outside the room to ensure operator safety.

(vii) Manual switches to the light in the operating area shall be located outside the door to the room.

(viii) There shall be an emergency shower and eyewash outside and close to the door to the operating area.

(ix) An emergency shutoff control to shut flows to the generator shall be located outside the operating area.

(x) The design shall minimize the possibility of chlorite leaks.

(xi) The chlorite tank and chlorine dioxide solution tank shall be vented to the outdoors away from any operating areas.

(xii) Gaseous chlorine feed to the chlorine dioxide generator should enter the chlorine dioxide facility area through lines which can only feed to vacuum.

(xiii) The floor of the chlorine dioxide facility area shall slope to a sump.

(xiv) There shall not be any open drains in the chlorine dioxide operating area.

(xv) Provide secondary containments with sumps for chlorine dioxide storage, and chlorine dioxide solutions which can hold the entire volume of these vessels. This containment shall prevent these solutions from entering the rest of the operating area.

(xvi) Provide wash-down water within the operating area.

(xvii) The operating area shall be designed to avoid direct exposure to sunlight, UV light, or excessive heat.

(4) Other Design Criteria.

(a) Provide secondary containment, a sump, wash-down water, and a shower and eyewash at the bulk delivery transfer point.

(b) Finished water should be used for chlorine dioxide generation.

(c) The finished water line to the chlorine dioxide generator should be protected with a high hazard assembly.

(d) Provide a water supply near the storage and handling area for cleanup.

(e) The parts of the chlorine dioxide system in contact with the strong oxidizing or acid solutions shall be of inert material.

(f) The design shall provide the capability to shut off the chlorine dioxide operation remotely, i.e., from a location that is outside of the chlorine dioxide operating area.

(5) Operation and Maintenance.

(a) Do not store or handle combustible or reactive materials, such as acids, reduced metals, or organic material, in the chlorine dioxide operating area.

(b) Store chemicals in clean, closed, non-translucent containers.

(c) Personal protective equipment and first aid kits shall be stored at a nearby location that is outside the chlorine dioxide facility area.

(d) The temperature of the chlorine dioxide operating area shall be maintained between 60 and 100 degrees F.

(e) After delivery allow chlorite solutions to equalize with the ambient temperature of the operating area to avoid stratification.

(f) The Operating and Maintenance manual shall include operator safety and emergency response procedures. Personnel shall have ongoing training for operator safety and emergency response procedures.

(g) All wastes should be disposed of in accordance to any existing solid and hazardous waste regulations.

(h) The operating area should be inspected daily for chlorite spills and solid chlorite buildup. The daily inspections should be logged.

(i) Chlorite leaks and solid chlorite buildup should be cleaned up and disposed of immediately.

(j) Solid chlorite should be washed down before removal.

(k) The ventilation system in the chlorine dioxide facility area should be operated to maintain the ambient air chlorine dioxide concentrations below the Permissible Exposure Limit (PEL).

(l) Audible alarms should be programmed to alert water treatment plant personnel when the ambient air chlorine dioxide sensor in the vicinity of the chlorine dioxide operating area detects the chlorine dioxide concentration above the Permissible Exposure Limit (PEL) and the Short Term Exposure Limit (STEL).

#### **R309-520-[13,]11. Chloramines.**

Proposals for the use of Chloramines as a disinfectant shall be discussed with the Division prior to the preparation of final plans and specifications.

#### **[R309-520-14. Ultraviolet Light.**

~~(1) Proposals for use of ultraviolet disinfection shall be discussed with the Division prior to the preparation of final plans and specifications.~~

~~(2) Secondary disinfection and maintenance of the required residual will be necessary where disinfection of the supply is required.~~

~~(3) Ultraviolet disinfection will be permitted where the design conforms to the minimum recommendations of the U.S. Public Health Service listed below:~~

~~(a) Ultraviolet radiation at a level of 2,537 Angstrom units must be applied at a minimum dosage of 16,000 microwatt-seconds per square centimeter per second (1,600 Finsen Units) at all points throughout the water disinfection chamber.~~

~~(b) Maximum water depth in the chamber, measured from the tub surface to the chamber wall, shall not exceed three inches.~~

~~(c) The ultraviolet tubes shall be:~~

~~(i) jacketed so that a proper operating tube temperature of about 105 degrees F is maintained; and~~

~~(ii) the jacket shall be of quartz or high silica glass with similar optical characteristics.~~

~~(d) A flow or time delay mechanism shall be provided to permit a two minute tube warm-up period before water flows from the unit.~~

~~(e) The unit shall be designed to permit frequent mechanical cleaning of the water contact surface of the jacket without disassembly of the unit.~~

~~(f) An automatic flow control valve, accurate within the expected pressure range, shall be installed to restrict flow to the maximum design flow of the treatment unit.~~

~~(g) An accurately calibrated ultraviolet intensity meter, properly filtered to restrict its sensitivity to the disinfection spectrum, shall be installed in the wall of the disinfection chamber at the point of greatest water depth from the tube or tubes.~~

~~(h) A diversion valve or automatic shut-off valve shall be installed which will permit flow into the finished drinking water system only when at least the minimum ultraviolet dosage is applied. When power is not being supplied to the unit, the valve should be in a closed position which prevents the flow of water into the finished drinking water system.~~

~~(i) An automatic, audible alarm shall be installed to warn of malfunction or impending shutdown.~~

~~(j) The materials of construction shall not impart toxic materials into the water either as a result of the presence of toxic constituents in materials of construction or as a result of physical or chemical changes resulting from exposure to ultraviolet energy.~~

~~(k) The unit shall be designed to protect the operator against electrical shock or excessive radiation.~~

~~(l) As with any drinking water treatment process, due consideration must be given to the reliability, economics, and competent operation of the disinfection process and related equipment, including:~~

~~(i) installation of the unit in a protected enclosure not subject to extremes of temperature which could cause malfunction; and~~

~~(ii) provision of a spare UV tube and other necessary equipment to effect prompt repair by qualified personnel properly instructed in the operation and maintenance of the equipment.~~

#### **R309-520-15. Operation and Maintenance.**

~~(1) Safety.~~

~~Chlorine gas facilities shall be operated in a manner which minimizes risks to water system personnel or the general public.~~

~~(2) Residual Chlorine.~~

~~Public drinking water systems supplied water from conventional surface water treatment or alternatives shall test for detectable chlorine residual or HPC within the distribution system as outlined in R309-215-10.~~

~~(3) Chlorine Dosing.~~

~~Chlorine, when used in the distribution system, shall be added in sufficient quantity to achieve either "breakpoint" and yield a detectable free chlorine residual or a detectable combined chlorine residual in the distribution system at points to be determined by the Executive Secretary. Residual checks must be taken daily by the operator of any system using disinfectants. The Executive Secretary may, however, reduce the frequency of residual checks if he determines that this would be an unwarranted hardship on the water system operator and, furthermore, the disinfection equipment has a verified record of reliable operation. Suppliers, when checking for residuals, must use test kits and methods which meet the requirements of the U.S. EPA. The "DPD" test method is recommended for free chlorine residuals. Information on the suppliers of this equipment is available from the Division.~~

~~(4) ANSI/NSF Standard 60 Certification.~~

~~All chemicals, including chlorine gas, added to drinking water supplied by a public water system shall be certified as complying with ANSI/NSF Standard 60, Drinking Water Treatment Chemicals.~~

**]KEY: drinking water, primary disinfectants, secondary disinfectants, operation and maintenance**

**Date of Enactment or Last Substantive Amendment: [April 27, 2009]2011**

**Notice of Continuation: March 22, 2010**

**Authorizing, and Implemented or Interpreted Law: 19-4-104**

## Environmental Quality, Environmental Response and Remediation **R311-200** Underground Storage Tanks: Definitions

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34270

FILED: 12/01/2010

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Definitions for "Certified Environmental Laboratory" and "Injury or Damages from a Release" are added to implement or clarify changes made in the rules (Subsection R311-205-2(d)) and in the Underground Storage Tank (UST) Act (Subsection 19-6-409(2)(e)). The term "Environmental Consultant" is removed from the definition of "Consultant" because the only use of the term in the UST rules (Subsection R311-207-4(e)) is removed. Use of the term "Consultant" is adequate. The definition of "Consultant" is modified so it will match the definition of a certified UST consultant in the UST Act (Subsection 19-6-402(6)).

**SUMMARY OF THE RULE OR CHANGE:** Adds definitions for "Certified Environmental Laboratory" and "Injury or Damages from a Release". Modifies and moves the definition of "Consultant".

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-105 and Section 19-6-403

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** No cost or savings. The changes only add definitions to implement or clarify other rules and the UST Act.

♦ **LOCAL GOVERNMENTS:** No cost or savings. The changes only add definitions to implement or clarify other rules and the UST Act.

♦ **SMALL BUSINESSES:** No cost or savings. The changes only add definitions to implement or clarify other rules and the UST Act.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No cost or savings. The changes only add definitions to implement or clarify other rules and the UST Act.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs. The changes only add definitions to implement or clarify other rules and the UST Act.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact associated with the addition or modification of the definitions.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 01/06/2011 02:00 PM, MASOB, 195 N 1950 W, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 02/14/2011

AUTHORIZED BY: Brent Everett, Director

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-200. Underground Storage Tanks: Definitions.**

**R311-200-1. Definitions.**

(a) Refer to Section 19-6-402 for definitions not found in this rule.

(b) For purposes of underground storage tank rules:

(1) "Actively participated" for the purpose of the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.

(2) "Alternative Fuel" means a petroleum-based fuel containing:

- (A) more than ten percent ethanol, or
- (B) more than twenty percent biodiesel.

(3) "As-built drawing" for purpose of notification means a drawing to scale of newly constructed USTs. The USTs shall be referenced to buildings, streets and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".

(4) "Automatic line leak detector test" means a test that simulates a leak, and causes the leak detector to restrict or shut off the flow of regulated substance through the piping or trigger an audible or visual alarm.

(5) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the underground storage tank system.

(6) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100.

(7) "Burden" means the addition of the percentage of indirect costs which are added to raw labor costs.

(8) "Certificate" means a document that evidences certification.

(9) "Certification" means approval by the Executive Secretary or the Board to engage in the activity applied for by the individual.

(10) "Certified Environmental Laboratory" means a laboratory certified by the Utah Department of Health as outlined in Rule R444-14 to perform analyses according to the laboratory methods identified for UST sampling in Subsection R311-205-2(d).

(1[0]1) "Change-in-service" means the continued use of an UST to store a non-regulated substance.

(1[1]2) "Community Water System" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least 25 year-round residents.

(1[2]3) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil overexcavation or any other remedial or investigation activities conducted for the purpose of determining the extent and degree of contamination.

(14) "Consultant" is a person who is a certified underground storage tank consultant according to Subsection 19-6-402(6).

(1[3]5) "Customary, reasonable and legitimate expenses" means costs incurred during the investigation, abatement and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.

(1[4]6) "Customary, reasonable and legitimate work" means work for investigation, abatement and corrective action that is required to reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and taking into account current or probable land use as determined by the Executive Secretary following the criteria in R311-211.

(1[5]7) "Department" means the Utah Department of Environmental Quality.

(1[6]8) "Eligible exempt underground storage tank" for the purpose of eligibility for the Utah Petroleum Storage Tank Trust Fund means a tank specified in 19-6-415(1).

~~[(17) "Environmental Consultant" or "Consultant" is an individual who provides or contracts to provide information, an opinion, or advice for a fee, or in conjunction with services for which a fee is charged, relating to underground storage tank management, release abatement, investigation, corrective action, or evaluation.~~

—[1[8]9) "Environmental sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for the purpose of evaluating environmental contamination.

(1[9]20) "EPA" means the United States Environmental Protection Agency.

(2[0]1) "Expediently disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the Executive Secretary.

(2[1]2) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.

(2[2]3) "Full installation" for the purposes of 19-6-411(2) means the installation of an underground storage tank.

(2[3]4) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.

(2[4]5) "Groundwater and soil sampler" is the person who performs environmental sampling for compliance with Utah underground storage tank rules.

(26) "Injury or Damages from a Release" means, for the purposes of Subsection 19-6-409(2)(e), any petroleum contamination that has migrated from the release onto or under a third party's property at concentrations exceeding Initial Screening Levels specified in R311-211-6(a).

—(2[5]7) "In use" means that an operational, inactive or abandoned underground storage tank contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to human health, safety or the environment as determined by the Executive Secretary.

(2[6]8) "Lapse" in reference to the Certificate of Compliance and coverage under the Petroleum Storage Tank Trust Fund, means to terminate automatically.

(2[7]9) "Native soil" means any soil that is not backfill material, which is naturally occurring and is most representative of the localized subsurface lithology and geology.

([28]30) "No Further Action determination" means that the Executive Secretary has evaluated information provided by responsible parties or others about the site and determined detectable petroleum contamination from a particular release does not present an unacceptable risk to public health or the environment based upon Board established criteria in R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.

([29]31) "Notice of agency action" means any enforcement notice, notice of violation, notice of non-compliance, order, or letter issued to an individual for the purpose of obtaining compliance with underground storage tank rules and regulations.

(3[0]2) "Occurrence" in reference to Subsection R311-208-4 means a separate petroleum fuel delivery to a single tank.

(3[1]3) "Owners and operators" means either an owner or operator, or both owner and operator.

(3[2]4) "Overexcavation" means any soil removed in an effort to investigate or remediate in addition to the minimum amount required to remove the UST or take environmental samples during UST closure activities as outlined in Section R311-205-2.

(3[3]5) "Permanently closed" means underground storage tanks that are removed from service following guidelines in 40 CFR Part 280 Subpart G adopted by Section R311-202.

(3[4]6) "Petroleum storage tank" means a storage tank that contains petroleum as defined by Section 19-6-402(20).

(3[5]7) "Petroleum storage tank fee" means the fee which capitalizes the Petroleum Storage Tank Trust Fund as established in Section 19-6-409.

(3[6]8) "Petroleum storage tank trust fund" means the fund created by Section 19-6-409.

(3[7]9) "Potable Drinking Water Well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such well may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

([38]40) "Public Water System" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. It includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

([39]41) "Registration fee" means underground storage tank registration fee.

(4[0]2) "Regulated substance" means any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act "CERCLA" of 1980, but not including any substance regulated as a hazardous waste under subtitle C, and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term "regulated substance" includes petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(4[1]3) "Secondary Containment" means a release prevention and detection system for a tank or piping that has an inner and outer barrier with an interstitial space between them for monitoring. The monitoring of the interstitial space shall meet the requirements of 40 CFR 280.43(g).

(4[2]4) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained an UST.

(4[3]5) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment,

monitoring, remediation or corrective action activities as outlined in Rule R311-202, Subparts E and F.

(4[4]6) "Site investigation" is work performed by the owner or operator, or his designee, when gathering information for reports required for Utah underground storage tank rules.

(4[5]7) "Site plat" for purpose of notification, or reporting, refers to a drawing to scale of USTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former UST(s); extent of any excavation(s) and known contamination and location and volume of any stockpiled soil; locations and depths of all environmental samples collected; locations and total depths of monitoring wells, soil borings or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(4[6]8) "Site under control" means that the site of a release has been actively addressed by the owner or operator who has taken the following measures:

(A) Fire and explosion hazards have been abated.

(B) Free flow of the product out of the tank has been stopped.

(C) Free product is being removed from the soil, groundwater or surface water according to a work plan or corrective action plan approved by the Executive Secretary.

(D) Alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release.

(E) A soil or groundwater management plan or both have been submitted for approval by the Executive Secretary.

(4[7]9) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

(4[8]50) "Surface water sample" is a sample of water, other than a groundwater sample, collected according to protocol established in Rule R311-205.

(4[9]51) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, such as concrete, steel, or plastic, that provide structural support.

(5[0]2) "UAPA-exempt orders" are orders that are exempt from requirements of the Utah Administrative Procedures Act under Section 63G-4-102(2)(k), Utah Code Annot.

(5[1]3) "Under-Dispenser Containment" means containment underneath a dispenser that will prevent leaks from the dispenser or transitional components that connect the piping to the dispenser (check valves, shear valves, unburied risers or flex connectors, or other components that are beneath the dispenser) from reaching soil or groundwater.

(5[2]4) "Underground storage tank" or "UST" means any one or combination of tanks, including underground pipes connected thereto and any underground ancillary equipment and containment system, that is used to contain an accumulation of

regulated substances, and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground, regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c et seq.

(5[3]5) "Underground storage tank registration fee" means the fee assessed by Section 19-6-408 on tanks located in Utah.

(5[4]6) "UST inspection" is the inspection required by state and federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated underground storage tank.

(5[5]7) "UST inspector" is an individual who performs underground storage tank inspections for compliance with state and federal rules and regulations.

(5[6]8) "UST installation" means the installation of an underground storage tank, including construction, placing into operation, building or assembling an underground storage tank in the field. It includes any operation that is critical to the integrity of the system and to the protection of the environment, which includes:

(A) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;

(B) vent and product piping assembly;

(C) cathodic protection installation, service, and repair;

(D) internal lining;

(E) secondary containment construction; and

(F) UST repair and service.

(5[7]9) "UST installation permit fee" means the fee established by Section 19-6-411(2)(a)(ii).

(5[8]60) "UST installer" means an individual who engages in underground storage tank installation.

(5[9]61) "UST removal" means the removal of an underground storage tank system, including permanently closing and taking out of service all or part of an underground storage tank.

(6[0]2) "UST remover" means an individual who engages in underground storage tank removal.

(6[1]3) "UST tester" means an individual who engages in UST testing.

(6[2]4) "UST testing" means a testing method which can detect leaks in an underground storage tank system, or testing for compliance with corrosion protection requirements. Testing methods must meet applicable performance standards of 40 CFR 280.40(a)(3), 280.43(c), and 280.44(b) for tank and product piping tightness testing, 280.44(a) for automatic line leak detector testing, and 280.31(b) for cathodic protection testing.

**KEY: petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: [August 18, 2008]2011**

**Notice of Continuation: April 18, 2007**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403**

**Environmental Quality, Environmental  
Response and Remediation  
R311-201  
Underground Storage Tanks:  
Certification Programs and UST  
Operator Training**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34271

FILED: 12/01/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Removes reference to a format for reports submitted by UST consultants, to provide for more streamlining of the reporting process and to remove a reference to the "most recent" consultant's day handbook, a reference that is not specific enough. No actual reference to a report format is necessary, because the content of the report is of more importance than adhering to a specific format. Reference to the date of the EPA Significant Operational Compliance matrices is removed because the date is given where the matrices are incorporated by reference (Subsection R311-206-10(b)(1)).

**SUMMARY OF THE RULE OR CHANGE:** Removes a reference to a specific format for reports submitted by UST consultants. Removes a reference to the version date for the EPA Significant Operational Compliance matrices.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-105 and Section 19-6-402 and Section 19-6-403

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** No anticipated costs. The changes remove references that no longer reflect current practice or are unnecessary. No significant changes in current report-preparation practices are anticipated. Potential savings to the Petroleum Storage Tank (PST) Fund. Reports submitted by consultants may be less expensive if the reports are not required to adhere to a specific format. For example, on a site-specific basis, Corrective Action Plans for leaking underground tank sites can be generated through a meeting between the PST Fund project manager and consultant to determine exact needs for the site, rather than requiring a pre-formatted report. This can result in a savings to the PST fund of up to \$4,000 per site where this process can be used. Aggregate savings will depend on number of reports submitted. Similar savings could result to the state as an underground storage tank owner who is paying for reports

generated as part of a cleanup of a leak from an underground storage tank.

◆ **LOCAL GOVERNMENTS:** No anticipated costs. Potential savings to a local government who is an underground storage tank owner who is paying for reports generated as part of cleanup of a leak from an underground storage tank.

◆ **SMALL BUSINESSES:** Consulting firms may see some savings in costs related to report preparation. Small businesses that are underground storage tank owners or operators may realize the same savings in their costs related to report preparation by their consultants when they are cleaning up releases from underground storage tanks. Savings to be determined by number of reports and amount saved per report.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Consulting firms may see some savings in costs related to report preparation. Underground storage tank owners or operators may realize the same savings in their costs related to report preparation by their consultants when they are cleaning up releases from underground storage tanks. Savings to be determined by number of reports and amount saved per report.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No compliance costs are anticipated. The changes remove references that no longer reflect current practice or are unnecessary.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Removing the reference to a specific format for reports is done to bring the rule in line with current practice. Reports can be tailored to the level of detail necessary for each cleanup site. If the report contains the correct information, adherence to a specific rule format is not necessary. Consulting firms may be able to save some report preparation costs, resulting in savings to the firm preparing the report and the underground tank owner or operator, for whom the report is created.

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

ENVIRONMENTAL QUALITY  
ENVIRONMENTAL RESPONSE AND  
REMEDATION  
ROOM FIRST FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at [gastin@utah.gov](mailto:gastin@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011**

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 01/06/2011 02:00 PM, MASOB, 195 N 1950 W, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 02/14/2011

AUTHORIZED BY: Brent Everett, Director

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training.**

**R311-201-6. Standards of Performance.**

(a) Certified UST Consultant. An individual who provides UST consulting services in the State of Utah:

(1) shall display the certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding UST release-related consulting in this state;

(3) shall provide, or shall associate appropriate personnel in order to provide a high level of experience and expertise in release abatement, investigation, or corrective action;

(4) shall perform, or take steps to ensure that work is performed with skill, care, and diligence consistent with a high level of experience and expertise in release abatement, investigation, or corrective action;

(5) shall perform work and submit documentation in a timely manner[ ~~as determined by the Executive Secretary and in a format established by the Division of Environmental Response and Remediation, as outlined in the most recent Consultant's Day Seminar Handbook~~];

(6) shall review and certify by signature any documentation submitted to the Executive Secretary in accordance with UST release-related compliance;

(7) shall ensure and certify by signature all pertinent release abatement, investigation, and corrective action work performed under the direct supervision of a Certified UST Consultant;

(8) shall report the discovery of any release caused by or encountered in the course of performing environmental sampling for compliance with Utah underground storage tank rules, or report the results indicating that a release may have occurred, to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(9) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,

(10) shall not participate in any other activities regulated under Rule R311-201 without meeting all requirements of that certification program.

(b) UST Inspector. An individual who performs underground storage tank inspecting for the Division of Environmental Response and Remediation:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank inspecting in this state;

(3) shall report the discovery of any release caused by or encountered in the course of performing tank inspecting to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(4) shall conduct inspections of USTs and records to determine compliance with this rule only as authorized by the Executive Secretary.

(5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,

(7) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(c) UST Tester. An individual who performs UST testing in the State of Utah:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding UST testing in this state;

(3) shall perform all work in a manner that there is no release of the contents of the tank;

(4) shall report the discovery of any release caused by or encountered in the course of performing tank testing to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(5) shall assure that all operations of UST testing which are critical to the integrity of the system and to the protection of the environment shall be supervised by a certified person;

(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release or suspected release from an underground storage tank or which would falsify UST testing results of the underground storage tank system;

(8) shall perform work in a manner that the integrity of the underground storage tank system is maintained; and,

(9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(d) Groundwater and soil sampler. An individual who performs environmental sampling for compliance with Utah underground storage tank rules:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank sampling in this state;

(3) shall report the discovery of any release caused by or encountered in the course of performing groundwater or soil sampling or report the results indicating that a release may have occurred to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(4) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,

(6) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(e) UST Installer. An individual who performs underground storage tank installation in the State of Utah:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank installation in this state;

(3) shall perform all work in a manner that there is no release of the contents of the tank;

(4) shall report the discovery of any release caused by or encountered in the course of performing tank installation to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(5) shall assure that all operations of tank installation which are critical to the integrity of the system and to the protection of the environment which includes preinstallation tank testing, tank site preparation including anchoring, tank placement, backfilling, cathodic protection installation, service, or repair, vent and product piping assembly, fill tube attachment, installation of tank manholes, pump installation, secondary containment construction, and UST repair shall be supervised by a certified person;

(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release from an underground storage tank; and

(8) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(9) shall notify the Executive Secretary as required by R311-203-3(a) before installing or upgrading an UST.

(f) UST Remover. An individual who performs underground storage tank removal in the State of Utah:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws and regulations regarding underground storage tank removal in this state;

(3) shall perform all work in a manner that there is no release of the contents of the tank;

(4) shall report the discovery of any release caused by or encountered in the course of performing tank removal to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(5) shall assure that all operations of tank removal which are critical to safety and to the protection of the environment which includes removal of soil adjacent to the tank, disassembly of pipe, final removal of product and sludges from the tank, cleaning of the tank, purging or inerting of the tank, removal of the tank from the ground, and removal of the tank from the site shall be supervised by a certified person;

(6) shall not proceed to close a regulated UST without an approved closure plan, except as outlined in Subsection R311-204-2(b);

(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(8) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release from an underground storage tank; and

(9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program, except as outlined in Subsection R311-204-5(b).

#### **R311-201-12. UST Operator Training and Registration.**

(a) To meet the Operator Training requirement (42 USC Section 6991i) of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility shall, by January 1, 2012, have UST facility operators that are trained and registered according to the requirements of this section. Each facility shall have three classes of operators: A, B, and C.

(1) A facility may have more than one person designated for each operator class.

(2) An individual acting as a Class A or B operator may do so for more than one facility.

(b) The UST owner or operator shall provide documentation to the Executive Secretary to identify the Class A, B, and C operators for each facility. If an owner or operator does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(c) After January 1, 2012, new Class A and B operators shall be trained and registered within 30 days of assuming responsibility for an UST facility. New Class C operators shall be trained before assuming the responsibilities of a Class C operator.

(d) The Class A operator shall be an owner or employee who has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system. The Class A operator shall:

(1) have a general knowledge of UST systems;

(2) ensure that UST records are properly maintained according to 40 CFR 280;

(3) ensure that yearly UST fees are paid;

(4) ensure proper response to and reporting of emergencies caused by releases or spills from USTs;

(5) make financial responsibility documents available to the Executive Secretary as required; and

(6) ensure that Class B and Class C operators are trained and registered.

(e) The Class B operator shall implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems. The Class B operator shall be an owner, employee, or contractor working for the UST owner or operator. The Class B operator shall:

(1) ensure that on-site UST operator inspections are conducted according to the requirements of Subsection R311-201-12(h);

(2) ensure that UST release detection is performed according to 40 CFR 280 subpart D;

(3) ensure that the status of the UST system is monitored every seven days for alarms and unusual operating conditions that may indicate a release;

(4) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(e)(3), if it is not reported as a suspected release according to 40 CFR 280.50;

(5) ensure that appropriate release detection and other records are kept according to 40 CFR 280.34 and 280.45, and are made available for inspection;

(6) ensure that spill prevention, overfill prevention, and corrosion protection requirements are met;

(7) be on site for facility compliance inspections, or designate another individual to be on site for inspections;

(8) ensure that suspected releases are reported according to the requirements of 40 CFR 280.50; and

(9) ensure that Class C operators are trained and registered, and are on-site during operating hours.

(f) An individual who contracts to act as a Class B operator for an UST owner or operator, or performs UST operator inspections according to Subsection R311-201-12(h), and is not the owner or operator, or an employee of the owner or operator, shall be certified as an UST inspector according to Section R311-201-2, and shall meet all requirements of an UST inspector.

(g) The Class C operator is an employee and is generally the first line of response to events indicating emergency conditions. A Class C operator shall:

(1) be present at the facility at all times during normal operating hours;

(2) monitor product transfer operations according to 40 CFR 280.30(a), to ensure that spills and overfills do not occur;

(3) properly respond to alarms, spills, and overfills;

(4) notify Class A and/or Class B operators and appropriate emergency responders when necessary; and

(5) act in response to emergencies and other situations caused by spills or releases from an UST system that pose an immediate danger or threat to the public or to the environment, and that require immediate action.

(h) UST Operator Inspections.

(1) Each UST facility shall have an on-site operator inspection conducted every 30 days, or as approved under Subsection R311-201-12(h)(4) or (5). The inspection shall be performed by or under the direction of the designated Class B operator. The Class B operator shall ensure that documentation of each inspection is kept and made available for review by the Executive Secretary.

(2) The UST operator inspection shall document that:

(A) release detection systems are properly operating and maintained;

(B) spill, overfill, vapor recovery, and corrosion protection systems are in place and operational;

(C) tank top manways, tank and dispenser sumps, secondary containment sumps, and under-dispenser containment are intact, and are properly maintained to be free of water, product, and debris;

(D) the tag or other identifying method issued under Subsection 19-6-411(7) is properly in place on each tank;

(E) alarm conditions that could indicate a release are properly investigated and corrected, and are reported as suspected releases according to 40 CFR 280.50 or documented to show that no release has occurred; and

(F) unusual operating conditions and other indications of a release or suspected release indicated in 40 CFR 280.50 are properly reported.

(3) The individual conducting the inspection shall use the form "UST Operator Inspection- Utah" to conduct on-site operator inspections. The form, dated April 30, 2009, and including information required to be completed during the inspection, is hereby incorporated by reference.

(4) The Executive Secretary may allow operator inspections to be performed less frequently in situations where it is impractical to conduct an inspection every 30 days. The owner or operator shall request the exemption, justify the reason for the exemption, and submit a plan for conducting operator inspections at the facility.

(5) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and R311-204-4 shall have an operator inspection every 90 days.

(i) A facility that normally has no employee or other responsible person on site, or is open to dispense fuel at times when no employee or responsible person is on site, shall have:

(1) a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders, and

(2) an emergency shutoff device, if the facility dispenses fuel.

(j) Operator Training and Registration

(1) Training and testing.

(A) Applicants for Class A and B operator registration shall successfully complete an approved operator training course within the six-month period prior to application.

(B) The training course shall be approved by the Executive Secretary, and shall include instruction in the following: notification, temporary and permanent closure, installation permitting, underground tank requirements of the 2005 Energy Policy Act, Class A, B, and C operator responsibilities, spill prevention, overfill prevention, UST release detection, corrosion protection, record-keeping requirements, emergency response, product compatibility, Utah UST rules and regulations, UST financial responsibility, and delivery prohibition.

(C) Applicants for Class A and B operator registration shall successfully pass a registration examination authorized by the Executive Secretary. The Executive Secretary shall determine the content of the examination.

(D) An individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(j)(1)(A) and (C) by completing the following within the six-month period prior to application:

(i) successfully passing a nationally recognized UST operator examination approved by the Executive Secretary, and

(ii) successfully passing a Utah UST rules and regulations examination authorized by the Executive Secretary. The Executive Secretary shall determine the content of the examination.

(E) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.

(2) Registration application.

(A) Applicants for Class A and B operator registration shall submit a registration application to the Executive Secretary, shall document proper training, and shall pay any applicable fees.

(B) Class C operators shall be designated by a Class B operator. The Class B operator shall maintain a list identifying the Class C operators for each UST facility. The list shall identify each Class C operator, the date of training, and the trainer. Identification on the list shall serve as the operator registration for Class C operators.

(C) A registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.

(D) Class A and B registration shall be effective for a period of three years, and shall not lapse or expire if the registered operator leaves the employment of the company under which the registration was obtained.

(3) Renewal of registration.

(A) Class A and B operators shall apply for renewal of registration not more than six months prior to the expiration of the registration by:

- (i) submitting a completed application form;
- (ii) paying any applicable fees; and
- (iii) documenting successful completion of any re-training required by Subsection R311-201-12(k).

(B) If the Executive Secretary determines that the operator meets all the requirements for registration, the Executive Secretary shall renew the applicant's registration for a period equal to the initial registration.

(C) Any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(j)(1) before receiving the renewal registration.

(k) Re-training.

(1) A Class A operator shall be subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:

- (A) lapsing of certificate of compliance;
- (B) failure to provide acceptable financial responsibility;

or

(C) failure to ensure that Class B and C operators are trained and registered.

(2) A Class B operator shall be subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:

(A) failure to document significant operational compliance, as determined by the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both ~~[dated September 30, 2003, and ]~~ incorporated by reference in Subsection R311-206-10(b)(1);

(B) failure to perform UST operator inspections required by Subsection R311-201-12(h);

(C) failure to have the tag or other identifying method issued under Subsection 19-6-411(7) properly in place on each tank;

or

(D) failure to ensure that Class C operators are trained and registered, and are on-site during operating hours.

(3) To be re-trained, Class A and Class B operators shall successfully complete the appropriate Class A or B operator training course and examination, or shall complete an equivalent re-training course and examination approved by the Executive Secretary.

(4) Class A and B operators shall be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the Executive Secretary within 30 days of the re-training. If the documentation is not received, the Executive Secretary may revoke the certificate of compliance for the facility for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(5) If the documentation of re-training is not received by the Executive Secretary within six months of the date of determination of non-compliance, the Class A or B operator's registration will lapse. To re-register, the operator shall meet the requirements of Subsection R311-201-12(j)(1) and (2).

(6) If a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsections R311-201-12(k)(1) or (2), re-training shall not be required if the Class A or B operator successfully completes and documents re-training under Subsections R311-201-12(k)(3) and (4) for a prior determination of non-compliance that occurred during the previous nine months.

(l) Reciprocity.

(1) If the Executive Secretary determines that another state's operator training program is equivalent to the operator training program provided in this rule, he may accept an applicant's Class A or Class B registration application, provided that the applicant:

(A) submits a completed application form;

(B) passes the Utah UST rules and regulations examination referenced in Subsection R311-201-12(j)(1)(D)(ii), and

(C) submits payment of any applicable registration fees.

(2) The Class A or Class B registration shall be valid until the Utah registration expiration described in Subsection R311-201-12(j)(2)(D).

**KEY: hazardous substances, petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: [August 18, 2009]2011**

**Notice of Continuation: April 18, 2007**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-402; 19-6-403**

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**Environmental Quality, Environmental  
Response and Remediation  
R311-203  
Underground Storage Tanks: Technical  
Standards**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34272

FILED: 12/01/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division's yearly fee schedule established under Section 63J-1-504 contains a provision for assessing a higher underground storage tank (UST) registration fee for tanks that are significantly out of compliance. The rule change sets forth the criteria under which the higher fee will be assessed. Adding a requirement for a remote reading of galvanic cathodic protection systems allows for a more accurate determination of the level of protection provided by the system, and reflects current practice. The remote reading is generally taken and is recommended by industry standards.

**SUMMARY OF THE RULE OR CHANGE:** A tank will be assessed a higher registration fee for being significantly out of compliance if it is out of Significant Operational Compliance (SOC) for more than six months after being found not to meet any of the criteria for SOC in the EPA SOC matrices. The higher fee will be due on July 1 following the 6-month period of non-compliance. Adds a requirement for one remote reading for tests of galvanic cathodic protection systems.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-105 and Section 19-6-403 and Section 19-6-408

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** As an UST owner, the state could incur an additional cost of \$200 per non-compliant tank on which the higher registration fee is assessed. The aggregate cost would depend on the number of tanks that are out of compliance. As a tank owner, the state could also be subject to a slightly higher cost for cathodic protection tests if the remote reading requirement results in an increased cost for the tests. Most testers now take remote readings, so the rule generally reflects current practice and would not result in any additional cost to a tank owner. If the tester does not currently take remote readings, an additional cost of approximately \$25 to \$50 per test could result. The aggregate cost would depend on the number of tests performed.

◆ **LOCAL GOVERNMENTS:** As an UST owner, a local government could incur an additional cost of \$200 (or \$100 for tanks that do not participate in the Utah Petroleum Storage Tank Fund) per non-compliant tank on which the higher registration fee is assessed. The aggregate cost would depend on the number of tanks that are out of compliance. A local government that is a UST owner could also be subject to a slightly higher cost of approximately \$25

to \$50 per test for cathodic protection tests done by testers who do not currently take a remote reading. Aggregate costs would depend on the number of tests conducted.

◆ **SMALL BUSINESSES:** As an UST owner, a small business could incur an additional cost of \$200 (or \$100 for tanks that do not participate in the Utah Petroleum Storage Tank Fund) per non-compliant tank on which the higher registration fee is assessed. The aggregate cost would depend on the number of tanks that are out of compliance. According to current levels of compliance, and an assumption that the higher fee would be an incentive for some UST owners to resolve compliance issues quickly, an aggregate cost of up to approximately \$30,000 could be expected. A small business that is a UST owner could also be subject to a slightly higher cost of approximately \$25 to \$50 per test for cathodic protection tests requiring a remote reading, if not already being done by the tester. The aggregate cost would be approximately \$1,000 per year, based on the number of tests performed yearly and an estimated number of testers who do not currently take remote readings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other persons who are underground storage tank owners could incur an additional cost of \$200 (or \$100 for tanks that do not participate in the Utah Petroleum Storage Tank Fund) per non-compliant tank on which the higher registration fee is assessed. The aggregate cost would depend on the number of tanks that are out of compliance. According to current levels of compliance, and an assumption that the higher fee would be an incentive for some UST owners to resolve compliance issues quickly, an aggregate cost of up to approximately \$30,000 could be expected. An UST owner could also be subject to a slightly higher cost of approximately \$25 to \$50 per test for cathodic protection tests requiring a remote reading, if not already being done by the tester. The aggregate cost would be approximately \$1,000 per year, based on the number of tests performed yearly and an estimated number of testers who do not currently take remote readings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** An additional cost of \$100 or \$200 per non-compliant tank if the higher UST registration fee is assessed. An additional cost of approximately \$25 to \$50 per cathodic protection test for tests conducted by testers who do not currently take the remote reading.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** UST owners who are significantly out of compliance should be able to come into compliance within six months of an inspection, thereby avoiding the higher registration fee. Almost all compliance issues relate to tests and monitoring deficiencies that can be corrected by better record keeping and performing required periodic testing and monitoring of the tank system. The cost of a remote reading for cathodic protection tests would be incurred only every three years and would not be a significant cost.

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 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 01/06/2011 02:00 PM, MASOB, 195 N 1950 W, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 02/14/2011

AUTHORIZED BY: Brent Everett, Director

### **R311. Environmental Quality, Environmental Response and Remediation.**

#### **R311-203. Underground Storage Tanks: Technical Standards.**

#### **R311-203-4. Underground Storage Tank Registration Fee.**

(a) Registration fees shall be assessed by the Department against all tanks which are not permanently closed for the entire fiscal year, and shall be billed per facility.

(b) Registration fees shall be due on July 1 of the fiscal year for which the assessment is made, or, for underground storage tanks brought into use after the beginning of the fiscal year, underground storage tank registration fees shall be due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

(c) The Executive Secretary may waive all or part of the penalty assessed under Subsection 19-6-408(5) if no fuel has been dispensed from the tank on or after July 1, 1991 and if the tank has been properly closed according to Sections R311-204 and R311-205, or in other circumstances as approved by the Executive Secretary.

(d) The Executive Secretary shall issue a certificate of registration to owners or operators for individual underground storage tanks at a facility if:

(1) the tanks are in use or are temporarily closed according to 40 CFR Part 280 Subpart G; and,

(2) the underground storage tank registration fee has been paid.

(e) Pursuant to 19-6-408(5)(c), all past due registration fees, late payment penalties and interest must be paid before the Executive Secretary may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility. However, the Executive Secretary may decline active

collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes the underground storage tanks within one year of becoming the new owner or operator of the facility.

(f) An underground storage tank will be assessed the higher registration fee established under Section 63J-1-504 if it is found to be out of significant operational compliance with leak prevention or leak detection requirements during an inspection, and remains out of compliance for six months or greater following the initial inspection. The higher registration fee shall be due July 1 following the documented six-month period of non-compliance. A tank will be out of significant operational compliance if it fails to meet any of the significant operational compliance measures stated in the EPA compliance measures matrices incorporated by Subsection R311-206-10(b)(1).

#### **R311-203-5. UST Testing Requirements.**

(a) Tank tightness testing. The testing method must be able to test the UST system at the maximum level that could contain regulated substances. Tanks with overflow prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overflow device.

(b) Automatic line leak detector testing. Line leak detectors shall be tested annually for functionality according to 40 CFR 280.44(a) and R311-200-1(b)(4). An equivalent test may be approved by the Executive Secretary. The test shall simulate a leak and provide a determination based on the test whether the leak detector functions properly and meets the requirements of 40 CFR 280.44(a). If a sump sensor is used as an automatic line leak detector, the sensor shall be located as close as is practical to the lowest portion of the sump.

(c) Containment sump testing. When a sump sensor is used as a leak detector, the secondary containment sump shall be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the Executive Secretary.

(d) Cathodic protection testing. Cathodic protection tests shall meet the inspection criteria outlined in 40 CFR 280.31(b)(2), or other criteria approved by the Executive Secretary. The tester who performs the test shall provide the following information: location of at least three test points per tank, location of one remote test point for galvanic systems, test results in volts or millivolts, pass/fail determination for each tank, line, flex connector, or other UST system component tested, the criteria by which the pass/fail determination is made, and a site plat showing locations of test points. A re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

(e) UST testers performing tank and line tightness testing shall include the following as part of the test report: pass/fail determination for each tank or line tested, the measured leak rate, the test duration, the product level for tank tests, the pressure used for pressure tests, the type of test, and the test equipment used.

**KEY: fees, hazardous substances, petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: [August 18, 2008]2011**

**Notice of Continuation: April 18, 2007**

**Authorizing, and Implemented or Interpreted Law: 19-6-105;  
19-6-403; 19-6-408**

## Environmental Quality, Environmental Response and Remediation

### **R311-205**

## Underground Storage Tanks: Site Assessment Protocol

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34275

FILED: 12/01/2010

### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Guidance documents for collecting soil and groundwater samples are incorporated by reference because samplers are required to follow the protocols in these documents when they collect samples. The reference to approval of Certified Environmental Laboratories by the Executive Secretary is removed because laboratory certification is already performed by the Utah Department of Health, so it is not necessary for the Executive Secretary to approve the laboratories. Removal of the reference to the table of analytical methods and the listing of the analytical methods separately in the rule are done to allow for more flexibility in methods used and to allow laboratories to use the most current method version without having to change the rule each time a new method version is created. Differences between versions are usually not significant and do not affect the validity of the method or the analysis. Because most laboratories use the current version, removing the reference to a specific version allows the rule to remain current with method versions as they change. The actual methods required by the rule are not changed.

**SUMMARY OF THE RULE OR CHANGE:** Incorporates by reference guidance documents for collecting soil and groundwater samples for UST site assessments. Removes the reference to the approval of Certified Environmental Laboratories by the Executive Secretary. Removes the reference to the table of analytical methods to be used for sample analysis, and specifies the analytical methods for each analyte separately in the rule text. Removes references to specific versions of analytical methods.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-105 and Section 19-6-403 and Section 19-6-413

### **MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Adds Description and Sampling of Contaminated Soils, A Field Pocket Guide, published by United States Environmental Protection Agency, 11/01/1991
- ◆ Removes Analytical Methods for Environmental Sampling at Underground Storage Tank Sites in Utah (July 2004), published by Division of Environmental Response and Remediation, Utah DEQ, 07/01/2004
- ◆ Adds RCRA Ground-Water Monitoring Technical Enforcement Guidance Document, published by United States Environmental Protection Agency, 09/01/1986
- ◆ Adds Compendium of ERT Surface Water and Sediment Sampling Procedures, published by United States Environmental Protection Agency, 01/01/1991

### **ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Savings of approximately \$600 per year in personnel costs because the Executive Secretary will no longer be required to approve laboratories.
- ◆ **LOCAL GOVERNMENTS:** No costs or savings are associated with the changes. The analytical method change only provides a way to keep the rule current with changes in laboratory methods. It has no effect on the methods that are in use by laboratories. Guidance documents are available free of charge on the Internet from EPA.
- ◆ **SMALL BUSINESSES:** No costs or savings are associated with the changes. The analytical method change only provides a way to keep the rule current with changes in laboratory methods. It has no effect on the methods that are in use by laboratories. Guidance documents are available free of charge on the Internet from EPA.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No costs or savings are associated with the changes. The analytical method change only provides a way to keep the rule current with changes in laboratory methods. It has no effect on the methods that are in use by laboratories. Guidance documents are available free of charge on the Internet from EPA.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None anticipated. The analytical method change only provides a way to keep the rule current with changes in laboratory methods. It has no effect on the methods that are in use by laboratories. Guidance documents are available free of charge on the Internet from EPA.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There should not be any fiscal impact on businesses. Environmental laboratories keep their analytical methods current, so the rule change would not affect them. If a laboratory uses one of the earlier method variations, it would still be acceptable, because a specific method version is no longer required by the rule.

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THIS RULE MAY BECOME EFFECTIVE ON: 02/14/2011

AUTHORIZED BY: Brent Everett, Director

### **R311. Environmental Quality, Environmental Response and Remediation.**

#### **R311-205. Underground Storage Tanks: Site Assessment Protocol.**

##### **R311-205-1. Definitions.**

Definitions are found in Rule R311-200.

##### **R311-205-2. Site Assessment Protocol.**

###### (a) General Requirements.

(1) When a site assessment or site check is required, pursuant to 40 CFR 280 or Subsection 19-6-428(3), owners or operators shall perform or commission to be performed a site assessment or a site check according to the protocol outlined in Rule R311-205 or equivalent, as approved by the Executive Secretary. Additional environmental samples must be collected when contamination is found, suspected, or as requested by the Executive Secretary.

(2) This Subsection incorporates by reference the documents referenced in Subsections R311-205-2(a)(2)(A) through (C). These documents contain guidance and methodologies for collecting soil and groundwater samples.

(A) Groundwater samples shall be collected in accordance with ~~the~~ "[EPA]-RCRA Ground-[w]Water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1), published by EPA and dated September 1986, or as determined by the Executive Secretary.

(B) Surface water samples shall be collected in accordance with protocol established in ~~the~~ "[EPA]-Compendium of ERT Surface Water and Sediment Sampling Procedures", published by EPA and dated January 1991, or as determined by the Executive Secretary.

(C) Soil samples shall be collected in accordance with ~~the~~ "[EPA]-Description and Sampling of Contaminated Soils, A Field Pocket Guide", published by EPA and dated November 1991, or as determined by the Executive Secretary.

(3) Owners and operators must document and report to the Executive Secretary sample types, sample locations and depths, field and sampling measurement methods, the nature of the stored substance, the type of backfill and native soil, the depth to groundwater, and other factors appropriate for identifying the source area and the degree and extent of subsurface soil and groundwater contamination.

(4) The owner or operator shall report the discovery of any release or suspected release to the Executive Secretary within twenty-four hours. Owners or operators shall begin release investigation and confirmation steps in accordance with 40 CFR 280, Subpart E upon suspecting a release. Owners or operators shall begin release response and corrective action in accordance with 40 CFR 280, Subpart F upon confirming a release.

(5) All environmental samples shall be collected by a certified groundwater and soil sampler who meets the requirements of Rule R311-201. The certified groundwater and soil sampler shall record the depth below grade and location of each sample collected to within one foot.

(6) All environmental samples shall be analyzed within the time frame allowed, in accordance with Table 4.1 of ~~the~~ "[EPA]-RCRA Ground-[w]Water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1), by a ~~Utah~~ Certified Environmental Laboratory [~~approved by the Executive Secretary~~]. Soil samples must be corrected for moisture, if necessary, with percent moisture reported to accurately represent the level of contamination.

(7) Environmental samples for UST permanent closure or change in service shall be collected according to the protocol outlined in Subsection R311-205-2(b), after the UST system is emptied and cleaned and after the closure plan has been approved.

(8) Environmental confirmation samples are required following overexcavation of soils. Confirmation samples shall be taken at locations and depths sufficient to detect the presence, extent and degree of a release from any portion of the UST in accordance with 40 CFR 280, Subparts E, F and G. Additional confirmation samples may be required as determined by the Executive Secretary.

(9) Upon confirming a release, a site assessment report, an updated site plat, analytical laboratory results, chain of custody forms, and all other applicable documentation required by 40 CFR 280, Subparts E and F, following any abatement, investigation or assessment, monitoring, remediation or corrective action activities, shall be submitted to the Executive Secretary within the specified time frames as outlined in compliance schedules.

(10) When conducting environmental sampling to satisfy the requirements of 40 CFR 280, subparts E and F, soil classification samples to determine native soil type shall be collected at locations and depths as outlined in compliance schedules, or as determined by the Executive Secretary. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification, or a field description from a qualified individual as determined by the Executive Secretary, may be used to satisfy requirements of determining native soil type.

(11) Other types of environmental or quality assurance samples may be required as determined by the Executive Secretary.

## (b) Site Assessment Protocol for UST Closure.

(1) The appropriate number of environmental samples, as described in Subsection R311-205-2(b)(4) shall be collected in native soils, below the backfill material, and as close as technically feasible to the tank, piping or dispenser island. Any other samples required by Subsection R311-205-2(a) must also be collected. Soil samples shall be collected from a depth of zero to two feet below the backfill and native soil interface. If groundwater is contacted in the process of collecting the soil samples, the soil samples required by Subsection R311-205-2(b)(4) shall be collected from the unsaturated zone immediately above the capillary fringe. Groundwater samples shall be collected using proper surface water collection techniques, from a properly installed groundwater monitoring well, or as determined by the Executive Secretary. All environmental samples shall be analyzed using the appropriate analytical methods outlined in Subsection R311-205-2(d).

(2) One soil classification sample to determine native soil type shall be collected at the same depth as indicated for environmental samples, at each tank and product piping area. For all dispenser islands, only one representative sample to determine native soil type is required. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification shall be used to satisfy requirements of determining native soil type when taking samples for UST closure.

(3) For purposes of complying with Rule R311-205, for tanks or piping to be removed, closed in-place or that undergo a change in service, a tank or product piping area is considered to be an excavation zone or equivalent volume of material containing one, or more than one immediately adjacent, UST or piping run.

## (4) Environmental Sampling Protocol for UST closures:

(A) For a tank area containing one UST, one soil sample shall be collected at each end of the tank. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank.

(B) For a tank area containing more than one UST, one soil sample shall be collected from each corner of the tank area. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank area.

(C) Product piping samples shall be collected from each product piping area, at locations where leaking is most likely to occur, such as joints, connections and fittings, at intervals which do not allow more than 50 linear feet of piping in a single piping area to go unsampled. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each piping area where groundwater was encountered.

(D) For dispenser islands, environmental samples shall be collected from the middle of each dispenser island. Additional environmental samples shall be collected at intervals which do not allow more than 25 linear feet of dispenser island piping to go unsampled. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each dispenser island where groundwater was encountered.

(c) Site Check Requirements for Re-applying to Participate in the Petroleum Storage Tank Trust Fund Program.

(1) Owners or operators wishing to re-apply for participation in the Petroleum Storage Tank Trust Fund Program following a period of lapse or non-participation shall perform a tank tightness test and site check pursuant to Subsection 19-6-428(3)(a). The tank tightness test and site check shall be consistent with requirements for testing and site assessment as defined under 40 CFR 280, Subparts D and E.

(2) The owner or operator shall develop or commission to have developed a site check plan outlining the intended sampling program. The Executive Secretary shall review and approve the site check plan prior to its implementation. The site check shall meet the sampling requirements for USTs, dispensers and piping as defined in Subsection R311-205-2(b), or as determined by the Executive Secretary on a site-specific basis. Additional sampling may be required by the Executive Secretary based on review of the proposed site check plan and site specific conditions.

## (d) Laboratory Analyses of Environmental Samples.

(1) Environmental samples which have been collected to determine levels of contamination from underground storage tanks shall be analyzed ~~[using appropriate laboratory analytical methods as referenced in the "Analytical Methods for Environmental Sampling at Underground Storage Tank Sites in Utah (July 2004)", or as determined by the Executive Secretary.]~~ by a Certified Environmental Laboratory. Unless otherwise approved by the Executive Secretary, the required analytes and corresponding analytical methods shall be:

~~([2]A) [Environmental samples which have been collected to determine levels of contamination by g]Gasoline contamination-~~

~~(i) [shall be analyzed for] total petroleum hydrocarbons (purgeable TPH as gasoline range organics C<sub>6</sub> - C<sub>10</sub>).~~ by either EPA 8015 or EPA 8260; and[;]

~~(ii) benzene, toluene, ethylbenzene, xylenes, [and] naphthalene (BTEXN), and [for]methyl tertiary butyl ether (MTBE)~~ by either EPA 8021 or EPA 8260.

~~([3]B) [Environmental samples which have been collected to determine levels of contamination by d]Diesel fuel contamination- [shall be analyzed for ]~~

~~(i) total petroleum hydrocarbons (extractable TPH as diesel range organics C<sub>10</sub> - C<sub>28</sub>)[;]~~ by EPA 8015; and

~~(ii) benzene, toluene, ethylbenzene, xylenes and naphthalene (BTEXN)~~ by either EPA 8021 or EPA 8260.

~~([4]C) [Environmental samples which have been collected to determine levels of contamination by u]Used oil [shall be analyzed for]contamination-~~

~~(i) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH)~~ by EPA 1664; and

~~(ii) [for] benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN)[;], methyl tertiary butyl ether (MTBE)[;], and halogenated volatile organic compounds (VOX)~~ by EPA 8021 or EPA 8260.

~~([5]D) [Environmental samples which have been collected to determine levels of contamination by n]New oil [shall be analyzed for]contamination-~~ oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664.

~~([6]E) [Environmental samples which have been collected to determine levels of e]Contamination from underground storage tanks which contain substances other than or in addition to~~

petroleum shall be analyzed for appropriate constituents as determined by the Executive Secretary.

(7)E [Environmental samples which have been collected to determine levels of e]Contamination for an unknown petroleum product type[ shall be analyzed for].

(i) total petroleum hydrocarbons (purgeable TPH as gasoline range organics C<sub>6</sub> - C<sub>10</sub>) by either EPA 8015 or EPA 8260;

(ii) total petroleum hydrocarbons (extractable TPH as diesel range organics C<sub>10</sub> - C<sub>28</sub>) by EPA 8015;

(iii) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664; and

(iv) benzene, toluene, ethylbenzene, xylenes[~~and~~], naphthalene (BTEXN)[~~and~~], methyl tertiary butyl ether (MTBE)[~~;~~], and [~~for~~]halogenated volatile organic compounds (VOX) by either EPA 8021 or EPA 8260.

(8)2 All original laboratory sample results must be returned to the certified groundwater and soil sampler or certified UST consultant to verify all chain of custody protocols, including holding times and analytical procedures, were properly followed. Environmental samples shall be collected and transported under chain of custody according to EPA methods as approved by the Executive Secretary.

(9)3 Reporting limits used by laboratories analyzing environmental samples taken under this rule shall be below initial screening levels for the contaminated media under study. Environmental samples shall be analyzed with the least possible dilution to ensure reporting limits are below initial screening levels to the extent possible. If more than one determinative analysis is performed on any given environmental sample, the final dilution factor used and the reporting limit must be reported by the laboratory. As an alternative to diluting environmental samples, the laboratory shall consider using appropriate analytical cleanup methods and describe which analytical cleanup methods were used to eliminate or minimize matrix interference. Any analytical cleanup method used must not eliminate the contaminant of concern or target analyte.

**KEY: petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: [May 15, 2006]2011**

**Notice of Continuation: April 18, 2007**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-413**

## Environmental Quality, Environmental Response and Remediation

### R311-206

## Underground Storage Tanks: Financial Assurance Mechanisms

## NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34273

FILED: 12/01/2010

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The fire code reference is changed to match the fire code version referenced in the state fire code. The new version of the EPA Significant Operational Compliance matrices is incorporated so the rule will remain current.

**SUMMARY OF THE RULE OR CHANGE:** Removes the reference to the International Fire Code and inserts a reference to the Utah State Fire Code. Incorporates by reference the new version of the EPA Release Prevention and Release Detection matrices used for determining significant operational compliance.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-105 and Section 19-6-403 and Section 19-6-428

### MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Release Detection Compliance Measures Matrix, published by United States Environmental Protection Agency, 03/03/2005

### ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No cost or savings--only involves changing the incorporation references. Requirements of the documents incorporated and referenced have not changed materially.
- ◆ **LOCAL GOVERNMENTS:** No cost or savings--only involves changing the incorporation references. Requirements of the documents incorporated and referenced have not changed materially.
- ◆ **SMALL BUSINESSES:** No cost or savings--only involves changing the incorporation references. Requirements of the documents incorporated and referenced have not changed materially.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost or savings--only involves changing the incorporation references. Requirements of the documents incorporated and referenced have not changed materially.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No compliance costs are anticipated. Changes are made only in the incorporation references. Requirements of the documents incorporated and referenced have not changed materially.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There should be no fiscal impact from these changes. The requirements of the documents referenced are essentially the same as the previous versions.

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THIS RULE MAY BECOME EFFECTIVE ON: 02/14/2011

AUTHORIZED BY: Brent Everett, Director

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-206. Underground Storage Tanks: Financial Assurance Mechanisms.**

**R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program.**

(a) Owners or operators of eligible exempt underground storage tanks specified in Subsection 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:

- (1) meeting the requirements of Subsection 19-6-415(1) and Subsection R311-206-3(a);
- (2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and
- (3) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

(b) Owners or operators of above-ground storage tanks may voluntarily participate in the Environmental Assurance Program by:

- (1) meeting the requirements of Subsection 19-6-415(2) and Subsection R311-206-3(a);
- (2) meeting applicable requirements of the [2000–International Fire Code, Chapters 22 and 34, published by the International Code Council, Inc.]Utah State Fire Code adopted pursuant to Section 53-7-106;

(3) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor-equipped double-walled underground product piping; and

(4) performing a tightness test of all above-ground tanks every five years, using a tightness test method capable of properly testing the tank.

**R311-206-10. Participation in the Environmental Assurance Program After a Period of Voluntary Non-participation.**

(a) Owners and operators who choose not to participate in the Environmental Assurance Program shall, before any subsequent participation in the program, meet the following requirements:

- (1) notify the Executive Secretary of the intent to participate in the program;
- (2) comply with the requirements of Subsection 19-6-428(3), and
- (3) meet the requirements of Subsection R311-206-3(a) to qualify for a new certificate of compliance.

(b) Effective January 1, 2007, and until December 31, 2007, the Executive Secretary may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each UST to participate in the program, meets the following requirements at the time the owner or operator applies for participation:

(1) The last two compliance inspections verify significant operational compliance, and verify that no release has occurred. Significant operational compliance status shall be determined using the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both dated [September 30, 2003]March 3, 2005 and incorporated herein by reference. The matrices contain leak prevention and leak detection criteria to be used by inspectors in determining compliance status of underground storage tanks.

(2) The owner or operator documents compliance with all release prevention and release detection requirements that are required for the time period since the last compliance inspection, and the records submitted do not give reason to suspect a release has occurred. The owner or operator shall submit:

- (i) tank and piping leak detection records, or a tank and line tightness test performed within the last six months;
- (ii) the most recent simulated leak test for all automatic line leak detectors;
- (iii) cathodic protection tests, if applicable, and
- (iv) internal lining inspections, if applicable.

(c) Effective January 1, 2008, the Executive Secretary may determine that reasonable cause exists if:

- (1) the owner or operator meets the requirements of Subsections (b)(1) and (b)(2) above, and
- (2) the period of non-participation in the Program is less than six months, or the UST is less than ten years old.

**KEY: hazardous substances, petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: [August 18, 2008]2011**

**Notice of Continuation: April 18, 2007**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-428**

**Environmental Quality, Environmental  
Response and Remediation  
R311-207  
Accessing the Petroleum Storage Tank  
Trust Fund for Leaking Petroleum  
Storage Tanks**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34274

FILED: 12/01/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The reference to a Statement of Qualifications (SOQ) form for UST consultants is removed because no such form exists. Subsection R311-207-3(c) dealing with the requirements for the statement of qualification is reorganized to give a better description of the information that must be included in the SOQ, and to differentiate more clearly between the initial submittal of the SOQ and the yearly "renewal" submittal. The substance of the requirements does not change. Reference to Subsection 19-6-419(1)(b) of the UST Act is changed because the subsection referenced no longer exists. The rule subsection now refers to the more generic UST Act section reference (Section 19-6-419), which is adequate. The term "environmental consultant" is modified to be "consultant" because "environmental consultant" appears nowhere else in the rule and the term "consultant" is adequate. "Consultant" is defined in Subsection R311-200-1(b)(14). Rules for third party consultants are added to implement a change to the UST Act made by the 2010 Utah Legislature. The statutory change allows the Petroleum Storage Tank Fund to pay for consultants hired by third parties that have been affected by a release.

**SUMMARY OF THE RULE OR CHANGE:** Removes the reference to a Statement of Qualification form prepared by the Executive Secretary. Subsection R311-207-3(c) is reorganized. Modifies the reference to Subsection 19-6-419(1)(b) of the UST Act. Removes the term "environmental consultant" and replaces it with "consultant." Adds a section giving requirements for consultants that are hired by third parties.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-105 and Section 19-6-403 and Section 19-6-409 and Section 19-6-419

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** No cost or savings are anticipated. The changes are made to clarify the rule and implement changes made to the UST Act by the legislature.

◆ **LOCAL GOVERNMENTS:** No cost or savings are anticipated. The changes are made to clarify the rule and implement changes made to the UST Act by the legislature.

◆ **SMALL BUSINESSES:** A certified UST consultant who is not a licensed professional engineer (PE) or licensed professional geologist (PG) would be required to be licensed as a PE or PG in order to act as a third-party consultant and receive repayment of expenses according to the UST Act (Subsection 19-6-409(2)(e)). The cost to become licensed would be approximately \$300 for an individual who is otherwise qualified to become licensed. The aggregate cost would depend on the number of consultants who are currently not licensed as a PE or PG. Most consultants are currently licensed, so it is anticipated that the aggregate cost would be approximately \$3,000 or less.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** A certified UST consultant who is not a licensed professional engineer (PE) or licensed professional geologist (PG) would be required to be licensed as a PE or PG in order to act as a third-party consultant and receive repayment of expenses according to the UST Act (Subsection 19-6-409(2)(e)). The cost to become licensed would be approximately \$300 for an individual who is otherwise qualified to become licensed. The aggregate cost would depend on the number of consultants who are currently not licensed as a PE or PG. Most consultants are currently licensed, so it is anticipated that the aggregate cost would be approximately \$3,000 or less.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The cost incurred by a certified UST consultant who would be required to become licensed as a PE or PG, approximately \$300.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Certified UST consultants may be required to be licensed as a PE or PG if they are not currently licensed in order to be hired as a third-party consultant under the change to the UST Act. The other rule changes are for accuracy and clarification of the rules.

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at [gastin@utah.gov](mailto:gastin@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 01/06/2011 02:00 PM, MASOB, 195 N 1950 W, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 02/14/2011

AUTHORIZED BY: Brent Everett, Director

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks.**

**R311-207-3. Prerequisites for Submission of Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.**

(a) Upon making a claim for coverage under the fund, and after receiving notice from the Executive Secretary that they are eligible to claim against the fund, the owner or operator shall respond to the compliance schedule issued by the Executive Secretary with work plans. The work plans may address three phases of the compliance schedule as determined by the Executive Secretary:

- (1) tasks required to bring the site under control;
- (2) tasks required to determine the extent and degree of the release; and

(3) tasks required to remediate the site until the Executive Secretary is satisfied that remediation has achieved the clean up goals as described in Section R311-211 or until further remediation is not feasible as determined by the Executive Secretary.

(b) The work plan shall include a budget for the work. The budget shall be in compliance with R311-207-4(e)(1) and (2). The budget shall include proposed costs in an itemized format as described in Section R311-207-4(a).

(c) The ~~proposed~~ consultant must have a ~~an approved~~ Statement of Qualification ~~approved by the Executive Secretary.~~

~~(1) The initial Statement of Qualification submittal shall include information about the qualifications of all proposed certified UST consultants or and other persons who will be performing investigation or corrective action activities concurrently in accordance with the work plans. The submission shall include information required by the Statement of Qualification form prepared by the Executive Secretary, and shall include at least three letters of reference from entities that have retained the services of the consultant. This Statement of Qualification must be updated annually and shall be approved, by the Executive Secretary, for a period of one year. Letters of reference are not required to be resubmitted annually. The information submitted shall demonstrate that the following standards have been met, and shall document that:~~

~~([+]) A) [F] the proposed consultant shall be and other key personnel are of good character and reputation regarding such matters as control of costs, quality of work, ability to meet deadlines, and technical competence;~~

~~(2) The person directly overseeing the work must be a Certified UST Consultant in conformance with R311-201-2(a), R311-201-4(a) and R311-201-6(a) and,~~

~~—) ([3] B) [P] the consultant and other key personnel must have completed applicable Occupational Safety and Health Agency-approved safety training and any other applicable safety training, as required by federal and state law[-]; and~~

~~([4] C) [F] the consultant must carry the following insurance:~~

~~([A] i) Commercial General Liability Insurance or Comprehensive General Liability Insurance, including coverage for premises and operation, explosion, collapse and underground hazards, products and completed operations, contractual, personal injury and death, and catastrophic, with limits of \$1,000,000 minimum per occurrence, \$2,000,000 minimum general aggregate, and \$2,000,000 minimum products or completed operations aggregate;~~

~~([B] ii) Comprehensive Automobile Liability Insurance, with limits of \$1,000,000 minimum and \$2,000,000 aggregate; and~~

~~([C] iii) Workers' Compensation and Employers' Liability Insurance, as required by applicable state law.~~

~~(2) The Statement of Qualification shall be updated annually in January, and shall be approved by the Executive Secretary for a period of one year. The update shall include changes in personnel and current documentation of compliance with Subsections R311-207-3(c)(1)(B) and (C).~~

(d) The work plan shall include information about the responsible party's contract with any proposed consultant or other person performing remedial action ~~concurrently~~ in accordance with the work plans. That information shall demonstrate that the following requirements have been met, as determined by the Executive Secretary:

(1) The contract shall be with the consultant, and shall specify the certified UST consultant and other key personnel for which qualifications are submitted under R311-207-3(c);

(2) The contract shall require a 100 percent payment bond through a United States Treasury-listed bonding company, or other equivalent assurance;

(3) The consultant shall have no cause of action against the state for payment;

(4) The contract will specify a subcontracting method consistent with the requirements of R311-207;

(5) The contract shall require, and include documentation that the consultant carries, the insurance specified in R311-207-3(c) ~~([5] 1)(C).~~

(6) Payment under the contract shall be limited to amounts that are customary, legitimate, and reasonable;

(7) The contract shall include a provision indicating that the State of Utah is not a party to the contract, unless the State of Utah is a responsible party; and

(8) Any other requirements specified by the Executive Secretary.

(e) The work plan shall include any additional information required by 40 CFR 280.

(f) The Executive Secretary may waive specific requirements of Section R311-207 if he determines there is good cause for a waiver, and that public health and the environment will be protected. The Executive Secretary may also consider, in determining whether to grant a waiver, the extent to which the financial soundness of the fund will be affected.

(g) Once the responsible party's share of eligible costs has been spent in accordance with Section 19-6-419, the Executive Secretary shall review and approve or disapprove work plans and the corrective action plan and all associated budgets. For costs to be covered by the fund, the Executive Secretary must approve all work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Sections 19-6-420(3)(b) and 19-6-420(6).

(h) A request for time and material reimbursement from the Fund must be received by the Executive Secretary within one year from the date the included work was performed or reimbursement shall be denied. If there are any deficiencies in the request, the owner/operator shall have 90 days from the date of their notification of the deficiency to correct the deficiency or the amount of the deficient item(s) shall not be reimbursed. If a release was initially denied eligibility and is subsequently found to be eligible, this provision shall apply only to the portion of work conducted following the determination that the release is eligible for reimbursement. The responsible party may submit claims for reimbursement where the work is more than one year old until April 2, 2003.

(i) The request for final reimbursement from the fund must be received by the Executive Secretary within one year from the date of the "No Further Action" letter issued by the Executive Secretary or reimbursement shall be denied. If a release is reopened as provided for in the "No Further Action" letter, payments from the fund may be resumed when approved by the Executive Secretary.

**R311-207-4. Submission Requirements for Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.**

(a) In order to receive payment from the fund, a claimant shall submit an invoice to the Executive Secretary. The invoice from the owner to the fund shall be on the form or forms provided by the Executive Secretary. Reimbursement may be on a pay for performance or on a time and material basis as approved in advance by the Executive Secretary. All costs for time and material reimbursement shall be itemized at a minimum to show the following:

- (1) amounts allocated to each approved work plan budget;
- (2) employee name, date of work, task or description of work, labor cost and the number of hours spent on each task;
- (3) sampling, reporting, and laboratory analysis costs;
- (4) equipment rental and materials;
- (5) utilities;
- (6) other direct costs; and
- (7) other items as determined by the Executive Secretary.

(b) All itemized expenses shall indicate the full name and address of the company or contractor providing materials or performing services.

(c) All expenses for time and material reimbursement shall be documented on a monthly basis, or as otherwise directed by the Executive Secretary, with a copy of the original bill provided to the Executive Secretary by the owners or operators. The claimant shall provide documentation that claimed costs and associated work were reasonable, customary, and legitimate in accordance with Sections R311-207-5 and R311-207-4(e).

(d) For time and material based reimbursement, before receiving payment under Section 19-6-419~~(1)(b)~~, the responsible party shall provide proof of past payments for services or construction rendered, in a form acceptable to, or as directed by, the Executive Secretary, unless the Executive Secretary has agreed to other arrangements. The owner or operator shall remain primarily liable, however, for all costs incurred and should obtain lien releases from the company or contractor providing material or performing services.

(e) For time and material based reimbursement, documentation of expenses for construction or other services provided by a subcontractor retained by a ~~non-environmental~~ consultant or contractor shall include one or more of the following items:

(1) a minimum of three competitive bids by responsive bidders. To be competitive:

(A) Two of the bids must be from bidders who are not related parties. "Related parties" for the purpose of this rule, shall mean organizations or persons related to the consultant by any of the following: marriage; blood; one or more partners in common with the consultant; one or more directors or officers in common with the consultant; more than 10% common ownership direct or indirect with the consultant.

(B) The bid specifications shall contain a clear and accurate description of the technical requirements for the material, product or service and shall not contain features which unduly restrict competition. The bid specifications shall include a statement of the qualitative nature of the material, product or service to be procured, and, when necessary shall set forth those minimum essential characteristics.

(C) For frequently used services such as drilling, competitive bid schedules may be taken by the consultant once each calendar year in January with the results provided to the Executive Secretary. The prices from the lowest responsible bidder will be used for at least the following 12 months and will remain in effect until re-bid by the consultant and approved by the Executive Secretary. The Executive Secretary may reject bid prices that are not customary, reasonable and legitimate. The lowest bid from a responsible bidder will establish the maximum dollar amount the PST Fund will reimburse the owner for these services, regardless of whether the owner accepts that bid or another;

(2) sole source justification;

(A) Analytical laboratories may be justified based on service, data quality and cost;

(3) documentation that expenses have been for reasonable, customary, and legitimate purposes; or

(4) other documentation as required or requested by the Executive Secretary.

(f) In accordance with Section 19-6-420, the Executive Secretary may not authorize payment from the fund for services provided by consultants, contractors, or subcontractors which are in non-compliance with the requirements of Section R311-207 or any other applicable federal, state, or local law.

(g) Any third party claims brought against the owner or operator or any occurrence likely to result in third party claims against the owner or operators as a result of the release must be immediately reported to the State Risk Manager and to the Executive Secretary.

(h) The Executive Secretary may reimburse claimants based on pay for performance for the investigation, abatement or remediation of eligible PST fund sites. Under a pay for performance cleanup the claimant is reimbursed on a fixed price schedule as measurable contaminant level goals are reached. The claimant's reimbursement under pay for performance for the work anticipated shall be supported by competitive bidding, sole source justification or reasonable, customary and legitimate costs as approved by the Executive Secretary. Itemization of expenses is not required for payment of a claim unless specifically required in a work plan by the Executive Secretary.

**R311-207-9. Third Party Consultant.**

(a) A certified UST consultant hired by a third party under Subsection 19-6-409(2)(e) shall:

(1) have an approved PST Trust Fund Statement of Qualifications in accordance with Subsection R311-207-3(c);

(2) have approved PST Trust Fund labor rates in accordance with Section R311-207-7; and

(3) be a licensed professional geologist in accordance with Section 58-76-301 or a licensed professional engineer in accordance with Section 58-22-301.

**KEY: financial responsibility, petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: [~~May 15, 2006~~2011]**

**Notice of Continuation: April 18, 2007**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; ~~19-6-409~~; 19-6-419**

## Environmental Quality, Environmental Response and Remediation

### **R311-212**

## Administration of the Petroleum Storage Tank Loan Fund

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34269

FILED: 12/01/2010

### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The allowable uses of the loan fund are changed to reflect changes to the UST Act made by the 2010 Utah Legislature. The legislative changes removed the reference to the 1998 upgrade deadline, and now allow the loan fund to be used for "upgrades", a more general term. The loan amount and loan term for unsecured loans are increased to reflect higher costs for tank upgrades and to allow for more loans to be made for upgrades and other lower-cost jobs.

The loan application form is changed to reflect higher allowable loan amounts now in the UST Act. Wording regarding Executive Secretary notification in writing of the status of the application review is removed to reflect the current one-step application process. The notification requirements are vestiges of the old two-step process and are no longer necessary. The Executive Secretary does not credit excess loan proceeds; the actual loan amount is adjusted based on the final invoice. Removing the reference to crediting of excess loan proceeds reflects current practice.

**SUMMARY OF THE RULE OR CHANGE:** Modifies the allowable uses of the loan fund by removing references to the 1998 upgrade deadline and installation of a leak detection monitoring system. Removes the requirement that the Executive Secretary must notify the loan applicant in writing of the status of the loan eligibility review. Removes the requirement that the Executive Secretary must notify the loan applicant in writing of the status of the application when the review is complete. Increases the amount that can be loaned on an unsecured loan from \$15,000 to \$30,000. Increases the loan term for an unsecured loan from five to seven years. Removes wording that allows the Executive Secretary to credit the difference between the approved loan amount and the actual allowable loan amount when the approved loan amount is greater than the allowable amount. Modifies the loan application form to reflect the new allowable loan amounts. Incorporates the new loan application form by reference.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-105 and Section 19-6-403 and Section 19-6-405.3

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Loan Application, published by Division of Environmental Response and Remediation, Utah DEQ, 08/19/2010

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The rule changes could result in savings to the Petroleum Storage Tank (PST) Trust Fund if UST owners use the loan fund to remove or upgrade their older tanks before they leak. Some owners may not be able to afford the upgrades or removals otherwise. The savings would depend on the number and severity of releases avoided. Other changes are procedural or reflect changes in the UST Act, and would have no cost or savings associated with them.
- ◆ **LOCAL GOVERNMENTS:** As a tank owner who receives an unsecured loan, a local government could incur an increased yearly cost of up to approximately \$1,520 for payments to repay the loan. \$1,520 is based on a 7-year loan of \$30,000 compared to a 5-year loan of \$15,000. Savings in costs of cleaning up leaks could occur by upgrading tank systems and leak detection monitoring systems through the loan fund. Savings would depend on the number of leaks avoided or caught early by better leak detection monitoring.

♦ **SMALL BUSINESSES:** As a tank owner who receives an unsecured loan, a small business could incur an increased yearly cost of up to approximately \$1,520 for payments to repay the loan. \$1,520 is based on a 7-year loan of \$30,000 compared to a 5-year loan of \$15,000. Savings in costs of cleaning up leaks could occur by upgrading tank systems and leak detection monitoring systems through the loan fund. Savings would depend on the number of leaks avoided or caught early by better leak detection monitoring.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** As a tank owner who receives an unsecured loan, a person could incur an increased yearly cost of up to approximately \$1,520 for payments to repay the loan. \$1,520 is based on a 7-year loan of \$30,000 compared to a 5-year loan of \$15,000. Savings in costs of cleaning up leaks could occur by upgrading tank systems and leak detection monitoring systems through the loan fund. Savings would depend on the number of leaks avoided or caught early by better leak detection monitoring.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** An UST owner who applies for an unsecured loan will be able to receive a loan for a higher amount, but will pay more if the loan amount and loan term are increased. The increased amount paid per year would be approximately \$1,520 for a 7-year loan of \$30,000, compared to a 5-year loan of \$15,000. The loan program is voluntary, so the higher costs that may occur are at the discretion of the tank owner/loan applicant.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Increasing the dollar limit on unsecured loans gives underground storage tank owners, especially small business owners, the opportunity to upgrade their tank systems with tanks and piping that are less likely to leak, and to install better equipment for preventing and detecting leaks. Cleanup costs will be reduced by preventing leaks and, when leaks do occur, detecting them sooner.

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

ENVIRONMENTAL QUALITY  
ENVIRONMENTAL RESPONSE AND  
REMEDICATION  
ROOM FIRST FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 01/06/2011 02:00 PM, MASOB, 195 N 1950 W, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 02/14/2011

AUTHORIZED BY: Brent Everett, Director

### **R311. Environmental Quality, Environmental Response and Remediation.**

#### **R311-212. Administration of the Petroleum Storage Tank Loan Fund.**

##### **R311-212-3. Eligibility Review.**

(a) The Executive Secretary shall determine if the applicant meets the eligibility criteria stated in Subsections 19-6-405.3(3), 19-6-405.3(4), 19-6-405.3(5) and 19-6-405.3(6).

(b) To meet the eligibility requirements of 19-6-405.3(4) the applicant must, for all facilities for which the applicant requests a loan, demonstrate current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks, or must be able to achieve compliance with the loan proceeds.

(c) To meet the eligibility requirements of 19-6-405.3(4) the applicant must meet the following for all facilities owned or operated by the applicant for which the applicant does not request a loan:

(1) The applicant has demonstrated current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks;

(2) All regulated underground petroleum storage tanks owned by the applicant have met the requirements of Section 19-6-412(2) and have a current certificate of compliance;

(3) The applicant has paid all underground storage tank registration fees, interest and penalties which have been assessed; and

(4) The applicant has paid all applicable petroleum storage tank fees, interest and penalties which have been assessed.

(d) To meet the requirements of Section 19-6-405.3(3), the loan request must be for the purpose of:

(1) Upgrading ~~[or replacing existing]~~ petroleum USTs ~~[to meet requirements of 40 CFR 280.21];~~

(2) ~~[Installing a leak detection monitoring system]~~ replacing USTs; or

(3) Permanently closing USTs. If an applicant requests a loan for closing USTs which will be replaced by above-ground storage tanks, the loan, if approved, will be only for closing the USTs. The security pledged by the applicant for a loan to replace USTs with above-ground storage tanks shall be subject to the limitations in R311-212-6. [

~~(e) The Executive Secretary shall notify the applicant in writing of the status of the eligibility review.]~~

##### **R311-212-5. Loan Application Review.**

(a) The applicant shall ensure that the loan application is complete. The completed application with supporting documents

shall contain all information required by the application. If the applicant does not submit a complete application within 60 days of eligibility approval, the applicant's eligibility approval shall be forfeited, and the applicant must re-apply.

(b) All costs incurred in processing the application including appraisals, title reports, or UCC-1 releases shall be the responsibility of and paid for by the applicant. The Executive Secretary may require payment of costs in advance. The Executive Secretary shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

(c) The review and approval of the application shall be based on information provided by the applicant, and:

(1) review of any and all records and documents on file;

(2) verification of any and all information provided by the applicant;

(3) review of credit worthiness and security pledged; and

(4) review of a site construction work plan.

(d) ~~The Executive Secretary shall notify the applicant in writing of the status of the application when the review is complete.~~

~~\_\_\_\_\_ (e) The applicant must close the loan within 30 days after the Executive Secretary mails the loan documents for the applicant's signature. If the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply. An exception to the 30 day period may be granted by the Executive Secretary if the closing is delayed due to circumstances beyond the applicant's control.~~

#### **R311-212-6. Security for Loans.**

(a) When an applicant applies for a loan of greater than \$30,000~~[\$15,000 or more]~~, the loan applicant must pledge for security personal or real property which meets or exceeds the following criteria:

(1) The loan amount may not be greater than 80 percent of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position, or

(2) The loan amount may not be greater than 60 percent of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.

(b) The applicant shall provide acceptable documentation of the value of the property to be used as security using:

(1) a current written appraisal, performed by a State of Utah certified appraiser;

(2) a current county tax assessment notice, or

(3) other documentation acceptable to the Executive Secretary.

(c) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the Executive Secretary by a title company or appropriate professional person approved by the Executive Secretary.

(d) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department. The Department shall accept no less than a second mortgage position on real property pledged for loan security.

(e) Whenever a corporation seeks a loan, its principals must guarantee the loan personally.

(f) The applicant must provide a complete financial statement with cash flow projections for debt service.

(g) Above ground storage tanks and real property on which they are located shall not be acceptable as security.

(h) Underground storage tanks and the real property on which they are located shall not be acceptable as security unless:

(1) The UST facility offered for security has not had a petroleum release which has not been properly remediated; and

(2) The applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in R311-212-3.

(i) If a loan is made without security, the maximum loan repayment period shall be ~~[five]~~seven years.

#### **R311-212-7. Procedure for Making Loans.**

(a) Loan funds shall be obligated after all documents to secure a loan are complete, processed, and appropriately signed by the applicant and the Executive Secretary.

(b) Loan proceeds shall be disbursed to the applicant after closing documents are processed, work at the site is completed, and all paperwork and notifications have been received by the Executive Secretary. ~~[If the loan amount exceeds the allowable project costs, the Executive Secretary may credit any difference to the applicant's account rather than disbursing excess proceeds to the applicant.]~~

(c) Loan proceeds shall not be used to pay underground storage tank registration fees, penalties, or interest assessed under Section 19-6-408 or petroleum storage tank fees, penalties, or interest assessed under Section 19-6-411.

(d) Loans shall not be made for work which is performed before the applicant's loan application is approved and the loan is closed.

#### **R311-212-10. Forms.**

(a) The forms dated and listed below, on file with the Department, are incorporated by reference as part of Section R311-212, and shall be used by the Executive Secretary for making loans.

(1) Loan Application version ~~[04/02/04]~~08/19/10

(2) Balance Sheet version 04/02/04

(3) Loan Commitment Agreement version 06/15/95

(4) Corporate Authorization version 06/15/95

(5) Promissory Note version 06/15/95

(6) Extension and Modification Agreement version 06/15/95

(7) Security Agreement version 06/15/95

(8) Hypothecation Agreement 06/15/95

(9) General Pledge Agreement 06/15/95

(10) Assignment 06/15/95

(11) Assignment of Account 06/15/95

(12) Trust Deed

(i) property with underground storage tanks version 06/15/95; or

(ii) property without underground storage tanks version 06/15/95.

(b) The Executive Secretary may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process. The Executive Secretary may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

**KEY:** hazardous substances, petroleum, underground storage tanks  
**Date of Enactment or Last Substantive Amendment:** ~~September 9, 2004~~ 2011  
**Notice of Continuation:** April 18, 2007  
**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-403; 19-6-405.3

**Governor, Economic Development,  
 Pete Suazo Utah Athletic Commission  
 R359-1-102  
 Definitions**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 34279  
 FILED: 12/01/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to expand the definition of "Unprofessional conduct" in response to repeated concerns raised by the public.

**SUMMARY OF THE RULE OR CHANGE:** The change expands the definition of "Unprofessional conduct" by unarmed combat licensees.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63C, Chapter 11

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** "Unprofessional conduct" by unarmed combat licensees is prohibited under current statute and rule. This adds further clarification to the definition. It is possible that there would be costs associated with agency action under the disciplinary actions in response to any "unprofessional conduct", but they would be borne within the agency's existing budget.
- ◆ **LOCAL GOVERNMENTS:** Local government will not be impacted by the change in the definition. Consequently, there will be no resulting cost or savings.
- ◆ **SMALL BUSINESSES:** Unprofessional conduct by unarmed combat licensees is currently prohibited by state statute and rule. Small businesses will not be impacted by the change in the definition, unless they are unarmed combat licensees engaged in unprofessional conduct and face disciplinary action.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Unprofessional conduct by unarmed combat licensees is currently prohibited by state statute and rule. Individuals,

partnerships, corporations, or associations will not be impacted by the change in the definition, unless they are unarmed combat licensees engaged in unprofessional conduct and face disciplinary action.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs to comply with the proposed rule. "Unprofessional conduct" is already prohibited by licensees.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The commission repeatedly receives reports from residents complaining about unprofessional conduct of licensees in the public arena. This proposed rule provides additional clarification for licensees and facilitates agency action in the event a licensee engages in "Unprofessional conduct".

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 GOVERNOR  
 ECONOMIC DEVELOPMENT,  
 PETE SUAZO UTAH ATHLETIC COMMISSION  
 324 S STATE ST  
 STE 500  
 SALT LAKE CITY, UT 84111  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011**

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2011

AUTHORIZED BY: Bill Colbert, Secretary, PSUAC

**R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.**

**R359-1. Pete Suazo Utah Athletic Commission Act Rule.**

**R359-1-506. Drug Tests.**

In accordance with Section 63C-11-317, the following shall apply to drug testing:

- (1) The administration of or use of any:
  - (a) Alcohol;
  - (b) Illicit drug;
  - (c) Stimulant; or

([e]d) Drug or injection that has not been approved by the Commission, including, but not limited to, the drugs or injections listed R359-1-506 (2), in any part of the body, either before or during a contest or exhibition, to or by any unarmed combatant, is prohibited.

(2) The following types of drugs, injections or stimulants are prohibited for any unarmed combatant pursuant to R359-1-506 (1):

(a) Afrinol or any other product that is pharmaceutically similar to Afrinol.

(b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol.

(c) A product containing an antihistamine and a decongestant.

(d) A decongestant other than a decongestant listed in R359-1-506 (4).

(e) Any over-the-counter drug for colds, coughs or sinuses other than those drugs listed in R359-1-506 (4). This paragraph includes, but is not limited to, Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(f) Any drug identified on the [2008]2011 edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby incorporated by reference. The 2008 edition of the Prohibited List may be obtained, free of charge, at [www.wada-ama.org](http://www.wada-ama.org).

(3) The following types of drugs or injections are not prohibited pursuant to R359-1-506 (1), but their use is discouraged by the Commission for any unarmed combatant:

(a) Aspirin and products containing aspirin.

(b) Nonsteroidal anti-inflammatory.

(4) The following types of drugs or injections are accepted by the Commission:

(a) Antacids, such as Maalox.

(b) Antibiotics, antifungals or antivirals that have been prescribed by a physician.

(c) Antidiarrheals, such as Imodium, Kaopectate or Pepto-Bismol.

(d) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1 or Teldrin.

(e) Antinauseants, such as Dramamine or Tigan.

(f) Antipyretics, such as Tylenol.

(g) Antitussives, such as Robitussin, if the antitussive does not contain codeine.

(h) Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet or Zantac.

(i) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent) or Salbutamol (Albuterol, Proventil or Ventolin).

(j) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide or Vanceryl.

(k) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox or Vosol.

(l) Hemorrhoid products, such as Anusol-HC, Preparation H or Nupercainal.

(m) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane or Milk of Magnesia.

(n) Nasal products, such as AYR Saline, HuMist Saline, Ocean or Salinex.

(o) The following decongestants:

(i) Afrin;

(ii) Oxymetazoline HCL Nasal Spray; or

(iii) Any other decongestant that is pharmaceutically similar to a decongestant listed in R359-1-506 (1) or (2).

(5) At the request of the Commission, the designated Commission member, or the ringside physician, a [~~contestant or assigned official~~]licensee shall submit to a test of body fluids to

determine the presence of drugs. A [~~contestant~~]licensee shall [~~must~~] give an adequate sample or it will deem to be a denial. The promoter shall be responsible for any costs of testing.

(6) If the test results in a finding of the presence of a drug or if the [~~contestant or assigned official~~]licensee is unable or unwilling to provide a sample of body fluids for such a test, the Commission may take one or more of the following actions:

(a) immediately suspend the [~~contestant's or assigned official's~~]licensee's license in accordance with Section R359-1-403;

(b) stop the contest in accordance with Subsection 63C-11-316(2);

(c) initiate other appropriate licensure action in accordance with Section 63C-11-310; or

(d) withhold the contestant's purse in accordance with Subsection 63C-11-321.

(7) A contestant who is disciplined pursuant to the provisions of this Rule and who was the winner of a contest shall be disqualified and the decision of the contest shall be changed to "no contest."

(8) Unless the commission [~~licensing an event requires~~]determines otherwise at a scheduled meeting, a [~~contestant~~]licensee who tests positive for illegal drugs shall be penalized as follows:

(a) First offense - 180 day suspension.

(b) Second offense - 1 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

(c) Third offense - 2 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

**KEY: licensing, boxing, unarmed combat, white-collar contests**  
**Date of Enactment or Last Substantive Amendment: [October 1, 2010]2011**

**Notice of Continuation: May 10, 2007**

**Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.**

**Governor, Economic Development,  
Pete Suazo Utah Athletic Commission  
R359-1-506  
Drug Tests**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34278

FILED: 12/01/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed rule change will facilitate the commission's ability to ensure that athletes and participating

unarmed combat licensees are not under the influence of alcohol, stimulants, or illicit drugs.

**SUMMARY OF THE RULE OR CHANGE:** The proposed rule change will permit the commission to test any active licensee participating in an unarmed contest or event for alcohol or illicit drugs. Also, updates the prohibited substances list for competing athletes to the 2011 World Anti-Doping Agency Prohibited List.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63C, Chapter 11

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Prohibited List, published by The World Anti-Doping Agency, 2011

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The anticipated cost to the state budget is minimal. The commission currently randomly tests athletes. The event promoter is responsible to reimburse the commission for the costs of these tests which is about \$5 per test.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government since these entities are not responsible for regulating unarmed combat and are not responsible for the costs associated with these tests.

◆ **SMALL BUSINESSES:** There may be a small cost increase to unarmed combat promoters to cover additional testing, but is anticipated to be less than \$50 per year.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed rule change will not impact other entities so there is no other anticipated cost or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Promoters are already responsible to pay for the cost of testing unarmed combat contestants. This cost is usually between \$10 and \$20 per event. In the rare event another licensee is tested under the provisions of this proposed rule, it would increase the cost by \$5 per test.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Current rules prohibit the consumption of drugs and alcohol by all unarmed combat licensees participating in an unarmed combat event. The proposed rule will facilitate the commission to enforce existing rules.

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

GOVERNOR  
ECONOMIC DEVELOPMENT,  
PETE SUAZO UTAH ATHLETIC COMMISSION  
324 S STATE ST  
STE 500  
SALT LAKE CITY, UT 84111  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2011**

**AUTHORIZED BY: Bill Colbert, Secretary, PSUAC**

**R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.**

**R359-1. Pete Suazo Utah Athletic Commission Act Rule.**

**R359-1-506. Drug Tests.**

In accordance with Section 63C-11-317, the following shall apply to drug testing:

(1) The administration of or use of any:

(a) Alcohol;

(b) Illicit drug;

(c) Stimulant; or

([e]d) Drug or injection that has not been approved by the Commission, including, but not limited to, the drugs or injections listed R359-1-506 (2), in any part of the body, either before or during a contest or exhibition, to or by any unarmed combatant, is prohibited.

(2) The following types of drugs, injections or stimulants are prohibited for any unarmed combatant pursuant to R359-1-506 (1):

(a) Afrinol or any other product that is pharmaceutically similar to Afrinol.

(b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol.

(c) A product containing an antihistamine and a decongestant.

(d) A decongestant other than a decongestant listed in R359-1-506 (4).

(e) Any over-the-counter drug for colds, coughs or sinuses other than those drugs listed in R359-1-506 (4). This paragraph includes, but is not limited to, Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(f) Any drug identified on the ~~2008~~2011 edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby incorporated by reference. The 2008 edition of the Prohibited List may be obtained, free of charge, at [www.wada-ama.org](http://www.wada-ama.org).

(3) The following types of drugs or injections are not prohibited pursuant to R359-1-506 (1), but their use is discouraged by the Commission for any unarmed combatant:

(a) Aspirin and products containing aspirin.

(b) Nonsteroidal anti-inflammatories.

(4) The following types of drugs or injections are accepted by the Commission:

(a) Antacids, such as Maalox.

(b) Antibiotics, antifungals or antivirals that have been prescribed by a physician.

(c) Antidiarrheals, such as Imodium, Kaopectate or Pepto-Bismol.

(d) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1 or Teldrin.

(e) Antinauseants, such as Dramamine or Tigan.

(f) Antipyretics, such as Tylenol.

(g) Antitussives, such as Robitussin, if the antitussive does not contain codeine.

(h) Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet or Zantac.

(i) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent) or Salbutamol (Albuterol, Proventil or Ventolin).

(j) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide or Vanceral.

(k) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox or Vosol.

(l) Hemorrhoid products, such as Anusol-HC, Preparation H or Nupercainal.

(m) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane or Milk of Magnesia.

(n) Nasal products, such as AYR Saline, HuMist Saline, Ocean or Salinex.

(o) The following decongestants:

(i) Afrin;

(ii) Oxymetazoline HCL Nasal Spray; or

(iii) Any other decongestant that is pharmaceutically similar to a decongestant listed in R359-1-506 (1) or (2).

(5) At the request of the Commission, the designated Commission member, or the ringside physician, a ~~[contestant or assigned official]~~ license shall submit to a test of body fluids to determine the presence of drugs. A ~~[contestant]~~ license shall ~~[must]~~ give an adequate sample or it will deem to be a denial. The promoter shall be responsible for any costs of testing.

(6) If the test results in a finding of the presence of a drug or if the ~~[contestant or assigned official]~~ license is unable or unwilling to provide a sample of body fluids for such a test, the Commission may take one or more of the following actions:

(a) immediately suspend the ~~[contestant's or assigned official's]~~ license in accordance with Section R359-1-403;

(b) stop the contest in accordance with Subsection 63C-11-316(2);

(c) initiate other appropriate licensure action in accordance with Section 63C-11-310; or

(d) withhold the contestant's purse in accordance with Subsection 63C-11-321.

(7) A contestant who is disciplined pursuant to the provisions of this Rule and who was the winner of a contest shall be disqualified and the decision of the contest shall be changed to "no contest."

(8) Unless the commission ~~[licensing an event requires]~~ determines otherwise at a scheduled meeting, a ~~[contestant]~~ license who tests positive for illegal drugs shall be penalized as follows:

(a) First offense - 180 day suspension.

(b) Second offense - 1 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

(c) Third offense - 2 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

**KEY: licensing, boxing, unarmed combat, white-collar contests**  
**Date of Enactment or Last Substantive Amendment: ~~[October 1, 2010]~~ 2011**

**Notice of Continuation: May 10, 2007**

**Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.**

## Health, Health Care Financing, Coverage and Reimbursement Policy

### R414-501

#### Preadmission Authorization, Retroactive Authorization, and Continued Stay Review

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34267

FILED: 11/30/2010

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to remove language that unnecessarily incorporates federal law by reference.

**SUMMARY OF THE RULE OR CHANGE:** This change removes language that unnecessarily incorporates federal law by reference. It also clarifies statutory authority and makes other minor corrections.

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

#### MATERIALS INCORPORATED BY REFERENCES:

- ◆ Removes 42 U.S.C. Sec. 1396r, published by Government Printing Office, 01/03/2007
- ◆ Removes 42 CFR 483, published by Government Printing Office, 10/01/2009
- ◆ Removes 42 U.S.C. Sec. 1396a(a)(3), published by Government Printing Office, 01/03/2007
- ◆ Removes 42 CFR 431.200 through 431.246, published by Government Printing Office, 10/01/2009
- ◆ Removes 42 U.S.C. Sec. 1396a(a)(7), published by Government Printing Office, 01/03/2007
- ◆ Removes 42 CFR 431.300 through 431.307, published by Government Printing Office, 10/01/2009

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only clarifies and removes unnecessary language from the rule text. It neither affects Medicaid services nor does it affect Medicaid eligibility.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide Medicaid services and do not determine Medicaid eligibility.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only clarifies and removes unnecessary language from the rule text. It neither affects Medicaid services nor does it affect Medicaid eligibility.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid clients and to Medicaid providers because this change only clarifies and removes unnecessary language from the rule text. It neither affects Medicaid services nor does it affect Medicaid eligibility.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because this change only clarifies and removes unnecessary language from the rule text. It neither affects Medicaid services nor does it affect Medicaid eligibility.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No changes with fiscal impact on business are present in the technical changes made by this proposed rule.

**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 01/14/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2011**

**AUTHORIZED BY: David Sundwall, Executive Director**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-501. Preadmission Authorization, Retroactive Authorization, and Continued Stay Review.****R414-501-1. Introduction and Authority.**

This rule implements the nursing facility and utilization requirements of 42 U.S.C. Sec. 1396r(b)(3), (e)(5), and (f)(6)(B), [and] 42 CFR 456.1 through 456.23, and 456.350 through 456.380, by requiring the evaluation of each resident's need for admission and continued stay in a nursing facility. It also implements the requirements for states and long term care facilities found in 42 CFR 483. ~~[42 USC 1396r, requirements for nursing facilities, and 42 CFR 483, requirements for states and long term care facilities, are adopted and incorporated by reference.]~~

**R414-501-9. General Provisions.**

(1) The Department is solely responsible for approving or denying a Preadmission, Retroactive or continued stay authorization for payment for nursing facility services provided to a Medicaid resident. The Department is ultimately responsible for determining if a Medicaid resident has a clinical need for nursing facility services. If the Department determines a nursing facility applicant or Medicaid resident does not have a clinical need for nursing facility services, a written notice of agency action, in accordance with 42 CFR 431.200 through 431.246, 42 CFR 456.437 and 456.438 will be sent. If a nursing facility complies with all Preadmission Authorization, Retroactive Authorization and continued stay requirements for a Medicaid resident then the Department will provide coverage consistent with the State Plan.

(2) If a nursing facility fails to comply with all Preadmission Authorization, Retroactive Authorization or continued stay requirements, the Department will deny payment to the nursing facility for services provided to the nursing facility applicant. The nursing facility is liable for all expenses incurred for services provided to the nursing facility applicant on or after the date the nursing facility applicant applied for Medicaid. The nursing facility will not bill the nursing facility applicant or his legal representative for services not reimbursed by the Department due to the nursing facility's failure to follow Preadmission Authorization, Retroactive Authorization or continued stay rules.

(3) If the application is incomplete it will be denied. The Department will comply with notice and hearing requirements as defined in 42 CFR 431.200 through 431.246, and also send written notice to the nursing facility administrator, the attending physician, and, if possible, the next-of-kin or legal representative of the nursing facility applicant. If the Department denies a claim, the nursing facility can resubmit additional documentation not later than 60 calendar days after the date the Department receives the initial Preadmission or Retroactive Authorization request or continued stay transmittal. If the nursing facility fails to submit additional documentation that corrects the claim deficiencies within the 60 calendar day period, then the denial becomes final and the nursing facility waives all rights to Medicaid reimbursement from the time of admission until the Department approves a subsequent request for authorization submitted by the nursing facility.

(4) The Department adopts the standards and procedures for conducting a fair hearing set forth in 42 U.S.C. Sec. 1396a(a)(3) and 42 CFR 431.200 through 431.246, ~~which are incorporated by reference. Those laws are] and as implemented in [Title 63G, Chapter 4 and in ]~~ Rule R410-14.

**R414-501-10. Safeguarding Information of Nursing Facility Applicants and Residents.**

(1) The Department adopts the standards and procedures for safeguarding information of nursing facility applicants and recipients set forth in 42 U.S.C. Sec. 1396a(a)(7) and 42 CFR 431.300 through 431.307 ~~[, which are incorporated by reference].~~

(2) Standards for safeguarding a resident's private records are set forth in Section 63G-2-302.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~[October 14, 2009]~~ **2011**

**Notice of Continuation:** August 20, 2009

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3; ~~63G-3-304(1)(a)]~~

Insurance, Administration

**R590-99**

**(Changed to R592-14)**

**Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34258

FILED: 11/29/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The number of the rule and authority code reference are being changed to indicate that it is a now Title and Escrow Commission rule. Also, an Enforcement Date section has been added to the rule.

**SUMMARY OF THE RULE OR CHANGE:** The rule changes include: changing the rule number to R592-14; replacing "commissioner" to "Title and Escrow Commission"; the general code reference in the Authority Section has been changed to the Title and Escrow Commission Act in Part 4 of Chapter 2 of Title 31A; the Purpose Section has been expanded to include the Scope of the rule noting that all title

insurers and producers are affected by it; the background of title insurance provided in the Purpose Section is being eliminated; and an "Enforcement Date" section is being added to the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-404

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The changes to this rule will have no fiscal impact on the department or the state's budget since the changes deal with ownership of the rule, elimination of background information and the addition of an "Enforcement Date" section.

♦ **LOCAL GOVERNMENTS:** This rule will have no fiscal impact on local governments since it deals solely with the relationship between the department and its title licensees.

♦ **SMALL BUSINESSES:** There are no changes that will fiscally impact any of the department's licensees. Changes in the rule are a result of the change in ownership of the rule and an Enforcement Date section only.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no changes that will fiscally impact any of the department's licensees. Changes in the rule are a result of moving the rule from the jurisdiction of the department to that of the Title and Escrow Commission. Since there is no impact on the title industry there will be no fiscal impact on insurance consumers.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no changes that will fiscally impact any of the department's licensees. Changes in the rule are a result of moving the rule from the jurisdiction of the department to that of the Title and Escrow Commission. Since there is no impact on the title industry there will be no fiscal impact on insurance consumers.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes to this rule will have no fiscal impact on the title industry or its consumers.

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](mailto:jwhitby@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

**R59[0]2. Insurance, [Administration]Title and Escrow Commission.**

**[R590-99]R592-14. Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices.**

**[R590-99]R592-14-1. Authority.**

This rule is promulgated by the Title and Escrow Commission pursuant to [the general authority vested in the commissioner by]Section 31A-2-404(2),[201(2)(3) to make reasonable rules necessary for, or as an aid to, the effectuation of any provision of the Utah Insurance Code, and pursuant to the specific authority of Section 31A-23a-402 allowing the commissioner to prescribe a classification of material inducements constituting unlawful trade practices, and to define unfair or deceptive acts or practices prohibited in the business of insurance.]

**[R590-99]R592-14-2. Purpose and Scope.**

[Title insurance is designed to provide indemnification against loss, including a loss resulting from a determination of unmarketability of the insured's interest in real property. The burden of proving any loss, together with the measure of damages, is the obligation of the insured. Normally, a claim of unmarketability of title or a claim involving a "defect, lien or encumbrance" not excluded from coverage will arise in connection with a proposed sale or loan requiring a review of the insured property as to current marketability. The insured owner, as a potential seller or borrower, may then be placed in the position of being forced or coerced into dealing only with his prior insurer or agent purely as the result of time constraints in meeting the requirements of his transaction, and as the only practical alternative to processing his claim and proving his damage as an insured under his existing coverage. The commissioner is advised and is aware that, in some instances, this circumstance has resulted from the](1) The purpose of this rule is to prohibit intentional delay, neglect or refusal by insurers, through their agents, to record or deliver for recording documentation necessary to support policy insuring provisions, resulting in the false appearance of unmarketability, in the record only, of property which would otherwise be marketable. This practice is deemed to be an unfair or deceptive act or practice detrimental to free competition in the business of insurance and injurious to the public.

(2) This rule applies to all title insurers and producers.

**[R590-99]R592-14-3. Definitions.**

For the purpose of this rule, the [commissioner]Commission adopts the definitions as particularly set forth in Section 31A-1-301 and in addition the following:

A. "Document" means any instrument in writing relating to real property described in any title insurance policy, contract or commitment, and reasonably required for the support of the insuring provisions.

B. "Record" means to cause to be delivered to the county recorder, or other public official as may be appropriate, any document in the possession or control of any title insurance

company or title insurance agent for which a request to record has been made by an insured party.

**[R590-99]R592-14-4. Definition and Classification of Unfair or Deceptive Practices and Material Inducements.**

A. Any knowing conduct by a title insurance company or title insurance agent which results in the failure, neglect, refusal to record, or to obtain for recording, any document which, unless recorded, results in the apparent unmarketability of title or a title which may not be insurable by another insurer, is defined as an unfair or deceptive act or practice as prohibited by Section 31A-23a-402.

B. The issuance or agreement to issue title insurance, or the affirmation of current marketability of title, when the possible recording of documents of title has not occurred, and the record does not manifest a title which would be insurable according to generally accepted title insurance standards, is classified and proscribed as an advantage and material inducement to obtaining title insurance business as prohibited under Section 31A-23a-402(2)(c)(i)(D).

**R592-14-5. Enforcement Date.**

The commissioner will begin enforcing this rule upon the rule's effective date.

**[R590-99-5]R592-14-6. Severability.**

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

**KEY: insurance law**

**Date of Enactment or Last Substantive Amendment:** [1994]2011

**Notice of Continuation: January 27, 2007**

**Authorizing, and Implemented or Interpreted Law: 31A-2-[201]404;[31A-23-302]**

**Insurance, Administration  
R590-186  
Bail Bond Surety Business**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 34259

FILED: 11/29/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule is being changed as a result of discussions in recent Bail Bond Advisory Board meetings. The changes are intended to provide clarification on the use

of letters of credit by bail bond agencies and adds deceptive or intimidating practices as unprofessional conduct.

**SUMMARY OF THE RULE OR CHANGE:** Sections R590-186-4 and R590-186-5 add wording regarding the use of letters of credit and requires that they be drawn on a Utah depository institution. The change in Section R590-186-7, regarding unprofessional conduct, adds to Subsection R590-186-7(28), "outstanding judgments" to violations dealing with the failure to comply with Utah laws and rules. A new Subsection R590-186-7(29) has been added which makes deceptive or intimidating practices to gain bail bond business as unprofessional conduct.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 31A-35-104 and Section 31A-35-301 and Section 31A-35-401 and Section 31A-35-406

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Additional violations that the department can take action against could increase the department's workload. At this time, there is no indication that this would result in the need for additional personnel. This could cause an increase in administrative actions and the number of forfeitures issued and paid into the general fund. What the fiscal impact would be is unknown at this time.

◆ **LOCAL GOVERNMENTS:** The requirement to have bail bond agencies have a Utah financial institution provide their letters of credit will benefit a very few financial institutions. Most agencies already use local financial institutions to do their business. The changes should have no other impact on local governments.

◆ **SMALL BUSINESSES:** All bail bond agencies in Utah are classified as small businesses. The addition of actions that are considered unprofessional conduct may result in an increase in the number of violations and the forfeitures paid by licensees. The amount of the forfeiture is determined during the administrative procedure and will vary depending on circumstances. If a bail bond agency has their account with an out-of-state financial institution, they will need to arrange for a local financial institution to issue their letters of credit to comply with the new requirements of this rule. This should have little if any fiscal impact on the bail bond agency.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Bail bond agencies that have their accounts with an out-of-state financial institution will need to arrange for a local financial institution to issue their letters of credit to comply with the new requirements of this rule. This should then have a positive fiscal impact on the financial institutions. Currently there are around 40 bail bond agencies licensed to do business in Utah. It is anticipated that only a few of these will need to change the financial institution that they are now doing business with.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** All bail bond agencies in Utah are classified as small businesses. The addition of actions that are considered unprofessional

conduct may result in an increase in the number of violations and the forfeitures paid by licensees. The amount of the forfeiture is determined during the administrative procedure and will vary depending on circumstances. If a bail bond agency has their account with an out-of-state financial institution they will need to arrange for a local financial institution to issue their letters of credit to comply with the new requirements of this rule. This should have little if any fiscal impact on the bail bond agency.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The few bail bond agencies that do not have their letters of credit drawn from a Utah financial institution will need to change their account to a local institution. This may result in little if any cost to the agency but should have a favorable impact on the financial institution receiving the new business. The increase in listed violations may result in an increase in the number of violations and the forfeitures paid into the general fund.

**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](mailto:jwhitby@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2011**

**AUTHORIZED BY: Jilene Whitby, Information Specialist**

**R590. Insurance, Administration.  
R590-186. Bail Bond Surety Business.  
R590-186-4. Initial Company License.**

(1) Persons desiring to become licensed as bail bond surety companies shall file with the Bail Bond Surety Oversight Board (Board) a bail bond company application which can be obtained from the Insurance Department.

(2) The applicant shall pay the annual license fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide at least one of the following:

(a) If the applicant relies on a letter of credit as the basis for issuing a bail bond, the applicant shall provide an irrevocable letter of credit with a minimum face value of \$300,000 assigned to the State of Utah from an entity qualified by state or federal regulators to do business as a financial institution in the state of Utah.

(b) If the applicant relies on the ownership of real or personal property located in Utah as the basis for issuing bail bonds, the applicant shall provide a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year. The financial statement must show a net worth of at least \$300,000, including a minimum of \$100,000 in liquid assets. The applicant shall also provide a copy of the applicant's federal income tax returns for the prior two years and, for each parcel of real property owned by the applicant and included in the applicant's net worth calculation, a preliminary title report dated not more than one month prior to the date of the application and an appraisal dated not more than two years prior to the date of the application.

(c) If the applicant relies on their status as the agent of a bail bond surety insurer as the basis for issuing bail bonds, the applicant shall provide a Qualifying Power of Attorney issued by the bail bond surety insurer.

(3) Applications approved by the Board will be forwarded to the insurance commissioner for the issuance of a license.

(4) Applications disapproved by the Board may be appealed to the insurance commissioner within 15 days of mailing the notice of disapproval.

(5) When a bail bond surety pledges the assets of a letter of credit under 31A-35-404(1), the letter of credit must:

(a) be drawn on a Utah depository institution;

(b) be assigned to the state and its political subdivisions to guarantee the payment of a bail bond forfeiture; and

(c) be drawn upon by the holder of the judgment of a bail bond forfeiture, which remains unpaid 60 days following the suspension of the bail bond surety licensed under 31A-35-504.

#### **R590-186-5. Company License Renewal.**

A licensed bail bond surety company shall renew its license on or before July 15 of each year by meeting the following requirements:

(1) file with the insurance commissioner a renewal application, pay the required renewal licensing fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide the additional information described in this section.

(2) If the applicant relies on the ownership of real or personal property as the financial basis for issuing bail bonds the applicant must include the following with the renewal:

(a) a statement that no material changes have occurred negatively affecting the property's title, including any liens or encumbrances that have occurred since the last license renewal;

(b) a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year showing a net worth of at least \$300,000, at least \$100,000 of which must consist of liquid assets and a copy of the applicant's federal income tax return for the prior year; and

(c) the following items are required as indicated:

(i) renewal in 2002, 2008, and 2014: a preliminary title report dated not more than one month prior to the date of the renewal application for each parcel of real property owned by the applicant and included in the applicant's net worth calculation; or

(ii) renewal in 2005, 2011, and 2017: a preliminary title report and a current appraisal dated not more than one month prior to the date of the renewal application for each parcel of real

property owned by the applicant and included in the applicant's net worth calculation.

(3) Renewal applicants who were licensed as a bail bond surety company prior to December 31, 1999, may opt to apply under the lower limits in effect at that date.

(a) For renewal applicants relying on a letter of credit as the financial basis for issuing bail bonds, the amount is reduced to \$250,000.

(b) For renewal applicants relying on real or personal property as the basis for issuing bail bonds, the amount is reduced to a net worth of at least \$250,000, at least \$50,000 of which must consist of liquid assets.

(c) Renewal applicants opting for lower limits are limited to the 5 to 1 ratio of outstanding bond obligations as shown in R590-186-9.

(4) When using a letter of credit at renewal the bail bond surety must follow R590-186-4(5).

#### **R590-186-7. Unprofessional Conduct.**

Persons in the bail bond surety business may not engage in unprofessional conduct. For purposes of this rule, unprofessional conduct means the violation of any applicable insurance law, rule, or valid order of the commissioner, or the commission of any of the following acts by bail bond sureties, by bail bond surety agents or by bail bond enforcement agents working for bail bond sureties:

(1) having a license as a surety revoked in this or any other state;

(2) being involved in any transaction which shows unfitness to act in a fiduciary capacity or a failure to maintain the standards of fairness and honesty required of a trustee or other fiduciary;

(3) willfully misstating or negligently reporting any material fact in the initial or renewal application or procuring a misstatement in the documents supporting the initial or renewal application;

(4) being the subject of any outstanding civil judgment which would reduce the surety's net worth below the minimum required for licensure;

(5) being convicted of any felony or of any misdemeanor that involves the misappropriation of money or property, dishonesty or perjury;

(6) failing to report any collateral taken as security on any bond to the principal, indemnitor, or depositor of such collateral;

(7) failing to preserve, or to retain separately, or both, any collateral taken as security on any bond;

(8) failing to return collateral taken as security on any bond to the depositor of such collateral, or the depositor's designee, within ten business days of having been notified of the exoneration of the bond and upon payment of all fees owed to the bail bond agent, whichever is later;

(9) failing to advise the insurance commissioner of any change that has reduced the surety's net worth below the minimum required for licensure;

(10) using a relationship with any person employed by a jail facility or incarcerated in a jail facility to obtain referrals;

(11) offering consideration or gratuities to jail personnel or peace officers or inmates under any circumstances which would permit the inference that said consideration was offered to induce bonding referrals or recommendations;

(12) failing to deliver to the incarcerated person, or the person arranging bail on behalf of the incarcerated person, prior to the time the incarcerated person is released from jail, a one page disclosure form which at a minimum includes:

- (a) the amount of the bail;
  - (b) the amount of the surety's fee, including bail bond premium, preparation fees, and credit transaction fees;
  - (c) the additional collateral, if any, that will be held by the surety;
  - (d) the incarcerated person's obligations to the surety and the court;
  - (e) the conditions upon which the bond may be revoked;
  - (f) any additional charges or interest that may accrue;
  - (g) any co-signors or indemnitors that will be required;
- and
- (h) the conditions under which the bond may be exonerated and the collateral returned.

(13) using an unlicensed bail bond agent or unlicensed bail bond enforcement agent;

(14) using a bail bond agent not contracted and appointed by the bail bond surety company;

(15) charging excessive or unauthorized premiums, excessive fees or other unauthorized charges;

(16) requiring unreasonable collateral security;

(17) failing to provide an itemized statement of all expenses deducted from collateral, if any;

(18) requiring as a condition of his executing a bail bond that the principal agree to engage the services of a specified attorney;

(19) preparing or issuing fraudulent or forged bonds or power of attorney;

(20) signing, executing, or issuing bonds by an unlicensed person;

(21) executing bond without countersignature by a licensed agent at time of issue;

(22) failing to account for and to pay any premiums held by the licensee in a fiduciary capacity to the bail bond surety company, bail bond surety insurer or other person who is entitled to receive them;

(23) knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, or injunction in the course of a business regulated under this chapter;

(24) conviction of felony involving illegally using, carrying, or possessing a dangerous weapon;

(25) conviction of any act of personal violence or force against any person or conviction of threatening to commit any act of personal violence or force against any person, including but not limited to violent felonies as defined under Utah Code Annotated Section 76-3-203.5;

(26) soliciting sexual favors as a condition of obtaining, maintaining, or exonerating bail bond, regardless of the identity of the person who performs the favors;

(27) acting as an unlicensed bail bond enforcement agent;

~~and~~ (28) failing to comply with the provisions of the Utah statutes and rules regulating the bail bond surety business or order of the insurance commissioner~~[-]~~, including outstanding judgments; and

(29) using deceptive or intimidating practices in which to gain bail bond business.

#### **R590-186-8. Investigating Unprofessional Conduct.**

The Board and the commissioner shall investigate allegations of unprofessional conduct on the part of any bail bond surety, or bail bond surety agent. Complaints alleging unprofessional conduct shall be submitted in writing to the Department of Insurance.

(1) Investigations shall be completed in the following manner:

(a) Upon receipt of a complaint of unprofessional conduct, the commissioner shall provide a copy of the complaint to the person against whom the complaint was made, and, if warranted, to the person's surety. The commissioner may edit the copy of the complaint mailed under this subsection as may be necessary to protect the identity or interests of the person making the complaint if the complainant so requests.

(b) The subject of the complaint shall provide to the commissioner a written response to the complaint within 15 days of the date the complaint was mailed to him.

(c) At the next meeting of the Board the commissioner shall present to the Board the complaint and the action undertaken by the Department to investigate the complaint.

(d) After the investigation is completed, the commissioner shall present the findings and recommended disposition to the Board. The Board may concur with the commissioner's recommended disposition, recommend a different disposition, request additional investigation, or conduct its own investigation.

(i) If the Board conducts its own investigation it may take and record witness statements under oath and may request any documents or other evidence from any person, including necessary financial records.

(ii) Witnesses may be compensated for their appearances as specified in 31A-2-301.

(iii) The Board may request a Subpoena from the commissioner to compel the production of documents or other evidence or to compel the testimony of a witness.

(iv) After the Board completes its investigation, it shall:

(A) close the investigation if the allegations have been shown to be unfounded or if the matter complained of is satisfactorily resolved; or

(B) if the investigation shows that unprofessional conduct did occur that requires the imposition of sanctions, it shall compile the evidence necessary to pursue the matter in an administrative proceeding by the Department of Insurance, and shall make a written report of its findings and of its recommendations for the penalties to be applied, and forward the report and evidence to the commissioner for further action within 15 days of the conclusion of the investigation.

(2) Except for matters referred to the commissioner for further proceedings, the Board shall retain in the Utah Insurance Department a file on each of the investigations it conducts concerning unprofessional conduct for a period of 5 years. Files regarding investigations conducted by the Board shall be classified as protected under Governmental Records Access and Management Act (GRAMA).

**KEY: insurance**

**Date of Enactment or Last Substantive Amendment:** ~~March 21, 2002~~ **2011**

**Notice of Continuation:** July 29, 2008

**Authorizing, and Implemented or Interpreted Law:** 31A-35-104; 31A-35-301; 31A-35-401; 31A-35-406

**Insurance, Administration**  
**R590-259**  
**Dependent Coverage to Age 26**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 34276

FILED: 12/01/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the rule is to ensure access to coverage for dependent children, as required under the federal Patient Protection Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119, 2010, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, 2010, that went into effect 09/23/2010, and Section 31A-30-108.

**SUMMARY OF THE RULE OR CHANGE:** The rule has been created to ensure access to coverage for dependent children, as required by the U.S. Department of Health Human Services (HHS) and under the federal Patient Protection Affordable Care Act that went into effect 09/23/2010, and Section 31A-30-108, Eligibility for small employer and individual market. As of September 23, insurers have declined coverage to dependent children in the individual market until the state defines the terms of an "Open Enrollment Period". The law requires the state to define the terms of an open enrollment period. The rule also requires insurers to offer coverage to individuals pursuant to Section 31A-30-108. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 34127 in the October 15, 2010, issue of the Bulletin and was effective 09/30/2010.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 31A-2-201 and Section 31A-22-605

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** No filings will need to be made by insurers. The change will require insurers to change their internal procedures. None of this will have a fiscal impact on the department or the state's budget.

♦ **LOCAL GOVERNMENTS:** Local governments will not be affected by this rule since it relates to the relationship between the department and their life insurance licensees.

♦ **SMALL BUSINESSES:** This rule will only impact health insurers who are considered large businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Health insurers will be required to comply with the Patient Protection Affordable Care Act and Section 31A-30-108 by providing insurance to children. Families and children will be able to obtain coverage during an enrollment period.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Health insurers will be required to comply with the Patient Protection Affordable Care Act by providing insurance to children. Families and children will be able to obtain coverage during an enrollment period.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The rule itself does not create the fiscal impact but rather requires insurers to implement the requirements of the new federal law.

**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](mailto:jwhitby@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011**

**INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:**

♦ 01/10/2011 02:00 PM, State Office Building, 450 N State Street, Room 3112, Salt Lake City, UT

**THIS RULE MAY BECOME EFFECTIVE ON:** 01/21/2011

**AUTHORIZED BY:** Jilene Whitby, Information Specialist

**R590. Insurance, Administration.**

**R590-259. Dependent Coverage to Age 26.**

**R590-259-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3) and 31A-22-605(4).

**R590-259-2. Purpose and Scope.**

(1) The purpose of this rule is to clarify marketplace rules relating to the coverage of children in the individual and group health benefit plan markets that have experienced disruption arising from implementation of federal health care reform.

(2)(a) Except as provided in R590-259-2(2)(b), this rule applies to any health insurer that provides individual or group health benefit plan coverage.

(b) Subject to R590-259-7, this rule applies to grandfathered plan coverage for individual and group health benefit plan coverage.

**R590-259-3. Definitions.**

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

(1) "Certificate of insurability" means a certificate issued to an individual by the Utah Comprehensive Health Insurance Pool pursuant to Subsection 31A-29-111(5)(c).

(2) "Grandfathered plan coverage" means coverage provided by a health insurer in which an individual was enrolled on March 23, 2010 for as long as it maintains that status in accordance with federal regulations.

(3) "Group health insurance coverage" means, in connection with a group health plan, health insurance coverage offered in connection with such plan.

(4) "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974, ERISA, to the extent that the plan provides medical care, as defined in R590-259-3(10), and including items and services paid for as medical care to employees, including both current and former employees, or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

(5)(a) "Health benefit plan" means a policy, contract, certificate or agreement offered by an insurer to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services.

(b) "Health benefit plan" includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition.

(c) "Health benefit plan" does not include:

(i) coverage only for accident, or disability income insurance, or any combination thereof;

(ii) coverage issued as a supplement to liability insurance;

(iii) liability insurance, including general liability insurance and automobile liability insurance;

(iv) workers' compensation or similar insurance;

(v) automobile medical payment insurance;

(vi) credit-only insurance;

(vii) coverage for on-site medical clinics; and

(viii) other similar insurance coverage, specified in federal regulations issued pursuant to Pub. L. No. 104-191, under which benefits for medical care are secondary or incidental to other insurance benefits.

(d) "Health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(i) limited scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or

(iii) other similar, limited benefits specified in federal regulations issued pursuant to Pub. L. No. 104-191.

(e) "Health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:

(i) coverage only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance.

(f) "Health benefit plan" does not include the following if offered as a separate policy, certificate or contract of insurance:

(i) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(ii) coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); or

(iii) similar supplemental coverage added to coverage under a group health plan.

(6) "Health insurer" means an insurer that offers a health benefit plan.

(7) "Individual carrier" has the same meaning as defined in Section 31A-30-103.

(8)(a) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, which includes a health benefit plan provided to individuals through a trust arrangement, association or other discretionary group that is not an employer plan, but does not include short-term limited duration insurance.

(b) For purposes of this subsection, a health insurer offering health insurance coverage in connection with a group health plan shall not be deemed to be a health insurer offering individual health insurance coverage solely because the insurer offers a conversion policy.

(9) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

(10) "Medical care" means amounts paid for:

(a) the diagnosis, care, mitigation, treatment or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in R590-259-3(10)(a); and

(c) insurance covering medical care referred to in R590-259-3(10)(a) and (b).

(11) "Participant" adopts the meaning given under section 3(7) of ERISA.

(12) "Subscriber" means, in the case of individual health insurance contract, the person in whose name the contract is issued.

**R590-259-4. Eligibility for Dependent Coverage to Age 26; Definition of Dependent; Uniformity of Plan Terms.**

(1) A health insurer that makes available dependent coverage of children shall make that coverage available for children until attainment of 26 years of age.

(2) With respect to a child who has not attained 26 years of age, a health insurer shall not define dependent for purposes of eligibility for dependent coverage of children other than the terms

of a relationship between a child and the plan participant, and, in the individual market, primary subscriber.

(3) A health insurer shall not deny or restrict coverage for a child who has not attained 26 years of age:

(a) based on the presence or absence of the child's financial dependency upon the participant, primary subscriber or any other person, residency with the participant and in the individual market the primary subscriber, or with any other person, student status, employment or any combination of those factors; or

(b) based on eligibility for other coverage, except as provided in R590-259-7.

(4) Nothing in this rule shall be construed to require a health insurer to make coverage available for the child of a child receiving dependent coverage, unless the grandparent becomes the adoptive parent of that grandchild.

(5) The terms of coverage in a health benefit plan offered by a health insurer providing dependent coverage of children cannot vary based on age except for children who are 26 years of age or older.

**R590-259-5. Individuals Whose Coverage Ended by Reason of Cessation of Dependent Status - Applicability; Opportunity to Enroll; Written Notice; Effective Date.**

(1) This section applies to any child:

(a) whose coverage ended, or who was denied coverage, or was not eligible for group health insurance coverage or individual health insurance coverage under a health benefit plan because, under the terms of coverage, the availability of dependent coverage of a child ended before the attainment of 26 years of age; and

(b) who becomes eligible, or is required to become eligible, for coverage on the first day of the first plan year and, in the individual market, the first day of the first policy year, beginning on or after September 23, 2010 by reason of the provisions of this section.

(2)(a) If group health insurance coverage or individual health insurance coverage, in which a child described in R590-259-5(1) is eligible to enroll, or is required to become eligible to enroll, in the coverage in which the child's coverage ended or did not begin for the reasons described in R590-259-5(1), and if the health insurer is subject to the requirements of this section the health insurer shall give the child an opportunity to enroll that continues for at least 30 days.

(b) The health insurer shall provide the opportunity to enroll, including the written notice beginning not later than the first day of the first plan year and in the individual market the first day of the first policy year, beginning on or after September 23, 2010.

(3)(a) The notice of opportunity to enroll shall include a statement that children whose coverage ended, or who were denied coverage, or were not eligible for coverage, because the availability of dependent coverage of children ended before the attainment of 26 years of age are eligible to enroll in the coverage.

(b)(i) The notice may be provided to an employee on behalf of the employee's child and, in the individual market, to the primary subscriber on behalf of the primary subscriber's child.

(ii) For group health insurance coverage:

(A) the notice may be included with other enrollment materials that the health insurer distributes to employees, provided the statement is prominent; and

(B) if a notice satisfying the requirements of this section is provided to an employee whose child is entitled to an enrollment opportunity under R590-259-5(2), the obligation to provide the notice of enrollment opportunity under R590-259-5(3) with respect to that child is satisfied.

(c) The written notice shall be provided beginning not later than the first day of the first plan year and in the individual market the first day of the first policy year, beginning on or after September 23, 2010.

(4) For an individual who enrolls under R590-259-5(2), the coverage shall take effect not later than the first day of the first plan year and, in the individual market, the first day of the first policy year, beginning on or after September 23, 2010.

**R590-259-6. Individuals Whose Coverage Ended by Reason of Cessation of Dependent Status - Group Health Plan Special Enrollee.**

(1) A child enrolling in group health insurance coverage pursuant to R590-259-5 shall be treated as if the child were a special enrollee, as provided under 45 CFR Section 146.117(d).

(2)(a) The child and, if the child would not be a participant once enrolled, the participant through whom the child is otherwise eligible for coverage under the plan, shall be offered all the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

(b) For purposes of this subsection, any difference in benefits or cost-sharing requirements constitutes a different benefit package.

(3) The child shall not be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

**R590-259-7. Grandfathered Group Health Plans - Applicability.**

(1) For plan years beginning before January 1, 2014, a group health plan providing group health insurance coverage that is a grandfathered plan and makes available dependent coverage of children may exclude an adult child who has not attained 26 years of age from coverage only if the adult child is eligible to enroll in an eligible employer-sponsored health benefit plan, as defined in section 5000A(f)(2) of the Internal Revenue Code, other than the group health plan of a parent.

(2) For plan years, beginning on or after January 1, 2014, a group health plan providing group health insurance coverage that is a grandfathered plan shall comply with the requirements of R590-259-4 through 6.

**R590-259-8. Enrollment Periods.**

(1) An individual carrier shall offer:

(a) continuously enrollment for individuals applying for a new policy; and

(b) for a dependent to be added to an existing policy:

(i) beginning May 1, 2011 and extending through June 15, 2011 for coverage effective July 1, 2011; and

(ii) at least once a year beginning 45 days prior to the policy renewal; or

(iii) continuously.

(2) During an enrollment period in R590-259-8(1), a dependent under the age of 19 shall be offered coverage on a

guaranteed issue basis and without any limitations, pre-existing exclusions or riders based on health status.

(3) A health insurer shall provide prior written notice to each of its policyholders annually of the enrollment rights in R590-259-8(1)(b) that includes information as to the enrollment dates and how a dependent eligible for enrollment may apply for coverage with the insurer.

**R590-259-9. Utah Alternative Mechanism Enrollment.**

(1) An individual carrier shall offer a continuous enrollment to an individual under age 19 with a certificate of insurability:

(a) as required by Subsection 31A-30-108(3) and 31A-30-109(1); and

(b) on an underwritten basis without any limitations, pre-existing exclusions or riders based on health status.

(2) An individual carrier shall not:

(a) require a health benefit plan offered under the requirements of this section to cover more than one individual;

(b) deny or unreasonably delay the issuance of a policy;  
or

(c) refuse to issue a policy.

**R590-259-10. Special Enrollment for Qualifying Events.**

Nothing in this rule shall alter an applicant's ability to obtain health insurance during a special enrollment period, outside of the open enrollment period, resulting from a qualifying event as defined by the Health Insurance Portability and Accountability Act.

**R590-259-11. Penalties.**

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

**R590-259-12. Enforcement Date.**

The department will begin enforcing the provisions of this rule immediately.

**R590-220-13. Severability.**

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: health insurance open enrollment**

**Date of Enactment or Last Substantive Amendment: 2011**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-605**

Labor Commission, Occupational  
Safety And Health  
**R614-1-4**  
Incorporation of Federal Standards

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34260

FILED: 11/30/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This purposes of this amendment to Utah's Occupational Safety and Health (UOSH) rules are: 1) to protect workers and other individuals involved in the use of cranes and derricks in construction activities; and 2) to satisfy the requirement of Subsection 34A-6-102(2) of the Utah Occupational Safety and Health Act that Utah's occupational safety and health standards be "as effective as" the standards established by federal OSHA.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment incorporates recently-adopted federal OSHA standards for the use of cranes and derricks in construction activities. These standards address advances in the design of cranes and derricks, qualifications of employees operating them, and safety hazards in their operation. Specifically, the standards require employers to: 1) determine whether the ground can support the weight of the crane or derrick and its anticipated loads; 2) assess hazards in the work zone, such as power lines, other objects, and personnel; 3) inspect equipment for safe operating condition; and 4) train employees in the use of the crane or derrick.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 34A, Chapter 6

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Adds 29 CFR Part 1926: Cranes and Derricks in Construction; Final Rule, published by Office of the Federal Register, 08/09/2010

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** UOSH's enforcement of the proposed amendment will be absorbed by existing personnel and will not result in additional cost or saving to the state budget. State construction projects involving use of cranes or derricks will experience minor cost increases as a result of the inspections, hazard assessments, and employee training required by the proposed amendment. These additional costs are expected to be de minimis because Utah law currently requires certification of crane and derrick operators, and most construction companies already undertake the inspections and hazard assessments required by the proposed amendment. Furthermore, any such costs will be offset by potential savings in insurance premiums and the avoidance of accident costs.

◆ **LOCAL GOVERNMENTS:** Local governments have no administration or enforcement obligations under the proposed amendment. Local government construction projects involving use of cranes or derricks will experience minor cost increases as a result of the inspections, hazard assessments, and employee training that is required by the proposed amendment. These additional costs are expected to be de

de minimis because Utah law currently requires certification of crane and derrick operators, and most construction companies already undertake the inspections and hazard assessments required by the proposed amendment. Furthermore, any such costs will be offset by potential savings in insurance premiums and the avoidance of accident costs.

♦ **SMALL BUSINESSES:** Small businesses that either use cranes or derricks in their business operations, or engage in construction projects where cranes or derricks will be used, may experience minor cost increases as a result of the inspections, hazard assessments, and employee training required by the proposed amendment. These additional costs are expected to be de minimis because Utah law currently requires certification of crane and derrick operators, and most construction companies already undertake the inspections and hazard assessments required by the proposed amendment. Furthermore, any such costs will be offset by potential savings in insurance premiums and the avoidance of accident costs.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other persons will experience the same fiscal impact as described for small businesses. Specifically, those who use cranes or derricks in their business operations, or engage in construction projects where cranes or derricks will be used, may experience minor cost increases as a result of the inspections, hazard assessments, and employee training that is required by the proposed amendment. These additional costs are expected to be de minimis because Utah law currently requires certification of crane and derrick operators, and most construction companies already undertake the inspections and hazard assessments required by the proposed amendment. Furthermore, any such costs will be offset by potential savings in insurance premiums and the avoidance of accident costs.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Based on OSHA's exhaustive evaluation of compliance costs nationwide, the Commission estimates that the total Utah cost for compliance with the proposed amendment will be approximately \$1,000,000 annually, resulting from increased costs for duties related to ground conditions, worksite control, employee training, and power line compliance provisions. However, the anticipated savings from the proposed amendment are expected to exceed compliance costs by approximately 30%.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This proposed amendment adopts standards developed by stakeholders involved with construction cranes and derricks. The amendment's fiscal impact will include increased costs for inspection, hazard assessment and training, but these costs are expected to be outweighed by fiscal benefits that will result from adoption of the standards. Specifically, these benefits include reduced costs from personal injuries, down time, property damage and insurance premiums.

Consequently, the Commission expects the proposed amendment to have a net positive fiscal impact on business.

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

LABOR COMMISSION  
OCCUPATIONAL SAFETY AND HEALTH  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ William Adams by phone at 801-530-6897, by FAX at 801-530-7606, or by Internet E-mail at wadams@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2011

AUTHORIZED BY: Sherrie Hayashi, Commissioner

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**R614. Labor Commission, Occupational Safety and Health.**

**R614-1. General Provisions.**

**R614-1-4. Incorporation of Federal Standards.**

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2009, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2009, is incorporated by reference.

3. 29 CFR 1904, July 1, 2009, is incorporated by reference.

4. FR Vol. 75, No. 51. Wednesday, March 17, 2010, Pages 12681 to and including 12686 "Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards" Direct Final Rule" is incorporated by reference.

5. FR Vol. 75, No. 93. Friday, May 14, 2010. Pages 27188 to and including 27189 "Revising the Notification Requirements in the Exposure Determination Provision of the Hexavalent Chromium Standards" Final rule; confirmation of effective date" is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2009, edition is incorporated by reference.

2. FR Vol. 75, No. 51. Wednesday, March 17, 2010, Pages 12681 to and including 12686 "Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards" Direct Final Rule" is incorporated by reference.

3. FR Vol. 75, No. 93. Friday, May 14, 2010. Pages 27188 to and including 27189 "Revising the Notification Requirements in the Exposure Determination Provision of the Hexavalent Chromium Standards" Final rule; confirmation of effective date" is incorporated by reference.

4. FR Vol. 75, No. 152, Monday, August 9, 2010, Pages 47906 to and including 48177 "29 CFR Part 1926 Cranes and Derricks in Construction." Final rule, is incorporated by reference.

**KEY:** safety

**Date of Enactment or Last Substantive Amendment:** ~~October 22, 2010~~ 2011

**Notice of Continuation:** November 2, 2007

**Authorizing, and Implemented or Interpreted Law:** 34A-6

Lieutenant Governor, Elections  
**R623-1-4**  
 Registration/License Application  
 Procedure

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34245

FILED: 11/16/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to correct an old and incorrect fee reference in the rule.

**SUMMARY OF THE RULE OR CHANGE:** The old and incorrect fee reference for lobbyist registration in the Section R623-1-4 will be removed.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 36-11-404

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--Whereas statute has already changed the fee earlier this year, the change will not have any effect on the budget as it stands.

♦ **LOCAL GOVERNMENTS:** None--Whereas statute has already changed the fee earlier this year, the change will not have any effect on the budget as it stands.

♦ **SMALL BUSINESSES:** None--Whereas statute has already changed the fee earlier this year, the change will not have any effect on the budget as it stands.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Whereas statute has already changed the fee earlier this year, the change will not have any effect on the budget as it stands.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--Whereas statute has already changed the fee earlier this year, the change will not have any effect on costs as it stands.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Whereas statute has already changed the fee earlier this year, the change will not have any effect on the business as it stands.

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

LIEUTENANT GOVERNOR  
ELECTIONS

UTAH STATE CAPITOL

350 N STATE STREET

STE 220

SALT LAKE CITY, UT 84114

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Spencer Hadley by phone at 801-538-1041, by FAX at 801-538-1133, or by Internet E-mail at spencerhadley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 01/22/2011

AUTHORIZED BY: Greg Bell, Lieutenant Governor

**R623. Lieutenant Governor, Elections.**

**R623-1. Lieutenant Governor's Procedure for Regulation of Lobbyist Activities.**

**R623-1-4. Registration/License Application Procedure.**

A. In order to register and obtain a license, a lobbyist shall:

1. Pay the [\$25-]registration fee.

2. File a registration/license application statement in compliance with the provisions of Section 36-11-103. The lieutenant governor's office shall make available forms that comply with Section 36-11-103. The lobbyist may either:

(a) Submit the completed form to the lieutenant governor's office; or

(b) File the lobbyist registration/license application by completing the electronic form available on the Utah Lobbyist Online system; and submit the completed signature authorization form to the lieutenant governor's office.

B. Upon receipt of a completed lobbyist registration/license application form the lieutenant governor's office shall:

1. Review the registration form for accuracy, completeness and compliance with the law;

2. Approve or disapprove the registration/license application; and

3. Notify the lobbyist in writing within 30 days of approval or disapproval.

C. An applicant who has not been convicted of any of the offenses listed in Section 36-11- 103(4)(a)(i), and who has not had a civil penalty imposed as described in Section 36-11-103(4)(a)(ii),

may commence lobbying activities upon filing of a completed registration/license application form with the lieutenant governor's office and payment of the registration fee.

D. By applying for a license, the lobbyist certifies that the lobbyist intends to engage in lobbying activities under the circumstances stated in the application or supplements filed with the lieutenant governor's office during the time the registration and license are valid.

1. If a lobbyist intends to cease all lobbying activities for the remainder of the period of licensure, the lobbyist shall notify the lieutenant governor's office in writing and surrender the license.

2. If the lobbyist has a change in circumstances that affects the lobbyist's activities, the lobbyist shall notify the lieutenant governor's office in writing.

3. If a lobbyist has surrendered the license and then decides to reengage in lobbying activities, a reissued license without a fee may be requested, if it is within the 2-year period of the original registration.

4. The lobbyist must submit a written request to the lieutenant governor's office in order to have the license reissued.

5. A reissued license expires on December 31 of each even numbered year in accordance with Section 36-11-103(3)(b).

E. A lobbyist may add and delete principals and provide other notices electronically as prescribed by the lieutenant governor's office.

**KEY: lobbyist**

**Date of Enactment or Last Substantive Amendment: [~~October 19, 2004~~2011**

**Notice of Continuation: April 7, 2009**

**Authorizing, and Implemented or Interpreted Law: 36-11-404**

**Public Safety, Fire Marshal  
R710-2**

**Rules Pursuant to the Utah Fireworks  
Act**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34247

FILED: 11/18/2010

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met on 11/09/2010, in a regularly scheduled Board meeting and passed by unanimous vote amendments to Rule R710-2. The major amendments to the administrative rule are with regard to the addition of Flame Effects Operator and Flame Effects Performing Artist as disciplines now required to be licensed to perform as professionals. This was passed by the

2010 Utah State Legislature and is located in Section 53-7-223.

SUMMARY OF THE RULE OR CHANGE: The summary of the rule amendments are as follows: 1) in Section R710-2-1, the Board proposes to clean up verbiage and add three new incorporated by reference standards; 2) in Section R710-2-2, the Board proposes to add three definitions to include what is flame effects, a licensed operator, and an acronym; 3) in Section R710-2-7, the Board proposes to add the classification of disciplines, establish separate testing procedures for the flame effects performing artist, and correct several sections with regard to verbiage and titles; 4) in Section R710-2-8, the Board proposes to create a new section for Importers and Wholesalers. This section was taken from Section R710-2-7 and the Board felt it better to create its own section for these two disciplines; and 5) in Section R710-2-11, the Board added one requirement to the fireworks display safety class.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Incendiary Circus Safety Manual, published by Incendiary Circus, LLC, 09/01/2006
- ◆ Adds NFAA - Performer Safety Guidelines, published by North American Fire Arts Association, 07/05/2005
- ◆ Adds NFPA 160 - Standard for the Use of Flame Effects Before an Audience, published by National Fire Protection Association, 2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There would be an aggregate anticipated cost to the state budget of approximately \$3,000 to purchase the standards, develop the examinations, and administer the program.
- ◆ LOCAL GOVERNMENTS: There is no aggregate anticipated cost or savings to local government because this program is overseen by the Utah State Fire Marshal's Office and local government has no participation in the enactment of this program.
- ◆ SMALL BUSINESSES: There would be an aggregate cost to small businesses of approximately \$77 for the cost of the standard and the cost of the license. Every license after that would be an additional \$40. There would be an approximate aggregate cost of \$1,000 to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There would be a cost of approximately \$77 for persons that would perform by themselves as some flame effects performing artists do. The cost would be broken down into \$40 for the license and \$37 to purchase the NFPA 160 Standard. There would be an aggregate cost of approximately \$3,850 for all to license.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for affected persons would be approximately \$77 per person. The cost would be broken down into the license and testing cost of \$40 for the license and the \$37 for the NFPA Standard.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be a fiscal impact of approximately \$77 for each performer to license to be a flame effects operator or a flame effects performing artist. There has been considerable effort by all involved to complete this licensing process and the majority of the professionals in our state that do either discipline are aware of this new program and the ensuing costs.

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

PUBLIC SAFETY  
FIRE MARSHAL  
ROOM 302  
5272 S COLLEGE DR  
MURRAY, UT 84123-2611  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2011

AUTHORIZED BY: Ron Morris, Utah State Fire Marshal

#### **R710. Public Safety, Fire Marshal.**

#### **R710-2. Rules Pursuant to the Utah Fireworks Act.**

##### **R710-2-1. Adoption.**

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts rules establishing minimum safety standards for retail storage, handling, and sale of class C common state approved explosives indoor or outdoor; [minimum requirements for placement and discharge of display fireworks]; providing a list of approved class C common state approved fireworks for retail sale; and requirements for licensing of importer, wholesaler, display operator, [or] special effects operator, flame effects operator, and flame effect performing artist[icenses].

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), [2006]2009 edition, as published by the International Code Council, Inc. (ICC), [except as amended by provisions listed in R710-2-9, et seq.] and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.

1.2 National Fire Protection Association (NFPA), Standard 1123, Code for Fireworks Display, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-[9]10, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1126, Standard for the Use of Pyrotechnics Before a Proximate Audience, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-[9]10, et seq.

1.4 National Fire Protection Association (NFPA), Standard 160, Standard for the Use of Flame Effects Before an Audience, 2011 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.

1.5 North American Fire Arts Association (NAFAA), Performer Safety Guidelines, Revision 2.1, updated July 5, 2005, as published by the North American Fire Arts Association, except as amended by provisions listed in R710-2-10, et seq.

1.6 Incendiary Circus, Safety Manual, September 2006, as published by the Incendiary Circus, LLC, except as amended by provisions listed in R710-2-10, et seq.

1.[4]7 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal's Office.

##### **R710-2-2. Definitions.**

2.1 "Authority having jurisdiction (AHJ)" means such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

2.2 "Flame Effects" means Flame Effects Operator or Flame Effects Performing Artist.

2.3 "Flame Effects Performing Artist" means a fire spinner, fire dancer or fire performer who is paid to perform professionally in a public location.

2.[2]4 "ICC" means International Code Council, Inc.

2.[3]5 "IFC" means International Fire Code.

2.6 "Licensed Operator" means any person who discharges, ignites, supervises, manages, oversees or directs the discharge of display fireworks, special effects fireworks, flame effects or flame effects performing artist.

2.7 "NAFAA" means the North American Fire Arts Association.

2.[4]8 "NFPA" means National Fire Protection Association.

2.[5]9 "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.

2.[6]10 "Person" means an individual, company, partnership or corporation.

2.[7]11 "Pre-packaged" means that the product is wrapped in a clear plastic wrap or other equivalent material to prevent the fuse of the class C common state approved explosive from being accessible to the customer.

2.[8]12 "Resale" means the act of reselling class B or C explosives to a new party.

2.[9]13 "SFM" means the State Fire Marshal.

2.[40]14 "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects.

2.[+1]15 "Temporary Stands and Trailers" means a non-permanent structure used exclusively for the sale of fireworks.

2.[+2]16 "UCA" means Utah Code Annotated.

**R710-2-7. ~~Importer, Wholesaler, Display Operator, or~~ Special Effects Operator, Flame Effects Operator, or Flame Effects Performing Artist Licenses.**

7.1 Application for a ~~importer, wholesaler, display operator, or~~ special effects operator, flame effects operator, or flame effects performing artist license shall be made in writing on forms provided by the SFM.

7.2 Application for a license shall be signed by the applicant. ~~[-If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association, it shall be signed by a principal officer.]~~

7.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Original ~~[-]~~licenses issued on or after October 1st, will be valid through December 31st of the following year.

7.4 Application for renewal of license shall be made before January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

7.5 The SFM may refuse to renew any license pursuant to Section ~~[8]9~~ of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section ~~[8]9~~ of these rules.

7.6 Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

7.7 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

7.8 No license shall be issued to any person as licensee who is under twenty-one (21) years of age.

7.9 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

7.10 The applicant shall indicate on the application which license the applicant wishes to apply for:

7.10.1 Display Operator

7.10.2 Special Effects Operator

7.10.3 Flame Effects Operator

7.10.4 Flame Effects Performing Artist

~~7.[+0]11~~ Every person who wishes to secure a display licensed operator, ~~or~~ special effects licensed operator, or flame effects licensed operator original license shall demonstrate proof of competence by:

7.[+0]11.1 Successfully passing an open book written examination and obtaining a minimum grade of seventy percent (70%).

~~[7.10.2 Examinations will be given according to the following requirements:~~

~~7.[+0]11.2[-] The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. [-Any other materials to include cellular telephones are prohibited in the examination room.~~

~~7.10.2.2 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.~~

~~7.10.2.3 Each certification examination taken has a time limit of two hours to completion. Leaving the office or testing location before the completion of the examination voids the~~

~~examination and will require the examination to be retaken by the applicant.]~~

7.[+0-2]11.3 Submit written verification with the application of having completed a display operators safety class, ~~or~~ a special effects operators safety class, a flame effects operator safety class or demonstrate previous experience acceptable to the SFM.

7.[+0-3]11.4 Submit written verification with the application that the applicant has worked with a licensed display operator, ~~or~~ special effects operator, or a flame effects operator for at least three shows or demonstrate previous experience acceptable to the SFM.

7.12 Every person who wishes to secure an original flame effects performing artist operator license shall demonstrate proof of competence by:

7.12.1 Successfully passing an open book written examination and obtaining a minimum grade of seventy percent (70%).

7.12.2 The applicant is allowed to use the statute, the administrative rule, NFPA 160, the NAFAA Performer Safety Guidelines, and the Incendiary Circus Safety Manual.

7.12.3 Submit written verification with the application of having received a flame effects performing artist safety class or demonstrate previous experience acceptable to the SFM.

7.12.4 Submit written verification with the application that the applicant has worked with a licensed flame effects performing artist for at least five training meetings or practice sessions or demonstrate previous experience acceptable to the SFM.

~~7.[+1]13~~ The written examination stated in Section 7. ~~[+0(a)]11.1 or 7.12.1~~ shall be valid for five years from the date of the examination.

7.14 Applicants seeking an original license as stated in Sections 7.11 of these rules, may perform the various acts while under the direct supervision of a person holding a valid license for a period not to exceed 45 days. By the end of the 45 day period, the applicant shall have taken and passed the required examination and completed all other licensing requirements.

7.[+2]15 At the end of the five year period the licensed display operator, ~~or~~ special effects operator, flame effects operator, or flame effects performing artist shall take a re-examination. The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date. The re-examination shall focus on the changes in the last 5 years to the adopted standards. The license holder is responsible to complete the re-examination and return it to the Division in time to renew and also comply with the requirements listed in Section 7. ~~[+3]16~~ of these rules.

7.[+3]16 After the issuance of the original license, and each year thereafter, the display operator, ~~or~~ special effects operator, flame effects operator, or flame effects performing artist shall complete a minimum of ~~[one fireworks]~~ one of the following:

7.16.1 Complete one show or performance annually[-or]

7.16.2 Attend an operator safety class or flame effects performing artist meeting annually[-or]

7.16.3 W[or]k with another licensed display operator, or special effects operator, flame effects operator, or flame effects performing artist with a show annually to demonstrate proof of competence.

7.[+4]17 When the license has expired for more than one year, an application shall be made for an original license and the

initial requirements shall be completed as required in Sections ~~7. [40]~~11 or 7.12 of these rules.

7.[45]18 Every person who wishes to secure a ~~[n importer, wholesaler,] display operator, [or] special effects operator[s], flame effects operator, or flame effects performing artist~~ license shall be at least 21 years of age.

7.[46]19 Every licensed display operator, ~~[or] special effects operator, flame effects operator, or flame effects performing artist~~ shall complete ~~[the Pyrotechnician's]~~an After Action Report ~~[for Fireworks Display form]~~ within ten (10) working days after the conclusion of any ~~[display or special effects]~~ show and send it to the State Fire Marshal. ~~If there are more than one licensed operator involved in the show, only one After Action Report needs to be sent to the State Fire Marshal for that show.~~

#### **R710-2-8. Importer or Wholesaler License.**

8.1 Application for an importer or wholesaler license shall be made in writing on forms provided by the SFM.

8.2 Application for a license shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association, it shall be signed by a principal officer.

8.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

8.4 The SFM may refuse to renew any license pursuant to Section 8 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 8 of these rules.

8.5 Every licensee shall notify the SFM within thirty (30) days of any change of address or location.

8.6 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

8.7 No license shall be issued to any person as licensee who is under twenty-one (21) years of age.

8.8 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

#### **R710-2-[8]9. Adjudicative Proceedings.**

[8]9.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

[8]9.2 The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, licensee, person employed for, the person having authority and management of a concern commits any of the following violations:

[8]9.2.1 The person or applicant is not the real person in interest.

[8]9.2.2 The person of applicant provides material misrepresentation or false statement on the application.

[8]9.2.3 The person or applicant refuses to allow inspection by the AHJ.

[8]9.2.4 The person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the written examination, ~~[or]~~ demonstrate practical skills or complete the safety class.

[8]9.2.5 The person or applicant has been convicted of one or more federal, state or local laws.

[8]9.2.6 Failure to accurately complete the ~~[Pyrotechnician's]~~After Action Report~~[for Fireworks Display form]~~.

[8]9.2.7 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

[8]9.2.8 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration.

[8]9.2.9 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of ~~[servicing portable fire extinguishers]~~being an importer, wholesaler, display operator, special effects operator, flame effects operator or flame effects performing artist.

[8]9.3 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final notice from the AHJ.

[8]9.4 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

[8]9.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

[8]9.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

[8]9.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

[8]9.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

[8]9.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

#### **R710-2-[9]10. Amendments and Additions.**

[9]10.1 The following are amendments and additions to the codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses, as adopted in Section 1 of these rules:

[9]10.2 IFC, Chapter 33, Section 3301.2.1 and 3301.2.2 is deleted, and rewritten to read as follows:

[9]10.2.1 For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before

and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:

[9]10.2.1.1 The retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored.

[9]10.2.1.2 Class C common state approved explosives shall not be stored in residences to include attached garages.

[9]10.2.1.3 The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

[9]10.2.1.3.1 In self storage units where the owner allows it.

[9]10.2.1.3.2 In a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business.

[9]10.2.1.3.3 In a locked or secured truck, trailer, or other vehicle at an approved location.

[9]10.2.1.3.4 In a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building.

[9]10.2.1.3.5 Wholesalers warehouse.

[9]10.2.1.3.6 An approved Group M occupancy.

[9]10.2.1.3.7 In a locked or secured metal container adjacent to the temporary stand, trailer or tent that is acceptable to the authority having jurisdiction.

[9]10.2.1.3.8 Any other structure or location approved by the authority having jurisdiction.

[9]10.2.2 All other periods of time, except those stated in Section 9.2[~~(+)~~].1 of these rules, the storage, use, and handling of fireworks are prohibited, except as follows:

[9]10.2.2.1 The storage and handling of fireworks are allowed as required in IFC, Chapter 33 and these rules.

[9]10.2.2.2 The use of fireworks for display is allowed as set forth in IFC, Chapter 33 and these rules.

#### **R710-2-[~~10~~]11. Fire Department Displays.**

[~~10~~]11.1 As required in UCA 53-7-223(1) and as allowed for fire departments in UCA 53-7-202(9)(b), the fire department's involvement in the discharge of display fireworks is allowed only for the discharge of display fireworks in that fire departments community or communities it has a contract to protect.

[~~10~~]11.2 Within 10 working days after the conclusion of a fireworks display, the fire chief or an assigned fire department member shall complete an [~~Pyrotechnician's~~]After Action Report and send it to the State Fire Marshal.

[~~10~~]11.3 Any fire department member that will be involved in the discharge site as defined in NFPA 1123, shall complete a fireworks display safety class and examination on-line yearly to be allowed in the discharge area during the display. A copy of the completed certificate shall be sent to the SFM yearly to be placed in the fire department file.

[~~10~~]11.4 Any fireworks purchased by a community or fire department outside of the State of Utah shall require the securing of an annual importers license as required in UCA 53-7-224.

**KEY: fireworks**

**Date of Enactment or Last Substantive Amendment: [~~May 12, 2009~~]January 21, 2011**

**Notice of Continuation: June 4, 2007**

**Authorizing, and Implemented or Interpreted Law: 53-7-204**

## Public Safety, Highway Patrol **R714-600** Performance Standards for Tow-Truck Motor Carriers

### NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 34255

FILED: 11/29/2010

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this repeal and reenactment is to establish procedures for the designation and dispatch of tow truck motor carriers upon a sworn officer's request for removal and towing of a motor vehicle.

**SUMMARY OF THE RULE OR CHANGE:** The current rule authorizes the department to use a contractor to operate a rotation-dispatch program to provide non-preference vehicle towing services. The proposed rule provides that a dispatch center shall determine which tow truck motor carrier to dispatch according to the policies and practices of that particular dispatch center. The proposed rule also provides guidelines for dispatch centers which are operated or maintained by the department to determine which tow truck motor carrier may be dispatched.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 41-6a-1406(10)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no cost impact to the state's budget as the new rule only clarifies the procedures that a dispatch center will use when dispatching tow truck motor carriers.

◆ **LOCAL GOVERNMENTS:** There is no cost impact to local government as the new rule only clarifies the procedures that a dispatch center will use when dispatching tow truck motor carriers.

◆ **SMALL BUSINESSES:** There is no cost impact to small businesses as the new rule only clarifies the procedures that a dispatch center will use when dispatching tow truck motor carriers.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost impact to other persons as the new rule only clarifies the procedures that a dispatch center will use when dispatching tow truck motor carriers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost impact to affected persons as the rule only clarifies the procedures that a dispatch center will use when dispatching tow truck motor carriers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not cause a fiscal impact on businesses because it clarifies the procedures that a dispatch center will use when dispatching tow truck motor carriers.

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

PUBLIC SAFETY  
HIGHWAY PATROL  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5994  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Letisha Garrick by phone at 801-965-4379, by FAX at 801-965-4716, or by Internet E-mail at letishagarrick@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 01/24/2011

AUTHORIZED BY: Lance Davenport, Commissioner

**R714. Public Safety, Highway Patrol.**

~~**R714-600. Performance Standards for Tow Truck Motor Carriers.**~~

~~**R714-600-1. Authority and Purpose.**~~

~~Pursuant to Subsection 41-6a-1405(1) which directs law enforcement officers to remove vehicles found upon a road or highway, and Subsection 53-1-106(1) which require that rules set performance standards for towing companies used by the department, this rule sets a procedure for coordinated dispatch services.~~

~~**R714-600-2. Definitions.**~~

~~As used in this rule:~~

~~(1) "Participating Carrier" means a tow truck motor carrier as defined in Section 72-9-102 and certified under Section 72-9-601, that agrees to accept a rotation-dispatch notification to provide non-preference vehicle towing services, as requested by law enforcement officers.~~

~~(2) "Contractor" means a tow truck motor carrier owner/operator authorized by the department to operate a rotation-dispatch service to coordinate non-preference vehicle towing service in accordance with this rule.~~

~~(3) "Department" means the Utah Department of Public Safety.~~

~~(4) "Non-preference vehicle towing service" means the removal and towing of motor vehicles by tow truck motor carriers when requested by a law enforcement officer, at times when a vehicle's owner/operator has not consented to, nor selected a tow truck motor carrier to provide towing services in response to a:~~

~~(a) law enforcement officer's call for rotation-dispatched non-preference vehicle towing;~~

~~(b) call initiated by a governmental entity, in accordance with Chapter 41-1(a), or~~

~~(c) notification or call for non-consent towing services.~~

~~**R714-600-3. Non-Preference Vehicle Towing.**~~

~~(1) The department may authorize rotation-dispatch towing services in specific areas of the state.~~

~~(2) The contractor shall operate a rotation-dispatch program by agreement with carriers who agree to accept rotation-dispatch notifications to provide non-preference vehicle towing services.~~

~~(3) In addition to fees provided under rules promulgated by the Utah Department of Transportation, the contractor may charge participating carriers a coordinated rotation-dispatch fee of up to \$10 per call.~~

~~(4) The department may rescind this rule at any time as deemed necessary. ]~~

~~**R714-600. Performance Standards for Tow Truck Motor Carriers.**~~

~~**R714-600-1. Authority.**~~

~~This rule is authorized by Subsection 41-6a-1406(10) which provides that the department shall make rules setting the performance standards for towing companies to be used by the department.~~

~~**R714-600-2. Purpose.**~~

~~The purpose of this rule is to establish procedures for the designation and dispatch of tow truck motor carriers when a sworn officer requests the removal and towing of a motor vehicle.~~

~~**R714-600-3. Definitions.**~~

~~(1) Definitions used in the rule are found in Sections 41-6a-102, 53-10-102, 69-2-2, and 72-9-102.~~

~~(2) In addition:~~

~~(a) "department dispatch center" means a dispatch center which is operated or maintained by the department;~~

~~(b) "department dispatcher" means an employee of a dispatch center operated or maintained by the department whose primary duties are to receive calls for emergency police, fire, and medical services, and to dispatch the appropriate personnel and equipment in response to the calls;~~

~~(c) "dispatch center" means a facility which acts as a public safety answering point and provides emergency dispatch and communications support to sworn officers;~~

~~(d) "sworn officer" means a peace officer who is employed by the department; and~~

~~(e) "tow truck motor carrier" means any company that provides for-hire, private, salvage, or repossession towing services and includes all of the company's agents, officers, representatives and employees.~~

**R714-600-4. Dispatch of a Tow Truck Motor Carrier.**

(1) When a sworn officer determines that a vehicle must be towed, the sworn officer shall contact the dispatch center which provides service for that area and request that a tow truck motor carrier be dispatched.

(2) The sworn officer will provide the dispatch center with the location, make, model and license number of the vehicle that must be towed.

(3) The dispatch center shall determine which tow truck motor carrier to dispatch according to the policies and practices of that particular dispatch center.

(4) Nothing in this rule precludes the owner of a vehicle from contacting a tow truck motor carrier directly to remove the vehicle.

**R714-600-5. Designation of Tow Truck Motor Carriers by the Department.**

(1) Each department dispatch center will maintain a call out list of tow truck motor carriers in the area who are certified according to the requirements found in Title 72, Chapter 9, Part 6, and R909-19.

(2) The call out list of tow truck motor carriers will contain the following information on each tow truck motor carrier:

(i) the business name and phone number of the tow truck motor carrier;

(ii) the names and phone numbers of all tow truck operators;

(iii) after-hours contact information for the tow truck motor carrier; and

(iv) whether the tow truck motor carrier has the ability to perform any special services.

(3) A tow truck motor carrier must notify the department dispatch center if the tow truck motor carrier is out of service or not available so the department dispatch center may temporarily remove the tow truck motor carrier from the call off list.

(4)(a) A department dispatch center may permanently remove a tow truck motor carrier from the call out list, after notice and an opportunity to respond to the allegations, if any of the following occur:

(i) a tow truck motor carrier is no longer certified;

(ii) a tow truck motor carrier is operating in violation of the law or has engaged in practices which are a violation of law;

(iii) a tow truck motor carrier's continued unavailability disrupts the operation of a department dispatch center;

(iv) a tow truck motor carrier routinely fails to respond to requests for service in a timely manner; or

(v) a tow truck motor carrier refuses to retrieve abandoned vehicles.

**R714-600-6. Dispatch of Tow Truck Motor Carriers by the Department.**

(1)(a) When a sworn officer contacts a department dispatch center and requests that a tow truck motor carrier be dispatched, a department dispatcher will immediately contact a tow truck motor carrier on the call out list.

(b) Department dispatchers will contact tow truck motor carriers in the order they appear on the call out list.

(2) Department dispatchers will provide the tow truck motor carrier with information regarding the nature of the call so the tow truck motor carrier may determine if the tow truck motor carrier is able to handle the call.

(3)(a) If a tow truck motor carrier fails to respond when contacted by a department dispatcher or the tow truck motor carrier is unable to respond to the call, the department dispatcher will contact the next tow truck motor carrier on the call out list.

(b) A tow truck motor carrier who fails to respond or who is unable to respond to a call, will not be contacted by a department dispatcher until the next time that the tow truck motor carrier's name appears on the call out list.

(4)(a) If a department dispatcher contacts a tow truck motor carrier who is available but is not equipped for the specific type of service requested, the department dispatcher will continue to contact tow truck motor carriers on the call out list until a tow truck motor carrier is found who is equipped to handle the request for service.

(b) A tow truck motor carrier's inability to provide requested services for lack of equipment, does not affect the tow truck motor carrier's place on the call out list.

(5) If a tow truck motor carrier responds to a call from dispatch but tow services are later determined not to be necessary, the tow truck motor carrier will be contacted the next time that tow services are needed.

(6) If a tow truck motor carrier responds to a department dispatcher's request for service and arrives at the location specified by the sworn officer, the tow truck motor carrier must provide the requested services unless the tow truck motor carrier is mechanically unable to do so.

(7) The performance of tow services that are not at the request of a department dispatcher will not affect the tow truck motor carrier's place on the call out list.

(8)(a) Each department dispatch center shall maintain a log of all of the requests for service made to certified tow truck motor carriers.

(b) The log of requests for service shall contain the following information:

(i) the date and time of the call for service;

(ii) the officer requesting service;

(iii) the reason for the request;

(iv) the description of the vehicle, including the license plate number;

(v) the location of the vehicle;

(vi) the certified tow truck motor carrier contacted;

(vii) whether the tow truck motor carrier responded to the request for service; and

(viii) the department dispatcher's initials and any remarks.

**KEY: towing, motor carrier, law enforcement**

**Date of Enactment or Last Substantive Amendment: [April 15, 1999]2011**

**Notice of Continuation: August 3, 2009**

**Authorizing, and Implemented or Interpreted Law: [41-6a-1405; 53-1-106(1)]41-6a-1406; 53-1-106(1)(a)(i)**

**School and Institutional Trust Lands,  
Administration  
R850-60  
Cultural Resources**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34261

FILED: 11/30/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** There have been many changes, both legislative and administrative, that make revisions to this rule necessary in order to bring it inline with current law, rule, and policy. The amendments to this rule will bring greater clarity to the agency's Cultural Resource Management process.

**SUMMARY OF THE RULE OR CHANGE:** Revisions to Section 9-8-305 (archaeological permitting), Section 9-8-404 (requirement to consider effect to historic properties), and Section 76-6-901 (cultural sites protection) have been considered in this rule amendment. The agency has also made recent administrative changes to its rules for surface leases (R850-30), easements (R850-40), and sales (R850-80) which required an update of the cultural resources rule to bring all of the processes into alignment. A modification to the definition of "area of potential effects" was made to clarify the agency's long-standing policy that the area of potential effects does not normally extend beyond the boundaries of the surface estate of the trust land on which a land use activity will take place that has the potential to cause changes in the character or use of historic properties. References to federal regulations have been removed, but necessary language has been incorporated in the amendments. Lastly, the amendments legitimize in rule the requirement for field work authorization by the agency prior to the initiation of archaeological research by persons other than agency staff archaeologists.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53C-2-301 and Section 76-6-901 and Section 76-6-902 and Section 76-6-903 and Section 76-9-704 and Section 9-8-302 and Section 9-8-305 and Section 9-8-404 and Subsection 53C-1-302(1)(a)(ii) and Subsection 53C-2-202(1)(a) and Subsection 63G-2-305(26)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the amendments to this rule. The amendments do not add or eliminate any requirements, but rather give greater clarity to processes already in place.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the amendments

to this rule. The amendments do not add or eliminate any requirements, but rather give greater clarity to processes already in place.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the amendments to this rule. The amendments do not add or eliminate any requirements, but rather give greater clarity to processes already in place.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities as a result of the amendments to this rule. The amendments do not add or eliminate any requirements, but rather give greater clarity to processes already in place.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated compliance costs for affected persons as a result of the amendments to this rule. The amendments don't add or eliminate any requirements, but rather give greater clarity to processes already in place.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The rule revision clarifies existing practices and is not anticipated to increase any costs to other entities. The clarifications may ultimately allow customers to recognize cost savings since it will prevent interpretations in the former versions that could require unnecessary expenditures.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
ROOM 500  
675 E 500 S  
SALT LAKE CITY, UT 84102-2818  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Kim Christy by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2011**

**AUTHORIZED BY: Kevin Carter, Director**

**R850. School and Institutional Trust Lands, Administration.  
R850-60. Cultural Resources.  
R850-60-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Enabling Act, Articles X and XX of the Utah Constitution, and [Sections]Subsections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a) which authorize the Director of the School and Institutional Trust

Lands Administration to prescribe the management of cultural resources on trust lands. This rule outlines the manner by which the agency shall, pursuant to Section 9-8-404, take into account the effect of trust land uses ~~[and other land uses]~~ on any ~~[district, site, building, structure or specimen that is included in or eligible for inclusion in the State Register or National Register of Historic Places, and allow]~~ historic property and provide the State Historic Preservation Officer ~~[a reasonable opportunity to comment]~~ with ~~[regard to]~~ a written evaluation of the effect of the expenditure or undertaking on the historic property. This rule also outlines the manner by which the agency shall ~~[ ]~~ authorize pursuant to Section 9-8-305 ~~[(2)](23)(c)~~ ~~[ ]~~ issue permits for archaeological surveys and excavations on trust lands.

#### **R850-60-200. Definitions.**

For purposes of this rule:

1. "Area of potential effects" means the ~~[geographic area or areas established]~~ trust lands identified by the agency within which ~~[an undertaking may]~~ a land use activity will take place that has the potential to cause changes in the character or use of historic properties, if any such properties exist on the surface estate of such trust lands.

2. "Discovery property" means any site or archaeological resource[s] that ~~[are]~~ is encountered, found or otherwise made known during the course of land use conducted subsequent to approval of that use by the agency.

3. ~~["Historic property" means any prehistoric or historic district, site, building or structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. This term includes, for the purposes of this rule, artifacts, records, and remains that are related to and located within such historic properties.]~~ "Expenditure" means use of the agency's funds for an "undertaking" as defined herein.

4. ~~["Interested persons" means those organizations and individuals that are concerned with the effects of an undertaking on historic properties and have expressed their concern to the agency.~~

5. "Local government" means any city, county, township, municipality or other general purpose subdivision of the state.

6. ~~]~~ "National Register" means the National Register of Historic Places, maintained by the United States Secretary of the Interior.

~~[7. "National Register Criteria" means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of cultural resources for the National Register; these criteria are found in 36 CFR Part 60, hereby incorporated by reference.~~

8. ~~]~~ 5. "Undertaking" means any trust land use ~~[or other land use]~~ that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects.

#### **R850-60-300. Authorization of Cultural Resource Work.**

1. No person shall alter, remove, injure or destroy antiquities or cultural resources on trust lands, without written permission from the agency.

2. For purposes of Section 76-6-902 "consent" to alter, remove, injure or destroy antiquities or cultural resources covered by a restrictive deed covenant means either:

~~(a) an amendment to the certificate of sale or patent evincing the agency's release of the deed covenant; or~~

~~(b) other specific written permission and an archaeological permit issued under Section 9-8-305.~~

3. No person shall ~~conduct an archaeological survey or excavate [archaeological]~~ (as defined by Section 9-8-302) any cultural resources on trust lands without first obtaining ~~[an archaeological]~~ a permit under Section 9-8-305 and written authorization from the agency that fulfills the requirement set forth in R850-41-500.

(a) A condition of ~~[permission]~~ such written authorization shall be that the ~~[permittee]~~ principal investigator, as defined by Section 9-8-302, shall provide the agency with a copy of ~~[all]~~ any records resulting from all such investigations ~~[ ]~~ No requirement for permission shall be made for non-documentary, non-disturbing, purely recreational visitation of sites on trust lands on trust lands that are conducted under the written authorization.

(b) Non-professional documentation of the location, nature, extent and condition of cultural resources on trust lands shall also be subject to R850-60-300(3)(a).

~~[3. Any]~~ 4. A person found in violation of R850-60-300 ~~[will]~~ may be subject to civil and criminal penalties under Sections 76-6-903 and 53C-2-301.

#### **R850-60-400. Archaeological Excavation Permits.**

1. ~~[The agency shall issue archaeological survey and]~~ Subsection 9-8-305(3)(c) allows for delegation of authority to issue excavation permits ~~[ ]~~ after consultation with SHPO, to persons who demonstrate compliance with the following requirements:

~~(a) the minimum standards for education and experience set by federal regulation, codified as 43 CFR 7.8(a)(1), hereby incorporated by reference. Permit applicants shall submit resumes or vitae as proof of conformity with these minimum standards.~~

~~(b) the ability]~~ to [conduct the proposed work in a manner consistent with current professional practice, including access to proper equipment, facilities, and other personnel who are qualified to assist in executing the proposed work. Permit applicants shall submit the appropriate documentation as proof of conformity with this requirement.

~~(c) written proof]~~ agencies that [an agreement with the Utah Museum of Natural History (UMNH) is in place for curation of all recovered archaeological materials, specimens and collections at either the UMNH or another repository or curation facility approved by the UMNH.

2. All work conducted under an archaeological survey permit shall be ~~conducted]~~ meet specified criteria. Should the agency obtain such delegation, it shall issue excavation permits for sites on trust lands in accordance with ~~[current professional practice and the terms of the permit]~~ Section 9-8-305 and Rule R694-1.

~~[3. For archaeological~~

~~]~~ 2. Applications for excavation permits ~~[ ]~~ shall be made on forms created and maintained by the Public Lands Policy Coordination Office and submitted to the agency ~~[shall require that the permit applicant provide the following:~~

~~(a) A]~~ in a timely manner and with enough lead time to allow for review and modification of the excavation plan or research design ~~[which explicitly states the questions to be addressed; the reasons for conducting the work; defines the methods to be used; describes the analysis to be performed; outlines the~~

~~expected results and the plans for reporting; evaluates the expected contributions of the project work to archaeological science and the field of anthropology]for the proposed investigation.~~

~~[(b) Written proof of consultation with the appropriate Indian tribe, if~~

~~\_\_\_\_\_](a) The agency shall respond to an application for excavation permit in a timely manner.~~

~~\_\_\_\_\_ (b) The agency may request information other than what is required by Section [9-9-403]9-8-305 and Rule R694.~~

~~\_\_\_\_\_ [(c) Any other information requested by the agency.~~

~~\_\_\_\_\_ 4.]3. All [archaeological]excavation permits shall be issued with the following requirements:~~

~~(a) The permittee shall provide reports documenting results of the work and data obtained, and deliver relevant records, site forms, and reports to the agency within the time specified in the permit.~~

~~(b) Any permittee who discovers human remains shall notify the agency and other appropriate agencies pursuant to Section [9-9-403 and cease further activity, except in compliance with Section 9-9-403]76-9-704 and Rule R850-61.~~

~~(c) [If the permittee fails to comply with any statute, rule or the provisions of the permit, the ]The agency may [terminate the permit and either continue the study or grant another permittee the responsibility or opportunity to complete the permitted work.~~

~~\_\_\_\_\_ 5. The duration of archaeological permits shall be the following:~~

~~\_\_\_\_\_ (a) Survey permits shall be issued for one year.~~

~~\_\_\_\_\_ (b) Excavation permits shall be issued for the period of time necessary to accomplish the proposed work. The period of time may be extended by the agency upon application by the permittee.~~

~~\_\_\_\_\_ (c) The UMNH shall be consulted if the duration of an excavation permit is to be modified.~~

~~\_\_\_\_\_ 6. The agency may require]include other [provisions]requirements as necessary.~~

~~\_\_\_\_\_ 4. Unless the proposed excavation is being conducted to facilitate execution of an expenditure or undertaking that is already the subject of Section 9-8-404 compliance, then the issuance of an excavation permit by the agency shall be considered an undertaking for purposes of Section 9-8-404.~~

#### **[R850-60-500. Delegation of Permitting Authority.**

~~Authority for permitting cultural resources surveys, excavations, or both under R850-60-300 may be delegated to the Division of State History through a Memorandum of Agreement (MOA) between the agency and the Division of State History. The delegation shall be contingent upon terms or conditions which the director deems appropriate and in the best interest of the trust. Authority for permitting surveys shall either be delegated annually by MOA to the Division of State History or retained annually by the agency. The agency may reserve in the MOA the right to issue an excavation permit for a specific undertaking upon a written finding that the best interest of the trust requires that the excavation be conducted pursuant to R850-60-400. The delegation may be rescinded through termination of the MOA after ten day's notice of the intent to terminate the MOA published in the Utah State Bulletin.~~

#### **]R850-60-[600]500. Identifying Historic Properties.**

1. Following the agency's determination that a proposed trust land use [~~or other land use~~]constitutes an undertaking, the agency shall establish the undertaking's area of potential effects. Thereafter, the agency shall collect and review existing information about historic properties that may be [~~affected by~~]located within the [~~undertaking~~]area of potential effects. As part of this process, the agency may seek information from the State Historic Preservation Officer (SHPO), Indian tribes, local governments, other state or federal agencies or any other interested parties likely to have knowledge or concerns about cultural resources in the area. The agency may delegate this collection of information to an appropriate person.

2. Based on this [~~assessment, the agency shall determine whether a field survey will be required to identify historic properties.~~

~~\_\_\_\_\_ 3. If the agency determines that a field survey will be required]review, the agency shall make a reasonable and good faith effort to identify historic properties that might be affected by an undertaking and shall gather sufficient information to evaluate the eligibility of these properties for the National Register.[The agency shall utilize the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716), incorporated by reference, in making this effort.~~

~~\_\_\_\_\_ 4.]~~

#### **R850-60-600. Identification Responsibilities.**

1. The agency may conduct [~~field~~]cultural resource surveys on [~~school and institutional~~]trust lands in the order of priority determined by the agency. The agency shall assign a higher priority to those [~~field~~]cultural resource surveys for proposed uses which the agency has determined will best fulfill the trust land management objectives in R850-2-200. Agency personnel shall not normally conduct [~~field~~]cultural resource surveys for mineral exploration or development [~~activity~~], for easements, for surface use leases, or for projects where federal, other state[;] or local government agencies are the applicants.

2. The director shall decide whether a cultural resource survey shall be conducted on behalf of the agency, by whom it shall be conducted, and the scope and extent to which it shall be conducted.

3. The director shall decide who will pay the cost of the cultural resource survey, when that cost shall be incurred, how much of the total cost shall be recovered, and from whom it shall be recovered. The agency may request from an applicant or interested party payment of the cost of a cultural resource survey prior to the survey being conducted.

(a) If the party providing payment for the cultural resource survey is successful in his or her bid for the use or purchase of the trust land in question, then the agency shall not reimburse the bidder for the cost of the survey.

[5. School and institutional trust land applicants may conduct authorized field surveys at their own expense.

(a) If the applicant is the successful bidder for the trust land use, no reimbursement shall be made by the agency.

\_\_\_\_\_](b) If the [~~applicant~~]party providing payment for the cultural resource survey is [~~not the successful bidder~~]unsuccessful

~~in his or her bid for the trust land [use]in question, the agency shall reimburse [the applicant for the cost of the survey, provided]that party the same amount the agency [has previously authorized the estimated maximum cost of the]received as payment for the cultural resource survey.[-prior to its initiation-]~~

#### **R850-60-700. Evaluating Eligibility.**

1. The agency shall make a determination of the eligibility for the National Register for ~~[any]each~~ site identified within the undertaking's area of potential effects. ~~The passage of time, changes in the nature of the undertaking or changing perceptions of significance may justify re-evaluation of sites that were previously determined to be eligible or ineligible for purposes of Section 9-8-404.~~

~~\_\_\_\_\_ (a) The agency shall follow the Secretary of the Interior's Standards and Guidelines for Evaluation in applying the National Register Criteria to any sites that may be affected by the undertaking.~~

~~\_\_\_\_\_ (b) The passage of time or changing perceptions of significance may justify re-evaluation of sites that were previously determined to be eligible or ineligible.~~

~~\_\_\_\_\_ 2. If the agency finds that either there are no historic properties present within the area of potential effects or there are historic properties present but the undertaking will have no effect on them as defined herein, the agency shall make a finding of "No Historic Properties Affected" and provide the SHPO with a written evaluation in support of that finding. If the SHPO does not reply within the time specified in Subsection 9-8-404(3)(a) or within the time period agreed to by the parties, then the agency may presume that the SHPO concurs with the agency.~~

~~\_\_\_\_\_ 3. If the agency finds that there are historic properties within the area of potential effects and the undertaking may cause changes in the character or use of historic properties, the agency shall make an assessment of effect in accordance with R850-60-800.[The agency shall consult the SHPO regarding the agency's determination of eligibility. If the SHPO does not provide comment within 15 days of receipt, the SHPO is presumed to agree with the agency's determination of eligibility.]~~

~~\_\_\_\_\_ 3. If the agency determines the property is eligible, the historic property will be assessed for effect in accordance with R850-60-800.]~~

#### **R850-60-800. Assessing Effects.**

1. The agency shall assess the effect of a proposed trust land use or ~~[other land use]disposition~~ on historic properties by applying the ~~[Criteria of Effect and Adverse Effect found in 36 CFR 800.9, hereby incorporated by reference.]following:~~

~~\_\_\_\_\_ (a) Criteria of adverse effect. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.~~

~~\_\_\_\_\_ (b) Examples of adverse effects. Adverse effects on historic properties include:~~

~~\_\_\_\_\_ i) physical destruction of or damage to all or part of the property;~~

~~\_\_\_\_\_ ii) alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation;~~

~~\_\_\_\_\_ iii) removal of the property from its historic location;~~

~~\_\_\_\_\_ iv) neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property; or~~

~~\_\_\_\_\_ v) disposal of trust lands without adequate restrictions or conditions to ensure long-term preservation of the property's historic significance.~~

~~\_\_\_\_\_ (c) Finding of no adverse effect. The agency may make a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (1)(a) of this section or the undertaking is modified or conditions are imposed to avoid adverse effects.~~

2. The agency shall consult the SHPO regarding the finding of effect. If the SHPO does not provide the agency with comment within ~~[15 days, or 30 days if consultation regarding eligibility is included]the time frame set forth in Section 9-8-404,~~ the SHPO is presumed to agree with the agency's finding of effect.

~~[3. Based upon the determination made in R850-60-600; R850-60-700 and R850-60-800, the agency shall take into account the effect of the undertaking on the historic property.~~

~~\_\_\_\_\_ 4.]3. The [agency]director may establish treatment options in consultation with the SHPO that may include:~~

~~\_\_\_\_\_ (a) archaeological data recovery;~~

~~\_\_\_\_\_ (b) "alternative" or "creative" mitigation;~~

~~\_\_\_\_\_ (c) physical treatment to alleviate or minimize the adverse effect(s);~~

~~\_\_\_\_\_ (d) historic property documentation; or~~

~~\_\_\_\_\_ (e) simple case documentation.~~

~~\_\_\_\_\_ The director will make the final decision regarding any treatment options.~~

#### **R850-60-900. Discoveries.**

1. ~~[Any]Upon discovering a site, a user of trust lands shall immediately cease [any use which may threaten an unanticipated discovery property upon discovery]all activities~~ until such time as the discovery ~~[property]has been evaluated and treated to the director's satisfaction[-of the agency].~~

#### **R850-60-1000. Emergency Undertakings.**

The ~~[agency]director~~ may waive cultural resource management considerations when responding to wildland fires, flood control and other emergency actions.

#### **R850-60-1100. Programmatic Agreements.**

The agency may enter into programmatic agreements with the SHPO, or with other state or federal agencies, and with local governments for compliance with Section 9-8-404 or other pertinent state ~~[or federal]-~~statutes. The agency may also cooperate with federal agencies in federal programmatic agreements where practicable and appropriate.

#### **R850-60-1200. Records.**

1. The agency shall submit one copy each of all site forms, survey and data recovery, treatment or mitigation reports prepared by the agency to the SHPO. All ~~permittees preparing similar data [prepared by permittees]or~~ conducting work in

accordance with R850-60-400 shall ~~[be required to]~~ furnish ~~[one copy]~~ two sets of the results of their ~~[investigations]~~ work, one of which the agency will submit to the SHPO.

2. Records and data containing site location information which could jeopardize the integrity of those sites shall be provided protected records status pursuant to Subsection 63G-2-305~~(25)~~ (26).

[  
**~~R850-60-1300. Ownership and Management of Collections.~~**

~~Collections recovered from school and institutional trust lands are the property of the respective trust and shall be labeled as belonging to that trust and are held in trust for the beneficiaries by the institution in possession and managed according to state law and the rules of the UMNH.~~

] **KEY: cultural resources**

**Date of Enactment or Last Substantive Amendment:** ~~[October 17, 1995]~~ January 21, 2011

**Notice of Continuation:** June 27, 2007

**Authorizing, and Implemented or Interpreted Law:** 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-2-301; 9-8-305; 9-8-404

## Tax Commission, Auditing

### **R865-19S-78**

#### Charges for Labor and Repair Under an Extended Warranty Agreement Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34268

FILED: 12/01/2010

#### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendment will treat all transactions in the same manner as bundled transactions are treated under statute, and clarifies the current treatment of service plan charges for items of tangible personal property that are permanently attached to real property.

**SUMMARY OF THE RULE OR CHANGE:** Amendment removes language indicating that in a purchase consisting of taxable and nontaxable items, the nontaxable items must be separately stated on the invoice or the entire purchase is subject to sales tax. The standard for recording these transactions will be in the amended Section R865-19S-4. This amended section will allow the seller to separately state the nontaxable items on the invoice or be able to reasonably

identify them from the books and records it keeps in its regular course of business. In addition, the proposed amendment clarifies the current treatment of service plan charges for items of tangible personal property that are permanently attached to real property. (DAR NOTE: the proposed amendment to Section R865-19S-4 was published under DAR No. 33848 in the August 15, 2010, issue of the Bulletin and was effective 09/23/2010.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-103 and Section 59-12-104

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed amendment does not impact the amount of tax due; only the recordkeeping requirements of the seller. The clarification of the treatment of service plan charges matches commission practice.

◆ **LOCAL GOVERNMENTS:** The proposed amendment does not impact the amount of tax due; only the recordkeeping requirements of the seller. The clarification of the treatment of service plan charges matches commission practice.

◆ **SMALL BUSINESSES:** None--Sellers are currently acting within the scope of the proposed amendment. The proposed amendment will allow sellers who sell taxable and nontaxable items in a nonbundled transaction the same invoicing options as the seller of a bundled transaction. The clarification of the treatment of service plan charges matches commission practice.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Sellers are currently acting within the scope of the proposed amendment. The proposed amendment will allow sellers who sell taxable and nontaxable items in a nonbundled transaction the same invoicing options as the seller of a bundled transaction. The clarification of the treatment of service plan charges matches commission practice.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--Sellers are currently acting within the scope of the proposed amendment. The proposed amendment will allow sellers who sell taxable and nontaxable items in a nonbundled transaction the same invoicing options as the seller of a bundled transaction. The clarification of the treatment of service plan charges matches commission practice.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** None anticipated.

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](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2011

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

**KEY: charities, tax exemptions, religious activities, sales tax**

**Date of Enactment or Last Substantive Amendment:** ~~[September 23, 2010]~~2011

**Notice of Continuation:** March 13, 2007

**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

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-78. Service Plan Charges for Labor and Repair ~~[Under an Extended Warranty Agreement]~~Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

~~[(1) Sales of extended warranty agreements or service plans are taxable, and tax must be collected at the time of the sale of the agreement. The payment is considered to be for future repair, which would be taxable. If the extended warranty agreement covers parts as well as labor, any parts that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge under the extended warranty agreement is taxable. Repairs made under an extended warranty plan are exempt from tax, even if the plan was sold in another state.~~

~~\_\_\_\_\_ (a) Repair parts provided and services rendered under the warranty agreements or service plans are not taxable because the tax is considered prepaid as a result of taxing the sale of the warranty or service plan when it was sold. (1) "Service plan" includes an extended warranty agreement or other prepaid arrangement.~~

~~\_\_\_\_\_ (2)(a) Service plan charges for a future taxable repair are subject to sales tax.~~

~~\_\_\_\_\_ (b) [If the customer is required to pay for any parts or labor at the time of warranty service, sales tax must be collected on the amount charged to the customer. ]Sales tax must also be collected on any ~~[deductibles]~~deductible charged to ~~[customers]~~a customer for ~~[their]~~the customer's share of the repair ~~[work]~~done under the ~~[warranty agreement]~~service plan. ~~[Parts or materials that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.]~~~~

~~[(2)](3)(a) [Extended warranties on]Service plan charges for items of tangible personal property that are converted to real property are not taxable. ~~[However, the taxable nature of parts and other items of tangible personal property provided in conjunction with labor under an extended warranty service shall be determined in accordance with R865-19S-58.]~~~~

~~\_\_\_\_\_ (b) Service plan charges for items of tangible personal property that are permanently attached to real property are treated as follows:~~

~~\_\_\_\_\_ (i) service plan charges for labor are not taxable; and~~  
~~\_\_\_\_\_ (ii) service plan charges for parts are taxable unless exempt under Title 59, Chapter 12, Part 1, Tax Collection.~~

~~\_\_\_\_\_ (6) Rule R865-19S-58 outlines the sales tax responsibility of a person that converts tangible personal property to real property.~~

**Workforce Services, Employment  
Development  
R986-600  
Workforce Investment Act**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34277

FILED: 12/01/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to change the rule to allow the Department to determine need.

**SUMMARY OF THE RULE OR CHANGE:** For dislocated workers, the Department traditionally did not consider assets and income in determining eligibility. Our federal partner has advised that the Department can consider financial need in determining whether to assist customers in obtaining training. This change will allow the Department to determine financial need.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-1-104 and Subsection 35A-1-104(4)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to the local government.

◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs of any persons to comply with these changes because there are no costs or fees associated with these proposed changes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs associated with these changes for any affected persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

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

WORKFORCE SERVICES  
EMPLOYMENT DEVELOPMENT  
140 E 300 S  
SALT LAKE CITY, UT 84111-2333  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2011

AUTHORIZED BY: Kristen Cox, Executive Director

**R986. Workforce Services, Employment Development.**

**R986-600. Workforce Investment Act.**

**R986-600-615. Assets.**

Assets are not counted when determining eligibility for WIA services but will be considered in determining whether the customer has a need for WIA funding.

**R986-600-618. Dislocated Worker.**

(1) A dislocated worker is an individual who meets, or has met within the past 24 months, one of the following criteria:

(a)(i) has been terminated or laid off, or has received a notice of termination or layoff from employment, including military service, and

(ii)(1) is eligible for or has exhausted unemployment compensation entitlement, or

(ii)(2) has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under unemployment compensation law, and

(iii) is unlikely to return to the individual's previous industry or occupation. 'Unlikely to return' means that labor market information shows a lack of jobs in either that industry OR occupation, or the customer lacks the skills to re-enter the industry or occupation, or the client declares that they will not return to that industry or occupation.

(b)(i) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any major layoff at, a plant, facility, or enterprise, or

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive available services other than training, intensive, or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close. Rapid response services are defined by WIA.

(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

(d) Is a displaced homemaker. A WIA displaced homemaker is an individual who has been providing unpaid services to family members in the home and who:

(i) has been dependent on the income of another family member but is no longer supported by that income; and

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(2) The dislocation must have occurred within the prior two years.

(3) There are no income or asset guidelines for dislocated worker eligibility. Training appropriateness and financial need must still be determined before training services can be provided.

(4) The following documentation is acceptable to confirm dislocated worker status:

a. Unemployment Insurance records;

b. An individual layoff letter;

c. Rapid Response Unit analysis or review;

d. Public announcements of layoff;

e. If no other means of verification are available, the employer can provide verification; or

f. Worker self certification, although this is a last resort and requires documentation that other attempts to verify were unsuccessful.

(5) If the Department is providing services under a National Reserve Discretionary Grant, additional documentation may be needed.

**KEY: Workforce Investment Act**

**Date of Enactment or Last Substantive Amendment:** ~~August 9, 2006~~**2011**

**Notice of Continuation: September 8, 2010**

**Authorizing, and Implemented or Interpreted Law: 35A-5**

**End of the Notices of Proposed Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

**NOTICES** are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

**NOTICES** are governed by Section 63G-3-305.

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## Administrative Services, Fleet Operations **R27-1** Definitions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 34250  
FILED: 11/29/2010

### **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 established pursuant to Section 63A-9-401 which requires the Department of Administrative Services, Division of Fleet Operations to establish rules regarding the State Fleet.

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 over the past five years from interested persons supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes definitions that provide clarity and continuity for all Division of Fleet Operations rules. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ADMINISTRATIVE SERVICES  
FLEET OPERATIONS  
ROOM 4120 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Brian Fay by phone at 801-538-3502, by FAX at 801-359-0759, or by Internet E-mail at [bfay@utah.gov](mailto:bfay@utah.gov)

AUTHORIZED BY: Sam Lee, Director

EFFECTIVE: 11/29/2010

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## Administrative Services, Fleet Operations **R27-2** Fleet Operations Adjudicative Proceedings

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 34251  
FILED: 11/29/2010

### **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 established pursuant to Section 63G-4-202 which allows an agency to designate, by rule, categories of adjudicative proceedings to be conducted informally.

OR REQUIRE THE RULE: This rule is established pursuant to Section 63A-9-401(1)(d) which authorizes the Division of Fleet Operations to establish the requirements for the use of state vehicles, including business and personal use practices, and commute standards.

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 over the past five years from interested persons supporting or opposing this rule.

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 over the past five years from interested persons supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to establish procedures governing informal adjudicatory proceedings for the Division of Fleet Operations. Therefore, this rule should be continued.

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 required to define the vehicle use standards for state employees while operating a state vehicle. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT: ADMINISTRATIVE SERVICES FLEET OPERATIONS ROOM 4120 STATE OFFICE BLDG 450 N STATE ST SALT LAKE CITY, UT 84114-1201 or at the Division of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT: ADMINISTRATIVE SERVICES FLEET OPERATIONS ROOM 4120 STATE OFFICE BLDG 450 N STATE ST SALT LAKE CITY, UT 84114-1201 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: ♦ Brian Fay by phone at 801-538-3502, by FAX at 801-359-0759, or by Internet E-mail at bfay@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO: ♦ Brian Fay by phone at 801-538-3502, by FAX at 801-359-0759, or by Internet E-mail at bfay@utah.gov

AUTHORIZED BY: Sam Lee, Director

AUTHORIZED BY: Sam Lee, Director

EFFECTIVE: 11/29/2010

EFFECTIVE: 11/29/2010

Administrative Services, Fleet Operations **R27-3** Vehicle Use Standards

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 34252  
FILED: 11/29/2010

**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

Administrative Services, Fleet Operations **R27-7** Safety and Loss Prevention of State Vehicles

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 34254  
FILED: 11/29/2010

**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 established pursuant to Subsection 63A-9-401(1)(d)(iii) which requires the Division of Fleet Operations to make rules establishing requirements for fleet safety and loss prevention programs.

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 over the past five years from interested persons supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to establish the requirements for fleet safety and loss prevention programs for the Division of Fleet Operations. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ADMINISTRATIVE SERVICES  
 FLEET OPERATIONS  
 ROOM 4120 STATE OFFICE BLDG  
 450 N STATE ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Brian Fay by phone at 801-538-3502, by FAX at 801-359-0759, or by Internet E-mail at bfay@utah.gov

AUTHORIZED BY: Sam Lee, Director

EFFECTIVE: 11/29/2010

Administrative Services, Fleet  
 Operations, Surplus Property  
**R28-2**  
 Surplus Firearms

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 34253  
 FILED: 11/29/2010

**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 sets forth policies and procedures for disposing of surplus firearms from state agencies and participating local agencies, as authorized in the Utah Code, Title 63A, Chapter 9, Part 8.

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 over the past five years from interested persons supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule governs the destruction, sale, transfer, or donation of surplus firearms to any agency or to the general public. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ADMINISTRATIVE SERVICES  
 FLEET OPERATIONS, SURPLUS PROPERTY  
 ROOM 4120 STATE OFFICE BLDG  
 450 N STATE ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Brian Fay by phone at 801-538-3502, by FAX at 801-359-0759, or by Internet E-mail at bfay@utah.gov

AUTHORIZED BY: Sam Lee, Director

EFFECTIVE: 11/29/2010

Corrections, Administration  
**R251-102**  
 Release of Communicable Disease  
 Information

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 34262  
 FILED: 11/30/2010

**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: As authorized under Subsection 64-13-36(3)(a), this rule is to designate the persons who will be permitted access to information in Department of Corrections Inmate medical records.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Nothing received to this date.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The release of this information must be controlled by a standard of legitimate penological interests as determined by a division director in consultation with Clinical Services. This information should not be released under any other premise that may be harmful to the individual, operations, or security interests. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 CORRECTIONS  
 ADMINISTRATION  
 14717 S MINUTEMAN DR  
 DRAPER, UT 84020-9549  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

AUTHORIZED BY: Thomas Patterson , Executive Director

EFFECTIVE: 11/30/2010

and guidelines for the standards, application and approval process, and program requirements for sex offender treatment providers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Nothing has been received by this office to this date.

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 informs potential providers of our screening process and requirements for qualifications to providers of sex offender treatment programs. The rule also reminds current providers that these qualifications are required every three years for all mental health providers and their programs. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 CORRECTIONS  
 ADMINISTRATION  
 14717 S MINUTEMAN DR  
 DRAPER, UT 84020-9549  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

AUTHORIZED BY: Thomas Patterson , Executive Director

EFFECTIVE: 11/30/2010

Corrections, Administration  
**R251-109**  
 Sex Offender Treatment Providers

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 34263  
 FILED: 11/30/2010

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 76-5-406.5. The purpose of the rule is to define the criteria

Corrections, Administration  
**R251-110**  
 Sex Offender Registration Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 34264  
 FILED: 11/30/2010

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 77-27-21.5. The purpose of the rule is to define the

registrant requirement and process for obtaining sex offender registration information.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Nothing has been received by this office to this date.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule defines the requirements of the registrant and the process of registration. This rule also outlines ways for the public to obtain information from the registry. Therefore, this rule should be continued.

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

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

AUTHORIZED BY: Thomas Patterson , Executive Director

EFFECTIVE: 11/30/2010

employ offenders. This rule also provides the requirements for offenders' participation in an educational or vocational training program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Nothing has been received by this office to this date.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule defines the requirements of schools, educators, contractors, business ventures, etc. when employing or educating inmates or offenders in their programs. This rule also defines requirements to inmates and offenders of their participation in these educational or work-based programs or opportunities. Therefore, this rule should be continued.

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

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

AUTHORIZED BY: Thomas Patterson , Executive Director

EFFECTIVE: 11/30/2010

## Corrections, Administration **R251-301**

### Employment, Educational or Vocational Training for Community Correctional Center Offenders

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 34265  
FILED: 11/30/2010

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Sections 63G-3-201, 64-13-10, and 64-13-14.5. The purpose of this rule is to provide the requirements for employers who

## Corrections, Administration **R251-709**

### Transportation of Inmates

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 34266  
FILED: 11/30/2010

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 64-13-10. This rule addresses requirements

regarding the transportation of inmates in order to provide for public safety and the security of inmates under the jurisdiction of the Department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Nothing of record has been received by this office to this date.

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 informs public and private transportation carriers of our policies and procedures when transporting inmates and offenders outside secure and unsecured facilities. Public safety considerations and security of the public and the offender are outlined. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

AUTHORIZED BY: Thomas Patterson , Executive Director  
EFFECTIVE: 11/30/2010

**Environmental Quality, Water Quality  
R317-102  
Utah Wastewater State Revolving Fund  
(SRF) Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 34249  
FILED: 11/24/2010

**End of the Five-Year Notices of Review and Statements of Continuation Section**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-5-104(1)(f) authorizes the Utah Water Quality Board to adopt rules to implement awarding construction loans to political subdivisions and municipal authorities under Section 11-8-2. The authority for the Department of Environmental Quality acting through the Utah Water Quality Board to issue loans to finance all or part of wastewater project costs from the State Revolving Fund (SRF) is provided in Title VI of the Federal Clean Water Act and Section 73-10c-1.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five-year review period for 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 establishes policies and procedures for implementing the Utah SRF Program. The rule contains definitions, eligibility requirements, application procedures, and prioritization procedures central to the Water Quality Board's implementation of their statutory charge. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Walter Baker, Director  
EFFECTIVE: 11/24/2010

## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Alcoholic Beverage Control

#### Administration

No. 34058 (AMD): R81-7-1. Application Guidelines

Published: 10/01/2010

Effective: 11/17/2010

### Commerce

#### Occupational and Professional Licensing

No. 34120 (AMD): R156-9. Funeral Service Licensing Act Rules

Published: 10/15/2010

Effective: 11/29/2010

No. 34123 (AMD): R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule

Published: 10/15/2010

Effective: 11/29/2010

No. 34115 (AMD): R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule

Published: 10/15/2010

Effective: 11/29/2010

No. 34108 (AMD): R156-39a. Alternative Dispute Resolution Providers Certification Act Rules

Published: 10/15/2010

Effective: 11/22/2010

No. 34111 (AMD): R156-55b. Electricians Licensing Rule

Published: 10/15/2010

Effective: 11/22/2010

No. 34116 (AMD): R156-55c. Construction Trades Licensing Act Plumber Licensing Rule

Published: 10/15/2010

Effective: 11/22/2010

No. 34124 (AMD): R156-55d. Utah Construction Trades Licensing Act Burglar Alarm Licensing Rule

Published: 10/15/2010

Effective: 11/22/2010

### Real Estate

No. 34097 (AMD): R162-2c-202. Qualifications for Licensure

Published: 10/15/2010

Effective: 11/22/2010

### Securities

No. 34121 (AMD): R164-2-2. Custody Requirements for Investment Advisers

Published: 10/15/2010

Effective: 11/22/2010

No. 34126 (AMD): R164-4. Licensing Requirements

Published: 10/15/2010

Effective: 11/22/2010

No. 34125 (AMD): R164-5. Broker-Dealer and Investment Adviser Books and Records

Published: 10/15/2010

Effective: 11/22/2010

### Environmental Quality

#### Air Quality

No. 34051 (AMD): R307-401-9. Small Source Exemption

Published: 09/15/2010

Effective: 01/01/2011

No. 34052 (AMD): R307-405-3. Definitions

Published: 09/15/2010

Effective: 01/01/2011

No. 34053 (AMD): R307-415-3. Definitions

Published: 09/15/2010

Effective: 01/01/2011

### Water Quality

No. 33921 (AMD): R317-1-7. TMDLs

Published: 09/01/2010

Effective: 11/19/2010

NOTICES OF RULE EFFECTIVE DATES

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Human Services

Services for People with Disabilities  
No. 34069 (AMD): R539-2. Service Coordination  
Published: 10/01/2010  
Effective: 12/01/2010

Boiler and Elevator Safety  
No. 34131 (AMD): R616-3-3. Safety Codes for Elevators  
Published: 10/15/2010  
Effective: 11/22/2010

Labor Commission

Industrial Accidents  
No. 34132 (AMD): R612-2-5. Regulation of Medical  
Practitioner Fees  
Published: 10/15/2010  
Effective: 11/22/2010

Public Safety

Highway Patrol  
No. 34070 (AMD): R714-500-6. Instrument Certification  
Published: 10/01/2010  
Effective: 11/27/2010

**End of the Notices of Rule Effective Dates Section**

**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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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, 2010 through December 01, 2010. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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**RULES INDEX - BY AGENCY (CODE NUMBER)**

**ABBREVIATIONS**

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Administrative Rules</u>					
R15-1	Administrative Rule Hearings	34104	5YR	09/21/2010	2010-20/65
R15-2	Public Petitioning for Rulemaking	34105	5YR	09/21/2010	2010-20/65
R15-2	Public Petitioning for Rulemaking	34110	NSC	10/27/2010	Not Printed
R15-3	Definitional Clarification of Administrative Rule	34106	5YR	09/21/2010	2010-20/66
R15-4	Administrative Rulemaking Procedures	33437	NSC	03/29/2010	Not Printed
R15-4	Administrative Rulemaking Procedures	34107	5YR	09/21/2010	2010-20/67
R15-5	Administrative Rules Adjudicative Proceedings	34109	5YR	09/22/2010	2010-20/67
<u>Archives</u>					
R17-7-3	Archives/ Research Room/Access to Records	33320	AMD	05/17/2010	2010-3/12
<u>Debt Collection</u>					
R21-3	Debt Collection Through Administrative Offset	33564	NSC	07/01/2010	Not Printed
R21-3	Debt Collection Through Administrative Offset	33778	NSC	07/26/2010	Not Printed
R21-3-2	Authority	34192	NSC	12/01/2010	Not Printed
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	33621	AMD	07/08/2010	2010-11/6
R23-2-15	Negotiation and Appointment	33766	NSC	07/01/2010	Not Printed
R23-7	State Construction Contracts and Drug and Alcohol Testing	33622	NEW	07/08/2010	2010-11/16
R23-22	General Procedures for Acquisition and Selling of Real Property	33623	AMD	07/08/2010	2010-11/19
R23-22-7	Requirements for the Disposition of Real Property by DFCM	33683	NSC	07/08/2010	Not Printed
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	33634	AMD	07/08/2010	2010-11/23
R23-26	Dispute Resolution	33360	5YR	02/01/2010	2010-4/79
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	33618	AMD	08/01/2010	2010-11/26
R25-7-10	Reimbursement for Transportation	33302	AMD	04/21/2010	2010-3/12
<u>Fleet Operations</u>					
R27-1	Definitions	34250	5YR	11/29/2010	Not Printed
R27-2	Fleet Operations Adjudicative Proceedings	34251	5YR	11/29/2010	Not Printed
R27-3	Vehicle Use Standards	34252	5YR	11/29/2010	Not Printed
R27-7	Safety and Loss Prevention of State Vehicles	34254	5YR	11/29/2010	Not Printed
<u>Fleet Operations, Surplus Property</u>					
R28-2	Surplus Firearms	33706	AMD	08/19/2010	2010-13/4
R28-2	Surplus Firearms	34253	5YR	11/29/2010	Not Printed
<u>Purchasing and General Services</u>					
R33-3	Source Selection and Contract Formulation	33650	AMD	07/08/2010	2010-11/28

R33-5	Construction and Architect-Engineer Selection	33635	AMD	07/08/2010	2010-11/35
R33-10	State Construction Contracts and Drugs and Alcohol Testing	33656	NEW	07/08/2010	2010-11/44
<u>Records Committee</u>					
R35-1-4	Committee Minutes	33335	AMD	05/17/2010	2010-4/16
R35-1-4	Committee Minutes	33436	NSC	05/17/2010	Not Printed
R35-1a	State Records Committee/Definitions	33399	5YR	02/22/2010	2010-6/35
<u>Risk Management</u>					
R37-1	Risk Management General Rules	33390	AMD	06/01/2010	2010-5/2
R37-2	Risk Management State Workers' Compensation Insurance Administration	33392	NSC	03/10/2010	Not Printed
R37-3	Risk Management Adjudicative Proceedings	34028	NSC	10/21/2010	Not Printed
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	33393	AMD	06/01/2010	2010-6/6
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-1	Public Petitions for Declaratory Rulings	34029	5YR	08/31/2010	2010-18/109
<u>Animal Industry</u>					
R58-7	Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers and Livestock Market Weighpersons	33326	5YR	01/14/2010	2010-3/87
R58-7	Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons	33895	AMD	10/12/2010	2010-17/12
R58-10	Meat and Poultry Inspection	33329	5YR	01/14/2010	2010-3/87
R58-11	Slaughter of Livestock	33997	5YR	08/25/2010	2010-18/109
R58-12	Record Keeping and Carcass Identification at Meat Exempt (Custom Cut) Establishments	33996	5YR	08/25/2010	2010-18/110
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R651-635	Commercial Use of Division Managed Park Areas	33981	NSC	10/20/2010	Not Printed
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**ABBREVIATIONS**

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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	34124	R156-55d	AMD	11/22/2010	2010-20/33

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Transportation, Preconstruction, Right-of-Way Acquisition	33311	R933-4	REP	03/10/2010	2010-3/56
<u>camp resort</u>					
Commerce, Real Estate	34056	R162-57a	NEW	11/08/2010	2010-19/19
	34165	R162-57a	NSC	12/01/2010	Not Printed
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<u>capacity development</u>					
Environmental Quality, Drinking Water	33501	R309-352	5YR	03/23/2010	2010-8/47
	33787	R309-352	NSC	07/26/2010	Not Printed
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Community and Culture, Arts and Museums	32949	R207-3	NEW	01/27/2010	2009-19/72
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	33544	R131-1	5YR	04/07/2010	2010-9/41
	33543	R131-1	NSC	04/26/2010	Not Printed
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Human Services, Aging and Adult Services	33027	R510-401	R&R	01/19/2010	2009-21/35
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	34143	R277-518-4	NSC	10/28/2010	Not Printed
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	34218	R628-16	5YR	11/03/2010	2010-23/83
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	34027	R616-2-8	AMD	10/22/2010	2010-18/69
	34023	R616-2-15	AMD	10/22/2010	2010-18/71
	34131	R616-3-3	AMD	11/22/2010	2010-20/54
	33684	R616-3-6	NSC	06/14/2010	Not Printed
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	33816	R728-409	R&R	09/09/2010	2010-15/49
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	33849	R865-19S-33	AMD	09/23/2010	2010-16/57
	33850	R865-19S-64	AMD	09/23/2010	2010-16/58
	33852	R865-19S-80	AMD	09/23/2010	2010-16/59
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	33902	R277-472	NSC	09/21/2010	Not Printed
	33745	R277-480	NEW	08/09/2010	2010-13/64

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Agriculture and Food, Chemistry Laboratory	34012	R63-1	5YR	08/26/2010	2010-18/112
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	33926	R512-201	AMD	10/13/2010	2010-17/101
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	33737	R156-55a	AMD	08/16/2010	2010-13/30
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	33421	R651-412	NEW	04/21/2010	2010-6/22	
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