

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-538-1773. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

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

Division of Administrative Rules, Salt Lake City 84114

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# SPECIAL NOTICES

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## Administrative Services Archives

### Correction to the Filing on Section R17-7-3, Archives/Research Room/Access to Records, Published in the February 1, 2010, Bulletin Under DAR No. 33320

This notice clarifies the responses to the cost/savings questions for the filing on Section R17-7-3 that was published in the February 1, 2010, issue of the Bulletin under DAR No. 33320.

#### ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: No impact to the state budget. There is no added cost because the staff of the Research Room is in place to monitor the activities of the Research Room and to ensure that the facilities and computers are used for research related purposes as outlined in the rule filing under DAR No. 33320. The Research Room computers and other equipment and facilities are to be used for history and Archives research and not for personal or business use.

◆ LOCAL GOVERNMENTS: No impact to local government. There is no added cost because the staff of the Research Room is in place to monitor the activities of the Research Room and to ensure that the facilities and computers are used for research related purposes as outlined in the rule filing under DAR No. 33320. The Research Room computers and other equipment and facilities are to be used for history and Archives research and not for personal or business use.

◆ SMALL BUSINESSES: No impact on small businesses. There is no added cost because the staff of the Research Room is in place to monitor the activities of the Research Room and to ensure that the facilities and computers are used for research related purposes as outlined in the rule filing under DAR No. 33320. The Research Room computers and other equipment and facilities are to be used for history and Archives research and not for personal or business use.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No impact on persons other than those wanting to use resources of the Research Center for other than Archives or State History research. There is no added cost because the staff of the Research Room is in place to monitor the activities of the Research Room and to ensure that the facilities and computers are used for research related purposes as outlined in the rule filing under DAR No. 33320. The Research Room computers and other equipment and facilities are to be used for history and Archives research and not for personal or business use.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Patrons may not use Research Center resources for personal or business purposes. The Research Room computers and other equipment and facilities are to be used for history and Archives research and not for personal or business use.

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## Commerce Occupational and Professional Licensing

### Public Hearing on Proposed Rule Amendment to Section R156-31b-701a, Delegation of Nursing Tasks in a School Setting, Published in the January 1, 2010, Bulletin Under DAR No. 33266

The Division of Occupational and Professional Licensing will hold a public hearing on Thursday, March 11, 2010, at 1:00 pm in the Heber M. Wells Building, 160 East 300 South, Room 474, Salt Lake City with respect to a proposed rule amendment affecting Section R156-31b-701a, Delegation of Nursing Tasks in a School Setting. Said proposed rule amendment was filed with the Division of Administrative Rules on December 14, 2009, and published in the January 1, 2010, Bulletin under DAR No. 33266 (2010-01, page 9). Also, the written comment period on this proposed rule amendment filing will be extended until March 11, 2010.

*For further information, please contact Laura Poe at 801-530-6789.*

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

**Notice for March 2010 Medicaid Rate Changes**

Effective March 1, 2010, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, as well as potential adjustments to existing codes. It is not anticipated that these rate changes will have a substantial fiscal impact.

All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

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

**Notice for February 2010 Primary Care Network (PCN) Waiver Re-authorization**

The Utah Department of Health is submitting a request to reauthorize the 1115 Primary Care Network (PCN) Medicaid Waiver for another three years. This will allow the Department to continue operating the Primary Care Network, Non-Traditional Medicaid, High Risk Pregnancy, and Utah's Premium Partnership for Health Insurance (UPP) through June 2013. In addition, the Department will seek to amend UPP to allow subsidies for coverage under private health plans and for coverage through the Utah Comprehensive Health Insurance Pool (HIPUtah). Additional information can be viewed at the following web address: <http://health.utah.gov/pcn/>

The proposed change is subject to Centers for Medicare & Medicaid Services (CMS) approval.

*For questions regarding this notice, please contact Jeff Nelson at 801-538-6471, or [jeffnelson@utah.gov](mailto:jeffnelson@utah.gov).*

**End of the Special Notices Section**

# EXECUTIVE DOCUMENTS

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

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

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## **Governor's Executive Order EO/003/2010: Establishing an Ethics Policy for Executive Branch Agencies and Employees**

### **EXECUTIVE ORDER**

Establishing an Ethics Policy for Executive Branch  
Agencies and Employees

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

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

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

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

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

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

#### 1. Application

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

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

2. Prohibition Against the Receipt of Gifts

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

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

- i. campaign contributions received in accordance with Title 20A, Chapter 11, Utah Code Annotated;
- ii. food, refreshments, or meals of limited value;
- iii. an item presented on behalf of a foreign government that becomes the property of the State;
- iv. opportunities, discounts, rewards and prizes open to the general public or all employees of the State of Utah;
- v. plaques or mementos recognizing service;
- vi. trinkets or mementos of nominal value;
- vii. gifts from family members, extended family members, or other employees of the State of Utah;
- viii. gifts from personal friends where it is clear that the gift is motivated by personal friendship and not by the employee's position with the State.
- ix. small efforts of common courtesy or other services of nominal monetary value;
- x. funeral flowers or memorials;
- xi. bequests, inheritances and other transfers at death;
- xii. attendance or participation at events sponsored by other governmental entities;
- xiii. attendance or participation at widely attended events that are related to governmental duties; and
- xiv. travel to and from widely attended events related to governmental duties where acceptance of such travel would result in financial savings to the State of Utah.

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

3. Prohibition Against Nepotism in Hiring and Contracting

a. An employee covered by this order may not take part in any hiring or employment decision relating to a family member. If a hiring or employment matter arises relating to a family member, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter. This prohibition shall apply notwithstanding the exceptions contained in Utah Code Ann. Section 52-3-1.

b. An employee covered by this order may not take part in any contracting decision: (i) relating to a family member; or (ii) relating to any entity in which a family member is an officer, director or partner, or in which a family member owns or controls 10% or more of the stock of such entity. If a contracting matter arises relating to a family member, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

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

4. Prohibition Against Lobbying Executive Branch Department or Agency Employees

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

b. For purposes of this order, the terms "to lobby" and "lobbying" shall mean to receive compensation or other remuneration for attempting to influence executive action as defined in Utah Code Ann. Section 36-11-102(2).

5. Penalties

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

**IN WITNESS WHEREOF**, I have here unto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the State Capitol Building in Salt Lake City, Utah, this 26th day of January 2010.

(State Seal)

**Gary R. Herbert**  
Governor

**Attest:**

**Greg Bell**  
Lieutenant Governor

EO/003/2010

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**Governor's Executive Order EO/001/2010 (CORRECTED): Establishing A System For Allocating Volume Cap For Qualified Energy Conservation Bonds in the State Consistent With the Provisions of the United States Internal Revenue Code of 1986**

(DAR NOTE: This executive order is republished because of a missing "\$" in the exhibit that did not appear in the 02/01/2010 Bulletin.)

**EXECUTIVE ORDER**

**Establishing A System For Allocating Volume Cap For Qualified Energy Conservation Bonds in the State Consistent With the Provisions of the United States Internal Revenue Code of 1986**

**WHEREAS**, Section 56D of the Internal Revenue Code of 1986, as amended (the "Code") provides that certain bonds can be issued for "qualified conservation purposes" subject to certain volume limitations (the "Volume Cap"); and

**WHEREAS**, the Code provides a formula for the allocation of such Volume Cap and in order to provide for the implementation and administration of the formula for allocation of the Volume Cap among the State of Utah and its issuing authorities, it is prudent to issue this Executive Order;

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, by the power vested in me by the Constitution and laws of the State of Utah do hereby order and proclaim:

**Section 1:** As used in this Executive Order:

- (1) "Allocation Dollars" means the dollar amount of the Volume Cap expressed in terms of dollars. Each Allocation Dollar equals one dollar of Volume Cap that may be allocated under this Executive Order.
- (2) "Board" means the Private Activity Bond Review Board of the State, created by Section 9-4-503, Utah Code Annotated 1953, as amended.
- (3) "Bonds" means the Qualified Energy Conservation Bonds for which an allocation of the Volume Cap is required by the Code.
- (4) "Code" means the Internal Revenue Code of 1986, as amended, including the American Recovery and Reinvestment Act of 2009, and any related regulations, including without limitation, the Notice, all as may be amended or supplemented.
- (5) "Form 8038" means the IRS form 8038, 8038-G or any other federal tax form or other method of reporting required by the United States Department of the Treasury under Section 149(e) of the Code.
- (6) "Initial Required Allocations" means the Required Initial Allocations established by the Board under the Notice and referred to in Section 2 hereof.
- (7) "Issuing Authority" shall have the meaning set forth in section 9-4-502(7) Utah Code Annotated 1953, as amended.
- (8) "Notice" means IRS Notice 2009-29, as amended.
- (9) "Qualified Energy Conservation Bonds" means bonds, notes or other obligations issued for "qualified conservation purposes" as provided in the Code and Notice.
- (10) "Remaining Volume Cap" means the amount set forth as "Remaining Volume Cap" in Section 3 hereof.
- (11) "State" means the State of Utah.
- (12) "Subsequent Allocation" means an allocation of Volume Cap by the Board, acting on behalf of) the State, of Remaining Volume Cap or all or a portion of an Initial Required Allocation returned to the State by waiver under the Code and Notice.
- (13) "Ultimate Beneficiary" means the ultimate beneficiary of the Volume Cap as provided in the Code and Notice.
- (14) "Volume Cap" means the volume cap for Qualified Energy Conservation Bonds for the State as computed under Section 54D of the Code, the Notice and related regulations.

**Section 2.**

The Initial Required Allocations of Volume Cap for the State are hereby made by the State to State counties and municipalities qualifying as "large local governments" in the amounts set forth on Exhibit "A". Such amounts were determined by the Board under the Notice and are intended to be further allocated by said entities to Ultimate Beneficiaries as provided in the Notice. The Initial Allocations do not expire unless all or a portion is returned to the State by waiver or deemed waiver as provided in the Code and Notice.

**Section 3.**

The Remaining Volume Cap shall equal the Qualified Energy Conservation Bond limitation allocated to the State under the Code and the Notice, less the sum of all Initial Required Allocations. Subsequent Allocations of Volume Cap shall be allocated by the Board in accordance with the procedures set forth in this Executive Order. The Board may seek waivers of Initial Required Allocations from applicable counties or municipalities that choose not to make their own allocations under the Code and Notice and allow the Board to make Subsequent Allocations.

**Section 4.**

(1) In order to obtain a Subsequent Allocation of Volume Cap, an Issuing Authority or Ultimate Beneficiary shall, prior to the issuance of Bonds, submit an application to the Board in a form acceptable to the Board and containing all information reasonably required by the Board. Information so obtained is subject to the Government Records Access and Management Act (GRAMA) of the State and may be classified as protected records if the requirements relating hereto are determined to apply by the Chair of the Board.

(2) The Board shall be under no obligation to process any application that is incomplete. Any application submitted by an Issuing Authority or Ultimate Beneficiary that the Board does not process shall be returned within a reasonable time with a brief explanation as to why the application was not processed.

(3) Subsequent Allocations shall be made on the basis of need, benefit to the citizens of the State and efficient distribution of resources in the State as determined by the Board. Subsequent Allocation may be made for an amount equal to or less than the amount requested as determined by the Board.

(4) Subsequent Allocations of Remaining Volume Cap and allocations by "large local governments" of Initial Required Allocations will be made such that not less than 70 percent of the allocation to the State or to each "large local government" will be used for Bonds which are not private activity bonds as provided in the Code and the Notice. Bonds issued to finance capital expenditures to implement "green community programs" shall not be treated as private activity bonds for this purpose.

**Section 5.**

(1) A certificate of allocation evidencing the granting of a Subsequent Allocation of Volume Cap shall be issued by the Chair of the Board to the requesting Issuing Authority or Ultimate Beneficiary.

(2) Every Subsequent Allocation of the Volume Cap shall remain effective until, and including, the date determined by the Board but not to exceed 180 days after the date on which such allocation was made. Any allocation for which Bonds are issued on or prior to the applicable date specified in this subsection shall be irrevocably allocated to such Bonds.

(3) The expiration date of an allocation of Volume Cap under this Executive Order may be extended upon prior written approval of the Board, as evidenced by an amended certificate of allocation.

**Section 6.**

(1) After the effective date of this Executive Order, each Issuing Authority shall advise the Board on or before the fifteenth day after the issuance of any Bonds of the principal amount of Bonds issued under an Initial Required Allocation or under a Subsequent Allocation by delivering to the Board a copy of the Form 8038 which was delivered to the Internal Revenue Service in connection with such Bonds.

(2) If all or a stated portion of Bonds, for which a Subsequent Allocation was made, were not, or will not be, issued, the related Issuing Authority shall advise the Board in writing of such fact on or before the earlier of: (A) the fifteenth day after the final decision not to issue all or a stated portion of such Bonds, or (B) the expiration date of the Subsequent Allocation.

**Section 7.**

In addition to the duties otherwise specifically set forth in this Executive Order, the Chair of the Board shall:

(1) maintain a record of all applications filed by Issuing Authorities or Ultimate Beneficiaries and all certificates of allocation issued hereunder;

(2) maintain a record of all Bonds issued by Issuing Authorities;

(3) maintain a record of material information filed by Issuing Authorities or Ultimate Beneficiaries under this Executive Order;

(4) make available upon reasonable request a certified copy of all or any part portion of the records maintained by the Board under this Executive Order or a summary thereof, including information regarding the Volume Cap allocated and any amounts remaining available, for allocation under this Executive Order; and

(5) establish an allocation process, including a form of application, not inconsistent with this Executive Order, deemed necessary or expedient to allocate the Volume Cap hereunder.

**Section 8.**

If any provision of this Executive Order shall be held to be, or shall, in fact, be invalid, inoperative or unconstitutional, the defect of the provision shall not affect any other provision of this Executive Order or render it invalid, inoperative, or unenforceable. To the extent this Executive Order shall be held or shall, in fact, be invalid inoperative, or unconstitutional, all allocations of the Volume Cap previously made under this Executive Order shall be treated as allocations made by the Governor of the State in accordance with this Executive Order.

**Section 9.**

The State pledges and agrees with the owners of Bonds, to which an allocation of the Volume Cap has been granted under this Executive Order, that the State will not retroactively alter the allocation of the Volume Cap to such Bonds after the issuance date of such Bonds.

**Section 10.**

No action taken pursuant to this Executive Order shall be deemed to create an obligation, debt or liability of the State, or be deemed to constitute an approval of any obligation issued or to be issued for the purposes set forth herein.

**Section 11.**

The purpose of this Executive Order is to maximize the benefits of financing and development through the use of Bonds by providing a system for the implementation and administration of the formula provided under the Code for allocating Volume Cap.

**Section 12.**

This Executive Order shall be effective immediately and shall continue in effect until such time as it may be repealed or superseded by operation of State or Federal law.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah at the Utah State Capitol in Salt Lake City on this, the 12th day of January, 2010.

(State Seal)

**Gary R. Herbert**  
Governor

**Attest:**

**Greg Bell**  
Lieutenant Governor

EO/001/2010

## EXHIBIT A TO EXECUTIVE ORDER

**State of Utah**  
**Qualified Energy Conservation Bonds**  
**Suballocation Amounts**

<b>2007 Total State Population for Utah</b>	<b>Name of City or County</b>	<b>2007 City/County Population</b>	<b>C/C Percentage of State Population</b>	<b>QECB State Volume Cap Amount</b>	<b>C/C Allocation Amount</b>
2,668,925	Cache County	108,995	4.0839%	\$28,389,000	\$1,159,365
2,668,925	Davis County	287,751	10.7815%	\$28,389,000	\$3,060,769
2,668,925	Provo City	117,849	4.4156%	\$28,389,000	\$1,253,544
2,668,925	Salt Lake City	179,433	6.7230%	\$28,389,000	\$1,908,605
2,668,925	Salt Lake County	600,993	22.5182%	\$28,389,000	\$6,392,683
2,668,925	Utah County	395,414	14.8155%	\$28,389,000	\$4,205,966
2,668,925	Washington County	133,447	5.0000%	\$28,389,000	\$1,419,458
2,668,925	Weber County	221,419	8.2962%	\$28,389,000	\$2,355,204
2,668,925	West Jordan City	102,445	3.8384%	\$28,389,000	\$1,089,694
2,668,925	West Valley City	122,374	4.5851%	\$28,389,000	\$1,301,676
2,668,925	Indian Tribal Gov	37,009	1.3867%	\$28,389,000	\$393,660
<b>Total Percentage and Allocation Amounts</b>			86.4441%		\$24,540,624
				<b>Total Amount Left for State Allocation</b>	
					\$3,848,376

**Governor's Executive Order EO/002/2010 (CORRECTED): Establishing a System For Allocating Volume Cap For Recovery Zone Bonds in the State Consistent With the Provisions of the United States Internal Revenue Code of 1986**

(DAR NOTE: This executive order is republished because of a misspelling, "Cash instead of Cache County", in the exhibit in the 02/01/2010 Bulletin.)

**EXECUTIVE ORDER**

**Establishing a System For Allocating Volume Cap For Recovery Zone Bonds  
in the State Consistent With the Provisions of the United State  
Internal Revenue Code of 1986**

**WHEREAS**, Sections 1400U-1 through U-3 of the Internal Revenue Code of 1986, as amended (the "Code") provide that until December 31, 2010 certain bonds can be issued to finance projects in "recovery zones" and subjects such bonds to volume limitations (the "Volume Cap"); and

**WHEREAS**, the Code provides a formula for the allocation of such Volume Cap and in order to provide for the implementation and administration of the formula for allocation of the Volume Cap among the State of Utah and its issuing authorities, it is prudent to issue this Executive Order;

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, by the power vested in me by the Constitution and laws of the State of Utah do hereby order and proclaim:

**Section 1:** As used in this Executive Order:

(1) "Allocation Dollars" means the dollar amount of the Volume Cap expressed in terms of dollars. Each Allocation Dollar equals one dollar of Volume Cap that may be allocated under this Executive Order.

(2) "Board" means the Private Activity Bond Review Board of the State, created by Section 9-4-503, Utah Code Annotated 1953, as amended.

(3) "Bonds" means the Recovery Zone Bonds for which an allocation of the Volume Cap is required by the Code.

(4) "Code" means the Internal Revenue Code of 1986, as amended, including the American Recovery and Reinvestment Act of 2009, and any related regulations, including without limitation, the Notice, all as may be amended or supplemented.

(5) "Form 8038" means the IRS form 8038, 8038-G or any other federal tax form or other method of reporting required by the Department of the Treasury under Section 149(e) of the Code.

(6) "Initial Allocations" means the sum of the Initial Allocations established under the Notice and referred to in Section 2 hereof.

(7) "Issuing Authority" shall have the meaning set forth in section 9-4-502(7) Utah Code Annotated 1953, as amended.

(8) "Notice" means IRS Notice 2009-50, as amended.

(9) "Recovery Zone" means an area so designated as provided in the Code and Notice.

(10) "Recovery Zone Bonds" means Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds.

(11) "Recovery Zone Economic Development Bonds" means bonds, notes or other obligations issued for one or more "qualified economic development purposes" as provided in the Code and the Notice.

(12) "Recovery Zone Facility Bonds" means bonds, notes or other obligations issued to finance "recovery zone property" as provided in the Code and Notice.

(13) "State" means the state of Utah.

(14) "Subsequent Allocation" means an allocation of Volume Cap by the Board acting for the State of all or a portion of Initial Allocations returned to the State by waiver under the Code and Notice.

(15) "Ultimate Beneficiary" means the ultimate beneficiary of the Volume Cap as provided in the Code and Notice.

(16) "Volume Cap" means the volume cap for Recovery Zone Bonds for the State as computed under Sections 1400U-1 through U-3 of the Code, the Notice and related regulations.

**Section 2.**

The Initial Allocations of Volume Cap for Recovery Zone Bonds for the State have been made to State counties and municipalities in the amounts set forth on Exhibit "A". Such amounts were determined by the Internal Revenue Service under the Notice and are intended to be further allocated by said entities to Ultimate Beneficiaries as provided in the Notice. The Initial Allocations do not expire unless all or a portion is returned to the State by waiver or deemed waiver as provided in the Code and Notice.

**Section 3.**

If, and to the extent all, or a portion of, the Initial Allocations is returned to the State by waiver or deemed waiver as provided in the Code and Notice, Subsequent Allocations of Recovery Zone Volume Cap shall be allocated in accordance with the procedures set forth in this Executive Order. The Board shall seek waivers of Initial Allocations prior to December 31, 2009,

and again, prior to April 1, 2010, from applicable counties or municipalities that choose not to make their own allocations under the Code and Notice and allow the Board to make Subsequent Allocations.

#### **Section 4.**

(1) In order to obtain a Subsequent Allocation of Volume Cap, an Issuing Authority or Ultimate Beneficiary shall, prior to the issuance of such Bonds, submit an application to the Board in a form acceptable to the Board and containing all information reasonably required by the Board. Information so obtained is subject to the Government Records Access and Management Act (GRAMA) of the State and may be classified as protected records if the requirements relating hereto are determined to apply by the Chair of the Board.

(2) The Board shall be under no obligation to process any application that is incomplete. Any application submitted by an Issuing Authority or Ultimate Beneficiary that the Board does not process shall be returned within a reasonable time with a brief explanation as to why the application was not processed.

(3) Subsequent Allocations shall be made on the basis of need, economic impact and efficient distribution of resources in the State as determined by the Board. Subsequent Allocations for Recovery Zone Economic Development Bonds may be made only from Volume Cap related to Initial Allocations for Recovery Zone Economic Development Bonds returned to the State by waiver or deemed waiver and Subsequent Allocations for Recovery Zone Facility Bonds may be made only from Volume Cap related to Initial Allocations for Recovery Zone Facility Bonds returned to the State by waiver or deemed waiver. Subsequent State Allocation may be made for an amount equal to or less than the amount requested as determined by the Board.

#### **Section 5.**

(1) A certificate of allocation evidencing the granting of a Subsequent Allocation of Volume Cap shall be issued by the Chair of the Board to the requesting Issuing Authority or Ultimate Beneficiary.

(2) Every Subsequent Allocation of the Recovery Zone Volume Cap shall remain effective until, and including, the earlier of: (a) the date determined by the Board but not to exceed 180 days after the date on which such allocation was made, or (b) 12:00 o'clock midnight on December 31, 2010. Any allocation for which Bonds are issued on, or prior to, the applicable date specified in this subsection shall be irrevocably allocated to such Bonds.

(3) The expiration date of an allocation of Volume Cap under this Executive Order may be extended upon prior written approval of the Board, as evidenced by an amended certificate of allocation.

#### **Section 6.**

(1) After the effective date of this Executive Order, each Issuing Authority shall advise the Board on or before the fifteenth day after the issuance of any Bonds of the principal amount of Bonds issued under an Initial Allocation or under a Subsequent Allocation by delivering to the Board a copy of the Form 8038 which was delivered to the Internal Revenue Service in connection with such Bonds.

(2) If all or a stated portion of Bonds, for which a Subsequent Allocation was made, were not, or will not be, issued, the related Issuing Authority shall advise the Board in writing of such fact on or before the earlier of: (A) the fifteenth day after the final decision not to issue all or a stated portion of such Bonds, or (B) the expiration date of the Subsequent Allocation.

#### **Section 7.**

In addition to the duties otherwise specifically set forth in this Executive Order, the Chair of the Board shall:

(1) maintain a record of all applications filed by Issuing Authorities or Ultimate Beneficiaries and all certificates of allocation issued hereunder;

(2) maintain a record of all Bonds issued by Issuing Authorities;

(3) maintain a record of material information filed by Issuing Authorities or Ultimate Beneficiaries under this Executive Order;

(4) make available, upon reasonable request, a certified copy of all or any part of the records maintained by the Board under this Executive Order or a summary thereof, including information regarding the Volume Cap allocated and any amounts remaining available, for allocation under this Executive Order; and

(5) establish an allocation process, including a form of application, not inconsistent with this Executive Order, deemed necessary or expedient to allocate the Volume Cap hereunder.

**Section 8.**

If any provision of this Executive Order shall be held to be, or shall, in fact, be invalid, inoperative or unconstitutional, the defect of the provision shall not affect any other provision of this Executive Order or render it invalid, inoperative, or unenforceable. To the extent this Executive Order shall be held or shall, in fact, be invalid inoperative, or unconstitutional, all allocations of the Volume Cap previously made under this Executive Order shall be treated as allocations made by the Governor of the State in accordance with this Executive Order.

**Section 9.**

The State pledges and agrees with the owners of Bonds, to which an allocation of the Volume Cap has been granted under this Executive Order, that the State will not retroactively alter the allocation of the Volume Cap to such Bonds after the issuance date of such Bonds.

**Section 10.**

No action taken pursuant to this Executive Order shall be deemed to create an obligation, debt or liability of the State or be deemed to constitute an approval of any obligation issued or to be issued for the purposes set forth herein.

**Section 11.**

The purpose of this Executive Order is to maximize the benefits of financing and development through the use of Bonds by providing a system for the implementation and administration of the formula provided under the Code for allocating Volume Cap.

**Section 12.**

This Executive Order shall be effective immediately and shall continue in effect until such time as it may be repealed or superseded by operation of State or Federal law.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah at the Utah State Capitol in Salt Lake City on this 12th day of January, 2010.

(State Seal)

**Gary R. Herbert**  
Governor

**Attest:**

**Greg Bell**  
Lieutenant Governor

EO/002/2010

## EXHIBIT A TO EXECUTIVE ORDER

Area	Residual	Recovery Zone Economic Development Bond	Recovery Zone Facility Bond
Utah		90,000,000	135,000,000
Provo city, UT		8,675,000	13,013,000
Salt Lake City city, UT		0	0
West Jordan city, UT		0	0
West Valley City city, UT		0	0
Beaver County, UT		0	0
Box Elder County, UT		0	0
Cache County, UT		0	0
Carbon County, UT		0	0
Daggett County, UT		0	0
Davis County, UT		8,266,000	12,398,000
Duchesne County, UT		0	0
Emery County, UT		0	0
Garfield County, UT		0	0
Grand County, UT		0	0
Iron County, UT		0	0
Juab County, UT		512,000	768,000
Kane County, UT		0	0
Millard County, UT		0	0
Morgan County, UT		228,000	342,000
Piute County, UT		0	0
Rich County, UT		0	0
Salt Lake County, UT	Residual	0	0
San Juan County, UT		0	0
Sanpete County, UT		0	0
Sevier County, UT		0	0
Summit County, UT		0	0
Tooele County, UT		0	0
Uintah County, UT		0	0
Utah County, UT	Residual	19,560,000	29,340,000
Wasatch County, UT		4,531,000	6,797,000
Washington County, UT		41,818,000	62,727,000
Wayne County, UT		0	0
Weber County, UT		6,410,000	9,615,000

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Department of the Treasury  
Internal Revenue Service

**End of the Executive Documents 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 January 16, 2010, 12:00 a.m., and February 01, 2010, 11:59 p.m. are included in this, the February 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 March 17, 2010. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through June 15, 2010, 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, Records  
Committee  
R35-1-4  
Committee Minutes**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 33335  
FILED: 01/21/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify State Records Committee (SRC) for approval of minutes and providing access to minutes and recordings of open public meetings.

**SUMMARY OF THE RULE OR CHANGE:** This changes the procedures for approval of minutes and recording of meetings and providing timely access to these records.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article IV and Section 63G-3-402 and Subsection 63G-3-601(3)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** No effect on the state budget. There is no added cost to the state budget because the procedures for approval of SRC minutes is implemented by current Archives personnel acting as Executive Secretary of the SRC. The SRC is a group of volunteer individuals appointed by the governor to serve four year terms. It is composed of government employees and private individuals who serve on the SRC without pay or by assignment in the case of state employees, and therefore imposes no additional cost.

◆ **LOCAL GOVERNMENTS:** No effect on local government. There is no added cost to local government because the procedures for approval of SRC minutes is implemented by current Archives personnel acting as Executive Secretary of the SRC. The SRC is a group of volunteer individuals appointed by the governor to serve four year terms. It is composed of government employees and private individuals who serve on the SRC without pay or by assignment in the case of state employees, and therefore imposes no additional cost.

◆ **SMALL BUSINESSES:** No effect on small businesses. There is no added cost to small businesses because the procedures for approval of SRC minutes is implemented by current Archives personnel acting as Executive Secretary of the SRC. The SRC is a group of volunteer individuals appointed by the governor to serve four year terms. It is composed of government employees and private individuals

who serve on the SRC without pay or by assignment in the case of state employees, and therefore imposes no additional cost.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Affects persons requesting access to copies of minutes or recordings of public meetings. There is no added cost to persons other than small businesses, businesses, or local governmental entities because the procedures for approval of SRC minutes is implemented by current Archives personnel acting as Executive Secretary of the SRC. The SRC is a group of volunteer individuals appointed by the governor to serve four year terms. It is composed of government employees and private individuals who serve on the SRC without pay or by assignment in the case of state employees, and therefore imposes no additional cost.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Costs assessed according to Archives schedule for providing copies of records.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No effect on businesses.

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

ADMINISTRATIVE SERVICES  
RECORDS COMMITTEE  
ARCHIVES BUILDING  
346 S RIO GRANDE  
SALT LAKE CITY, UT 84101-1106  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2010**

**AUTHORIZED BY: Patricia Smith-Mansfield, Director**

**R35. Administrative Services, Records Committee.  
R35-1. State Records Committee Appeal Hearing Procedures.  
R35-1-4. Committee Minutes.**

(1) Purpose. Utah Code Section 52-4-203 requires any public body to establish and implement procedures for the public body's approval of the written minutes of each meeting. This rule establishes procedures for the State Records Committee to approve the written minutes of each meeting.

(2) Authority. This rule is enacted under the authority of Utah Code Sections 52-4-203, 63G-3-201, and 78A-12-101 et seq.

~~\_\_\_\_\_~~ ~~[(1)](3)~~ All meetings of the Committee shall be recorded. The recording of the open meeting shall be made available to the public within 3 business days. Access to the audio recordings shall be provided by the Executive Secretary at the Utah State Archives, Research Center.

~~\_\_\_\_\_~~ ~~[(2)](4)~~ Approved written minutes shall be the official record of the meetings and appeal hearings and shall be maintained by the Executive Secretary. ~~[A copy of the approved minutes shall be made available for public access at the Utah State Archives.]~~

~~\_\_\_\_\_~~ (a) Written minutes shall be read by members prior to the next scheduled meeting, including electronic meetings.

~~\_\_\_\_\_~~ (b) Written minutes from meetings will be made available no later than one week prior to the date of the next regularly scheduled Committee meeting.

~~\_\_\_\_\_~~ (c) When minutes are complete but waiting official approval, they are a public record and must be marked as "Draft".

~~\_\_\_\_\_~~ (d) At the next meeting, at the direction of the chair, minutes shall be amended and/or approved with individual votes recorded in the minutes. The minutes will be then marked as "Approved".

~~\_\_\_\_\_~~ (e) When the minutes are "Approved" they will be so noted in the printed and online versions. A copy of the approved minutes shall be made available for public access at the Utah State Archives.

**KEY:** government documents, state records committee, records appeal hearings

**Date of Enactment or Last Substantive Amendment:** ~~[October 13, 2009]~~ 2010

**Notice of Continuation:** September 23, 2009

**Authorizing, and Implemented or Interpreted Law:** 63G-2-502(2)(a)

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-1-5  
Incorporations by Reference**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 33342  
FILED: 01/27/2010

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The Department, in order to draw down federal funds, must have an approved State Plan with the Centers for Medicare and Medicaid Services. This change, therefore, incorporates the most current Medicaid State Plan by reference. It also implements by rule ongoing Medicaid policy for services

described in the Utah Medicaid Provider Manual, Medical Supplies Manual and List, and policy described in the hospital services provider manual. It further incorporates these manuals by reference.

SUMMARY OF THE RULE OR CHANGE: Subsection R414-1-5(2) is changed to update the incorporation of the State Plan by reference effective 04/01/2010. It also incorporates State Plan Amendments that become effective no later than 04/01/2010. The change further incorporates by reference the Medical Supplies Manual and List and the hospital services provider manual, effective 04/01/2010.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Hospital Services Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2010
- ◆ Updates Medical Supplies Manual and List, published by Division of Medicaid and Health Financing, 04/01/2010
- ◆ Updates Utah Medicaid State Plan, published by Division of Medicaid and Health Financing, 04/01/2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to the Department or other state agencies.
- ◆ LOCAL GOVERNMENTS: There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to local governments.
- ◆ SMALL BUSINESSES: There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual

and List and in the hospital services provider manual does not create costs or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to a single Medicaid client or provider.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule should not have a direct fiscal impact on business. Incorporation of the State Plan by this rule assures that the Medicaid program is implemented through administrative 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 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-1. Utah Medicaid Program.**

**R414-1-5. Incorporations by Reference.**

(1) The Department incorporates by reference the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program effective ~~January~~April 1, 2010. It also incorporates by reference State Plan Amendments that become effective no later than ~~January~~April 1, 2010.

(2) The Department incorporates by reference the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, ~~January~~April 1, 2010, as applied in Rule R414-70.

(3) The Department incorporates by reference the Hospital Services Provider Manual, with its attachments, effective ~~January~~April 1, 2010.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~January 4~~, 2010

**Notice of Continuation:** April 16, 2007

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3

Health, Health Care Financing,  
Coverage and Reimbursement Policy  
**R414-7B**  
Nurse Aide Training and Competency  
Evaluation Program

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 33341

FILED: 01/27/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to update and implement by rule the criteria and protocol for the Nursing Assistant Training and Competency Evaluation Program.

**SUMMARY OF THE RULE OR CHANGE:** All requirements of the repealed rule are reenacted in the proposed rule. In contrast to the old rule, this new rule clarifies and updates program definitions and certification requirements that are specific to a nursing student, an expired licensed nurse, a certified nursing assistant (CNA), an expired CNA, an out-of-state CNA, and an out-of-state expired CNA. It also includes requirements for an entity that proctors competency evaluations and specifies Utah Nursing Assistant Registry (UNAR) requirements and procedures. It further specifies requirements and limitations for the Nursing Assistant Training and Competency Evaluation Program. The old rule, on the other hand, is more general in its outline of the aforementioned requirements, procedures and limitations as they applied at the inception of this program.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no impact to the state budget because only federal dollars pay for the Nursing Assistant Training and Competency Evaluation Program.

◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide the Nursing Assistant Training and Competency Evaluation Program for nursing assistants.

◆ SMALL BUSINESSES: These changes only increase the number of personnel who may certify for the Nursing Assistant Training and Competency Evaluation Program and work within a nursing facility-based program. While smaller nursing facilities or providers may benefit from the work that a CNA performs, they do not necessarily increase their profits or revenues.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These changes only increase the number of personnel who may certify for the Nursing Assistant Training and Competency Evaluation Program and work within a nursing facility-based program. While nursing facilities or providers may benefit from the work that a CNA performs, they do not necessarily increase their profits or revenues. CNAs may also increase their employment opportunities through this program but do not necessarily increase their ability to earn more in revenue or salary.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because these changes only increase the number of personnel who may certify for the Nursing Assistant Training and Competency Evaluation Program and work within a nursing facility-based program. While a single nursing facility or provider may benefit from the work that a CNA performs, it does not necessarily increase its profits or revenues. A CNA may also increase her employment opportunities through this program but does not necessarily increase her ability to earn more in revenue or salary.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed change repeals and reenacts all of the previous rules requirements, while allowing for more persons to certify as certified nurses aides.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

~~**[R414-7B. Nurse Aide Training and Competency Evaluation Program.**~~

~~**R414-7B-0. Authority and Purpose.**~~

~~A. Authority  
The nurse aide training and competency evaluation program is authorized by the Omnibus Budget Reconciliation Act (OBRA) of 1987, P.L. 100-203, Section 4211(b)(5)(A-G),(e)(2) (1-2),(f)(2)(A-B), which is hereby adopted and incorporated by reference.~~

~~B. The purpose of the nurse aide training and competency evaluation program is to provide quality services to residents of nursing facilities by nurse aides who are able to assist residents in maintaining independence, demonstrate sensitivity to residents' needs, and demonstrate observational and documenting skills that are needed in the assessment of residents' health, physical condition, and well-being.~~

~~**R414-7B-1. Definitions as used in this chapter:**~~

~~A. "Nurse aide" means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual who is a licensed health professional or who volunteers to provide such services without monetary consideration.~~

~~B. "Licensed health professional" means a physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; registered professional nurse; licensed practical nurse; or licensed or certified social worker.~~

~~C. "Nursing facility" means an institution licensed and certified to provide long-term care, and includes those facilities previously or currently licensed and Medicaid-certified as an Intermediate Care Facility (ICF) or a Skilled Nursing Facility. An intermediate care facility for the mentally retarded (ICF/MR) is not included in this definition.~~

~~D. "Resident" means an individual residing in and receiving medical long-term nursing services in a Medicaid-certified nursing facility.~~

~~E. "Train-the-trainer program" means a state-approved program which consists of formal instructions to potential instructors on how to train adults through demonstrations and lectures.~~

~~F. "Retraining" means required training for those nurse aides who have not performed paid services for a continuous period of 24 months since the most recent completion of a training and competency evaluation program.~~

~~G. "Competency evaluation" means a written or oral examination which addresses each requirement of OBRA 1987 for nurse aides, and a demonstration of the tasks the aide will be expected to perform as part of his function as a nurse aide.~~

~~H. "Testing out or challenging the test" means that those individuals acting as nurse aides in nursing facilities as of July 1, 1989, may be determined competent by taking the competency~~

evaluation without enrolling in the approved nurse aide training course.

I. "Deemed competency" means that those individuals who, prior to January 1, 1989, completed a nurse aide training program that met the State's requirements at the time it was offered, may be determined to have completed a training and competency evaluation program and be certified as competent.

J. "State survey agency" means the Bureau of Facility Review in the Division of Health Care Financing, which is responsible for certification of nursing facilities and for conducting surveys to determine compliance with Medicaid requirements.

#### **R414-7B-2. Procedures for Achieving Certification.**

A. All nurse aides employed by a nursing facility after July 1, 1989, shall complete the nurse aide training approved by the State Office of Vocational Education, and pass the nurse aide competency evaluation or be enrolled in the nurse aide training program by January 1, 1990.

B. A nursing facility must make the necessary provision for the individual to participate in and complete the competency evaluation by January 1, 1990.

C. Deemed competency

1. Individuals who were certified as nurse aides by the State Office of Vocational Education before January 1, 1989, shall be deemed to have met the OBRA requirement upon completion of the approved in-service training on mental retardation and mental illness.

2. It shall be the responsibility of the nursing facility to provide this in-service training on mental retardation and mental illness and to notify the State Office of Vocational Education when it is completed.

D. Testing out

Those aides employed by a nursing facility on or before July 1, 1989, who have not been deemed certified, if they elect to test out, shall be determined competent by:

1. successfully testing out on the competency evaluation, including the written and skills components of the evaluation, provided by the State Office of Vocational Education or a State Office of Vocational Education-approved program which meets federal requirements; and

2. presenting proof of employment at a nursing facility.

E. Nurse aides certified in other states

Nurse aides certified in other states before July 1, 1989, may be deemed as certified nurse aides in Utah if they complete the approved in-service training on mental retardation and mental illness provided by the nursing facility. After July 1, 1989, they may be deemed as certified nurse aides in Utah if they have documentation of certification in another state.

#### **R414-7B-3. Competency Evaluation.**

A. Administration of the competency evaluation

1. Vocational centers and community colleges are approved by the State Office of Vocational Education to provide competency evaluations to nurse aides, using both written or oral examinations and demonstration of skills.

a. The written examination shall be administered by the vocational centers and community colleges approved by the State Office of Vocational Education with the following exception: Nursing facility personnel may proctor the written examination

when the State Office of Vocational Education is confident that the competency evaluation program is secure from tampering, is standardized and scored by a testing, education or other organization approved by the State Office of Vocational Education, and requires no actual administration or scoring by facility personnel.

b. The skills demonstration component shall be performed in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide, and must be administered and evaluated by a registered nurse with at least one year's experience in providing care for the elderly or the chronically ill of any age. The skills demonstration shall be administered only by the State Office of Vocational Education.

2. If the individual fails to satisfactorily complete the evaluation, the individual must be advised of the areas in which he was inadequate, and that he may take the evaluation a maximum of three times:

3. Any individual who takes the competency evaluation must be advised in advance that a record of the successful completion of the evaluation shall be included in the nurse aide registry, and shall be required to sign a Release of Information form which indicates the nurse aide's understanding of information that is required to be entered into the nurse aide registry.

4. The State Office of Vocational Education shall periodically update and validate the competency evaluation.

B. Content of the Competency Evaluation

1. Written or oral examination

The State Office of Vocational Education shall establish a written or oral examination (in the case of individuals with limited literacy in English) that addresses each requirement as prescribed in OBRA 1987. The questions shall be developed from a pool of test questions, only a portion of which shall be used in any one evaluation, under a system which maintains the integrity of both the pool of questions and the individual evaluations.

2. Demonstration of skills

The competency evaluation must include demonstration of the tasks the aide will be expected to perform as part of his function as a nurse aide.

C. Requirements for the skills training component

1. For the skills training component of the evaluation, a performance record shall be developed for each nurse aide training program of major duties and skills taught which consist of, at a minimum:

a. a listing of the duties and skills expected to be learned in the program;

b. a record documenting when the aide performs this duty or skill;

c. documentation of satisfactory or unsatisfactory performance;

d. the date of the performance;

e. the instructor supervising the performance.

2. At the completion of the nurse aide training program, the nurse aide and his employer shall receive a copy of this record. If the individual did not successfully perform all the duties and skills on this performance record, he shall receive supervision for all duties and skills not satisfactorily performed until such satisfactory performance is confirmed.

3. The demonstration aspect of the skills training portion of the competency evaluation consists of a minimum performance

of five tasks, all of which are included in the performance record. These five tasks are selected for each aide from a pool of evaluation items ranked according to degree of difficulty. A random selection of tasks shall be made with at least one task from each degree of difficulty.

**R414-7B-4. Nurse Aide Training Program.**

~~A. Administration~~

~~1. Training and competency evaluation programs shall be administered through the State Office of Vocational Education in accordance with a contract between the Division of Health Care Financing and the Department of Education.~~

~~2. All agencies conducting nurse aide training programs shall be approved by the State Office of Vocational Education.~~

~~3. Each area vocational center, community college, or nursing facility that conducts nurse aide training programs shall designate a qualified registered nurse to oversee training and instruction.~~

~~B. Training program approval and review~~

~~1. Process~~

~~a. The State Office of Vocational Education shall review and render a determination regarding approval or disapproval of any nurse aide training when requested to do so by a Medicare or Medicaid-participating nursing facility. The State Office of Vocational Education, at its option, may also agree to review and render approval or disapproval of any nurse aide training program when requested to do so by another entity.~~

~~b. The State Office of Vocational Education must, within 30 days of the date of an acceptable request, either advise the requestor of the State Office of Vocational Education's determination, or must seek additional information from the requesting entity with respect to the program for which it is seeking approval.~~

~~c. Nursing facilities may apply for approval of a nurse aide training program by completing an application provided by the State Office of Vocational Education.~~

~~2. Requirements~~

~~a. The State Office of Vocational Education shall approve any nurse aide training program which meets the criteria specified in OBRA 1987, the federal Health Care Financing Administration's guidelines, and guidelines designated by the State Division of Health Care Financing.~~

~~b. Minimal content requirements must be met for the nurse aide training program to be approved by the State Office of Vocational Education. The nurse aide training program must consist of no less than 80 hours of training. The curriculum of the nurse aide training program must include at least the following subjects:~~

~~1) at least 16 hours of training in the following areas prior to any direct contact with a resident:~~

- ~~a) communication and interpersonal skills;~~
- ~~b) infection control, including AIDS;~~
- ~~c) safety and emergency procedures;~~
- ~~d) promoting residents' independence;~~
- ~~e) respecting residents' rights;~~
- ~~f) basic nursing skills.~~

~~2) The skills training of at least 16 hours shall ensure that each nurse aide, at a minimum, demonstrates competencies in the following areas:~~

- ~~a) Basic nursing skills:~~

- ~~(1) caring for residents when death is imminent;~~
- ~~(2) taking and recording vital signs;~~
- ~~(3) measuring and recording height;~~
- ~~(4) caring for residents' environment;~~
- ~~(5) recognizing abnormal signs and symptoms of common diseases and conditions.~~

~~b) Personal care skills, including, but not limited to:~~

- ~~(1) bathing, including mouth care;~~
- ~~(2) grooming;~~
- ~~(3) dressing;~~
- ~~(4) toileting;~~
- ~~(5) assisting with eating and hydration;~~
- ~~(6) proper feeding techniques; and~~
- ~~(7) skin care.~~

~~c) Basic restorative services:~~

- ~~(1) use of assistive devices in ambulation, eating, and dressing;~~

- ~~(2) maintenance of range of motion;~~
- ~~(3) proper turning and positioning in bed and chair;~~
- ~~(4) bowel and bladder training;~~
- ~~(5) care and use of prosthetic and orthotic devices; and~~
- ~~(6) transfer techniques;~~

~~d) Mental health and social service skills:~~

- ~~(1) modifying his own behavior in response to the resident's behavior;~~

- ~~(2) identifying developmental tasks associated with the aging process;~~

- ~~(3) training the resident in self-care according to the resident's ability;~~

- ~~(4) behavior management by reinforcing appropriate resident behavior and reducing or eliminating inappropriate behavior;~~

- ~~(5) allowing the resident to make personal choices, providing and reinforcing other behavior consistent with resident's dignity; and~~

- ~~(6) using the resident's family as a source of emotional support.~~

~~e) Residents' rights:~~

- ~~(1) providing privacy and maintaining confidentiality;~~
- ~~(2) promoting the residents' rights to make personal choices to accommodate their needs;~~

- ~~(3) giving assistance in solving grievances;~~
- ~~(4) providing needed assistance in getting to, and participating in, resident and family groups and other activities;~~

- ~~(5) maintaining care and security of residents' personal possessions;~~

- ~~(6) providing care which maintains residents free from abuse, mistreatment, or neglect; reporting any instances of such poor care to appropriate facility staff; and~~

- ~~(7) maintaining the residents' environment and care through appropriate nurse aide behavior so as to minimize the need for physical and chemical restraints.~~

~~c. Qualifications of instructors:~~

~~1) Non-nursing facility-based programs:~~

~~Nurse aide training and competency evaluation programs must have a program coordinator or primary instructor who is a registered nurse with at least two years of experience in caring for the elderly or chronically ill of any age.~~

~~2) Nursing facility-based programs:~~

~~a) The program coordinator in a nursing facility-based program may be the director of nursing for the facility as long as the facility remains in full compliance with OBRA 1987, Section 4211, requirements.~~

~~b) The primary instructor must be a licensed nurse with at least one year of experience in a nursing facility.~~

~~3) The program coordinator or primary instructor must have successfully completed a "train-the-trainer" type program approved by the State Office of Vocational Education or have demonstrated competence to teach adult learners as defined by the State Office of Vocational Education.~~

~~4) Qualified personnel from the health professions may supplement the program coordinator or primary instructor in the case of non-facility programs, or the program instructor in the case of facility-based programs, and as program trainers in both facility-based and non-facility-based programs;~~

~~5) Program trainers may include: registered nurses, licensed practical or vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech or language therapists, and any other appropriate and duly qualified personnel.~~

~~6) To function as program trainers, these health professionals must have a minimum of one year of current experience in the care of the elderly or chronically ill of any age, or have equivalent experience, and must be currently licensed, registered or certified in their field.~~

~~7) Licensed practical nurses, under the general supervision of the primary instructor, may provide classroom and skills training instruction and supervision if they have at least two years of experience in caring for the elderly or chronically ill of any age, or have equivalent experience.~~

~~8) Instructor-to-student ratio~~

~~A student-to-instructor ratio of 15:1 for clinical instruction and 30:1 for theory instruction shall not be exceeded.~~

~~9) Facilities~~

~~A classroom must be provided that has the following:~~

~~a) adequate space and furniture for the number of students;~~

~~b) adequate lighting and ventilation;~~

~~c) comfortable temperature;~~

~~d) appropriate audio-visual equipment;~~

~~e) skills lab equipment to simulate a resident's unit;~~

~~f) clean and safe environment;~~

~~g) appropriate textbooks and reference materials.~~

~~C. Compliance reviews~~

~~1. Initial post-approval and ongoing reviews~~

~~After the initial approval of a training and competency evaluation program, an initial one-year post-approval review shall be done by the State Office of Vocational Education to determine the program's compliance with the OBRA 1987 requirements.~~

~~2. After the one-year review, an on-site review shall be completed at least every two years by the State Office of Vocational Education.~~

~~3. A self-evaluation shall be submitted by the program provider to the State Office of Vocational Education each year that an on-site review is not scheduled.~~

~~4. Minimum program review standards~~

~~The training and evaluation program review must include:~~

~~a. skills training experience;~~

~~b. maintenance of qualified faculty members for both classroom and skills portions of the training and competency evaluation programs;~~

~~c. maintenance of the security of the competency evaluation examinations;~~

~~d. a record of complaints received about the program;~~

~~e. a record that each nursing facility has provided certified nurse aides with six hours of staff development training per quarter with compensation for the training;~~

~~f. curriculum content that meets federal and state requirements; and~~

~~g. classroom facilities that meet federal requirements for nurse aide training programs.~~

~~5. Division of Health Care Financing shall enforce the standards for nurse aide training and competency evaluation described in OBRA 1987, Section 4211, which are hereby adopted and incorporated by reference.~~

~~6. In addition to the required nurse aide training, all nurse aides shall receive an orientation program from the nursing facility where they are employed, which is not included in the required 80 hours of training. This orientation phase shall include, but is not limited to, an explanation of:~~

~~1) the organizational structure of the facility;~~

~~2) the facility policies and procedures;~~

~~3) the philosophy of care of the facility;~~

~~4) the description of the resident population; and~~

~~5) the employee rules.~~

#### **R414-7B-5. Nurse Aide Registry.**

~~A. A central nurse aide registry has been developed and shall be maintained under the direction of the State Office of Vocational Education. This registry must include identification of individuals who have successfully completed and passed the nurse aide training and competency evaluation program with a passing score of 75 percent or above.~~

~~B. Any organization responsible for the nurse aide competency evaluation program must report to the nurse aide registry within 30 days the names of all individuals who have satisfactorily completed the nurse aide training and competency evaluation program.~~

~~C. The registry shall also document substantiated allegations of resident neglect, abuse, or misappropriation of resident property by a nurse aide in a nursing facility, including an accurate summary of the findings. If the nurse aide disputes the findings, this information shall also be entered into the registry.~~

~~D. The Division of Health Care Financing's Bureau of Facility Review shall investigate such complaints. A nurse aide shall be entitled to a hearing, to be conducted through the Division of Health Care Financing, before a substantiated claim can be entered against the nurse aide.~~

~~E. The Division of Health Care Financing shall enforce the standards for the nurse aide registry described in OBRA 1987, Sections 4211 and 4212, which are hereby adopted and incorporated by reference.~~

#### **R414-7B-6. Limitations.**

~~A. The State Office of Vocational Education may not approve a facility-based nurse aide training program if, in the prior~~

two years, the facility's participation in the Medicare and Medicaid programs has been terminated.

B. Nurse aide training programs must be reviewed and reapproved at least every two years.

C. The competency evaluation, both written and skills components, may not be administered by a skilled nursing facility which participates in Medicare nor a nursing facility which participates in Medicaid.

D. After January 1, 1990, nursing facilities may not use nurse aides for more than four months unless they have completed the nurse aide training and competency evaluation program.

E. After January 1, 1990, a nursing facility may not permit an individual to work as a nurse aide for monetary compensation unless the facility has checked the credentials of the nurse aide through the nurse aide registry.

F. Upon review of program performance standards, those programs not meeting minimum requirements and which do not provide an acceptable plan for correcting deficiencies shall be terminated from the program.

#### G. Retraining

Nurse aides who have not performed paid services for a continuous period of 24 months since the most recent completion of a training and competency evaluation program shall be required to undergo necessary retraining.]

### **R414-7B. Nursing Assistant Training and Competency Evaluation Program.**

#### **R414-7B-1. Introduction and Authority.**

The Nursing Assistant Training and Competency Evaluation Program is authorized by the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100 203, 101 Stat. 1330, Sec. 4211.(b)(5)(A)(B)(C)(D)(E)(F)(G), (e)(1)(2), f(2)(A)(B), which the Department adopts and incorporates by reference. The purpose of this program is to allow a certified nursing assistant (CNA) to provide quality nursing services to nursing facility residents.

#### **R414-7B-2. Definitions.**

(a) "Certified Nursing Assistant" means any person who completes a UNAR-approved nursing assistant training program and passes the state certification examination.

(b) "Competency evaluation" means a written or oral examination that addresses each requirement of OBRA for a nursing assistant and a demonstration of the tasks the nursing assistant is expected to perform as part of the assistant's function.

(c) "Deemed competency" means that an individual is deemed to be competent if the individual completed a state-approved nursing assistant training program on or before July 1, 1989.

(d) "Nursing assistant" means any individual who provides nursing or nursing-related services to residents in a nursing facility, but does not include an individual who is a licensed professional or who volunteers to provide these services without monetary consideration.

(e) "Nursing Assistant Training and Competency Evaluation Program" (NATCEP) means any program that the Utah Nursing Assistant Registry (UNAR) approves to offer training to an individual who is interested in becoming a certified nursing assistant in the state of Utah.

(f) "Nursing facility" means any institution that is licensed and Medicare or Medicaid-certified to provide long-term care.

(g) "Resident" means an individual who resides in and receives medical long-term nursing services in a Medicare or Medicaid-certified nursing facility.

(h) "Retraining" means training for a CNA who has not performed paid services for a total of 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the state-approved nursing assistant training or certification renewal.

(i) "State survey agency" means the Bureau of Health Facility Licensing, Certification and Resident Assessment, within the Department of Health, which is responsible for nursing facility certification and for conducting surveys to determine compliance with Medicare and Medicaid requirements.

(j) "Supervised practical training" means training in a nursing facility in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a licensed nurse, who is a UNAR-approved instructor.

(k) "Train-the-trainer program" means a UNAR-approved program that consists of formal instructions to potential instructors on how to train adults through demonstrations and lectures.

(l) "Waiver of CNA Training Program" means a waiver that allows a qualified nursing professional and qualified in-state expired CNA to challenge the state written and skill examination.

(m) "Utah Nursing Assistant Registry" means the state agency that approves nursing assistant training programs, monitors all UNAR test sites, maintains an abuse registry for all substantiated allegations of resident neglect, abuse or misappropriation of resident property by a CNA in a nursing facility or Medicare and Medicaid facility, certifies nursing assistants who have completed a nursing assistant training program, and renews certifications of qualified CNAs.

#### **R414-7B-3. Program Access Requirements.**

(1) A nursing assistant is required to complete a UNAR-approved nursing assistant training program and become certified within 120 days of the first date of employment.

(2) An individual who was certified as a nursing assistant on or before July 1, 1989, is deemed to be competent and to have met the OBRA requirement upon completion of the approved in-service training on mental retardation and mental illness.

(3) If specific requirements are met in the following cases, the UNAR office may grant a waiver to:

(a) a nursing student who has completed the first semester of nursing school within the past two years and to a current nursing student. An official transcript of a nursing fundamentals class must accompany the waiver request. If the candidate does not pass either the skills or written portion of the CNA examination after three attempts, she must complete a UNAR-approved nursing assistant training program.

(b) an expired licensed nurse who can show proof of previous licensure and who was in good standing with her professional board. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination. If the candidate does not pass either portion, she must complete a UNAR-approved nursing assistant training program.

(c) an expired Utah CNA who is in good standing with UNAR. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination. If the candidate does not pass either portion, the candidate must complete a UNAR-approved nursing assistant training program.

(d) any out-of-state CNA deemed certified and in good standing with another state's survey agency. UNAR grants reciprocity upon the CNA providing proof of certification in her state.

(4) An out-of-state expired CNA must complete a UNAR-approved nursing assistant training program.

#### **R414-7B-4. Competency Evaluation.**

(1) An entity that proctors competency evaluations using both written or oral examinations and demonstrations of skills to nursing assistants must be UNAR-approved.

(a) An individual shall perform the skills demonstration component in a facility or laboratory setting comparable to the setting in which the individual will function as a nursing assistant, and a UNAR-approved representative must administer and evaluate the demonstration. (b) The examiner must be a registered nurse (RN) with a current active license to practice nursing as an RN, who is in good standing with the Division of Occupational and Professional Licensing (DOPL) in the state of Utah, with at least one year of experience in providing care for the elderly or chronically ill of any age;

(c) If the individual fails to satisfactorily complete the skills or written examination after three attempts at either, the candidate must be advised of the areas in which the candidate is inadequate and must retrain at an approved nursing assistant training program;

(d) UNAR must advise an individual who takes the competency evaluation that a record of the outcome of the evaluation shall be included in the nursing assistant registry. Further, UNAR shall require the individual to sign a Release of Information form that indicates the nursing assistant's understanding of information that UNAR requires to be entered into the registry;

(e) UNAR shall periodically update and validate the competency evaluations;

(f) UNAR shall establish a written and oral examination that addresses each requirement as prescribed in OBRA. The questions shall be developed from a pool of test questions, only a portion of which shall be used in any one evaluation, under a system that maintains the integrity of both the pool of questions and individual evaluations;

(f) The competency evaluation must include a demonstration of the tasks the nursing assistant is expected to perform as part of the assistant's function as a CNA;

(g) For the skills training component of the evaluation, UNAR shall establish a performance record for each nursing assistant training program of major duties and skills taught that include:

(i) a listing of the duties and skills that UNAR expects a CNA to learn in the program in accordance with Section R414-7B-4;

(ii) a record that documents when the nursing assistant performs this duty or skill;

(iii) documentation of satisfactory or unsatisfactory performance;

(iv) the date of the performance; and

(v) the instructor supervising the performance.

(2) At the completion of the nursing assistant training program, the nursing assistant shall receive a copy of this record.

(3) The demonstration aspect of the skills training portion of the competency evaluation consists of a minimum performance of five tasks, all of which are included in the performance record. UNAR shall select five tasks for each nursing assistant from a pool of evaluation items ranked according to degree of difficulty. UNAR shall make a random selection of tasks with at least one task from each degree of difficulty.

#### **R414-7B-5. Nurse Assistant Training Program.**

(1) UNAR shall administer a NATCEP through a contract with the Department of Health.

(2) An agency that conducts a NATCEP must be UNAR-approved.

(3) Applicants for approval of a nursing assistant training program must be fingerprinted and have their records checked in state and national bureaus. Before receiving NATCEP approval, a nursing assistant training program must send a background check and fingerprinting to UNAR to be placed in the file of the proposed new training program.

(4) In accordance with Section R414-7B-5, UNAR shall review and render a determination regarding approval or disapproval of any nursing assistant training program when a Medicare or Medicaid participating nursing facility requests the determination. UNAR at its option, may also agree to review and render approval or disapproval of any private nursing assistant training program.

(5) UNAR must, within 90 days of the date of an application, either advise the requestor of UNAR's determination, or must seek additional information from the requesting entity with respect to the program for which it is seeking approval.

(6) UNAR shall approve a nursing assistant training program that meets the criteria specified in OBRA, the Centers for Medicare and Medicaid Service's guidelines, guidelines designated by the Department of Health, and all UNAR requirements.

(a) UNAR shall admit a student who is 16 years of age and older on or before the first day that the student begins class; and

(b) shall include an orientation to the training program.

(7) The nursing assistant training program must meet minimal content requirements to be UNAR-approved.

(a) NATCEP must consist of no less than 80 hours of supervised and documented training by a licensed nurse.

(b) The curriculum of the training program must include the following subjects:

(i) communication and interpersonal skills;

(ii) infection control;

(iii) safety and emergency procedures;

(iv) promoting residents' independence;

(v) respecting residents' rights; and

(vi) basic nursing skills.

(c) The trainee must complete at least 16 hours of supervised practical training in a long-term care facility, and complete all skill curriculum and skill competencies prior to training in any facility. The skills training must ensure that each nursing assistant demonstrates competencies in the following areas:

(i) Basic nursing skills;

(A) taking and recording vital signs;  
(B) measuring and recording height;  
(C) caring for residents' environment; and  
(D) recognizing abnormal signs and symptoms of common diseases and conditions.

(ii) Personal care skills:  
(A) bathing that includes mouth care;  
(B) grooming;  
(C) dressing;  
(D) using the toilet;  
(E) assisting with eating and hydration;  
(F) proper feeding techniques; and  
(G) skin care.

(iii) Basic restorative services:  
(A) use of assistive devices in ambulation, eating, and dressing;  
(B) maintenance of range of motion;  
(C) proper turning and positioning in bed and chair;  
(D) bowel and bladder training;  
(E) care and use of prosthetic and orthotic devices; and  
(F) transfer techniques.

(iv) Mental Health and Social Service Skills:  
(A) modifying her own behavior in response to the resident's behavior;  
(B) identifying developmental tasks associated with the aging process;  
(C) training the resident in self-care according to the resident's ability;  
(D) behavior management by reinforcing appropriate resident behavior and reducing or eliminating inappropriate behavior;  
(E) allowing the resident to make personal choices, providing and reinforcing other behavior consistent with resident's dignity; and  
(F) using the resident's family as a source of emotional support.

(v) Resident's rights:  
(a) providing privacy and maintaining confidentiality;  
(b) promoting the resident's right to make personal choices to accommodate the resident's needs;  
(c) giving assistance in solving grievances;  
(d) providing needed assistance in getting to and participating in resident and family groups and other activities;  
(e) maintaining care and security of resident's personal possessions;  
(f) providing care that keeps a resident free from abuse, mistreatment, or neglect, and reporting any instances of poor care to appropriate facility staff; and  
(g) maintaining the resident's environment and care through appropriate nurse aide behavior to minimize the need for physical and chemical restraints.

(8) Qualification of Instructors:  
(a) a nursing assistant training program must have a program coordinator who is a registered nurse with a current and active Utah license to practice;  
(b) who is in good standing with DOPL;  
(c) with two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age; and

(d) must have three hours of documented consulting time per month with the respective program.

(9) Nursing facility-based programs:  
(a) the program coordinator in a nursing facility-based program may be the director of nursing for the facility as long as the facility remains in full compliance with OBRA requirements.  
(b) the primary instructor must be a licensed nurse with a current and active Utah license to practice and must be in good standing with DOPL; and  
(c) must have two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age.

(10) Before approval of a nursing assistant training program, the program coordinator and primary instructor must successfully complete a UNAR-approved "Train-the-Trainer" program or demonstrate competence to teach adult learners as defined by UNAR.

(11) Students who provide services to residents must be under the direct supervision of a licensed nurse who is a UNAR-approved clinical instructor and whose clinical time is separate from her facility employment.

(12) Qualified personnel from the health professions may supplement the program coordinator or primary instructor. The program coordinator or primary instructor must be present during all provided supplemental training.

(13) Qualified personnel include registered nurses, licensed practical or vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech or language therapists, and any other appropriate and duly qualified personnel.

(14) UNAR requires qualified personnel to have at least one year of current experience in the care of the elderly or chronically ill of any age, or to have equivalent experience. Qualified personnel must also meet current licensure requirements, whether they are registered or certified in their field.

(15) A nursing assistant training program must have a student-to-instructor ratio of 12:1 for clinical instruction and shall not exceed a 30:1 ratio for theory instruction. UNAR requires an instructor assistant when the program has more than 20 students.

(16) A nursing assistant training program must provide a classroom with the following:  
(a) adequate space and furniture for the number of students;  
(b) adequate lighting and ventilation;  
(c) comfortable temperature;  
(d) appropriate audio-visual equipment;  
(e) skills lab equipment to simulate a resident's unit;  
(f) clean and safe environment; and  
(g) appropriate textbooks and reference materials.

(17) Initial post-approval and ongoing reviews:  
(a) After the initial approval of a nursing assistant training program, UNAR grants a one-year probationary period;  
(b) During the probationary period, UNAR may withdraw program approval if there is a violation of OBRA, state, federal, or UNAR requirements;  
(c) After the probationary period, UNAR shall complete an on-site review and then complete subsequent on-site reviews at least every two years;

(d) The CNA training program shall submit a self-evaluation to UNAR during the interim year that UNAR does not complete an on-site review;

(e) In the event that UNAR does not complete an on-site review within two years, the CNA training program is responsible to send a self-evaluation to UNAR for the applicable two-year period;

(f) If UNAR does not make an on-site visit within two years and the CNA training program sends in a self-evaluation, UNAR must make an on-site visit within one year of the self-evaluation.

(18) The training and evaluation program review must include:

(a) skills training experience;

(b) maintenance of qualified faculty members for both classroom and skills portions of the nursing assistant training program;

(c) maintenance of the security of the competency evaluation examinations;

(d) a record of complaints received about the program;

(e) a record that each nursing facility has provided certified nursing assistants with 12 hours of staff development training per year with the compensation for the training;

(f) curriculum content that meets state and federal requirements; and

(g) classroom facilities and required equipment that meet state, federal and UNAR requirements.

(19) In addition to the nursing assistant training that UNAR requires, all nursing assistants shall receive an orientation program from the nursing facility where they are employed, which is not included in the required 80 hours of training. This orientation phase shall include an explanation of:

(a) the organizational structure of the facility;

(b) the facility policies and procedures;

(c) the philosophy of care of the facility;

(d) the description of the resident population; and

(e) the employee rules.

#### **R414-7B-6. Nurse Aide Registry.**

(1) UNAR is the central registry for all certified nursing assistants. This registry must include identification of individuals who have successfully completed and passed a nursing assistant training program with a passing score of 75.

(2) A nursing assistant training program must report to UNAR, within five days of the completion date of the program, the names of all individuals who have satisfactorily completed the certified nursing assistant training program.

(3) The state survey agency shall enforce the standards of UNAR described in OBRA, Secs. 4211 and 4212.

(4) The state survey agency shall investigate all complaints of resident neglect, abuse or misappropriation of resident property by a CNA. A CNA is entitled to a hearing through the Division of Medicaid and Health Financing before a substantiated claim can be entered into the registry.

(5) After notification from the health facility licensing, certification and resident assessment agency of a substantiated claim of abuse, neglect or misappropriation of property of a vulnerable adult by a CNA, the name of the CNA and an accurate

summary of the findings are placed in the abuse registry in accordance with UNAR protocol.

#### **R414-7B-7. Limitations.**

(1) UNAR may approve a facility-based NATCEP only if the facility's participation in the Medicare and Medicaid programs has not been terminated within the last two years.

(2) UNAR must review and reapprove a nursing assistant training program at least every two years.

(3) A skilled nursing facility that participates in a Medicare or Medicaid facility may not administer the written and skills components of the competency evaluation.

(4) A nursing facility may employ a nursing assistant for more than 120 days only if the assistant has completed a nursing assistant training program.

(5) Upon review of program performance standards, UNAR shall terminate a program that does not provide an acceptable plan to correct deficiencies.

(6) A nursing assistant who does not perform paid services that total at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months that follow the completion date of the state-approved nursing assistant training program or certification renewal, must retrain and repeat the skills and written examination.

(7) A candidate has one attempt to pass both the skills and written portion of the examination. If the candidate fails either portion of the examination, the candidate must complete a UNAR-approved nursing assistant training program.

**KEY: [m]Medicaid**

**Date of Enactment or Last Substantive Amendment: [1989]2010**

**Notice of Continuation: October 20, 2009**

**Authorizing, and Implemented or Interpreted Law: 26-1-4.1; 26-1-5; 26-18-3**

## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-54-3** Services

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 33343

FILED: 01/27/2010

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to incorporate by reference the Speech-Language Services Provider Manual, effective 04/01/2010.

**SUMMARY OF THE RULE OR CHANGE:** This change incorporates by reference the Speech-Language Services Provider Manual, effective 04/01/2010.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Speech-Language Services Provider Manual does not create costs or savings to the Department or other state agencies.
- ◆ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide speech-language services to Medicaid clients.
- ◆ **SMALL BUSINESSES:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Speech-Language Services Provider Manual does not create costs or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Speech-Language Services Provider Manual does not create costs or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because the incorporation of ongoing Medicaid policy described in the Speech-Language Services Provider Manual does not create additional costs to a Medicaid client or a loss of revenue to a Medicaid provider.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule should not have a direct fiscal impact on business. Incorporation of this section of the Provider Manual by this rule assures that the Medicaid program is implemented through administrative 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 03/17/2010**

**THIS RULE MAY BECOME EFFECTIVE ON:** 03/24/2010

**AUTHORIZED BY:** David Sundwall, MD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-54. Speech-Language Pathology Services.**

**R414-54-3. Services.**

- (1) Speech-language pathology services are optional.
- (2) Speech-language pathology services are limited to services described in the Speech-Language Services Provider Manual, effective ~~January~~ April 1, 2010, which is incorporated by reference.
- (3) The Speech-Language Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.
- (4) Speech-language pathology services may be provided by licensed speech-language pathologists, or speech-language pathology aides under the supervision of speech-language pathologists.

**KEY:** Medicaid, speech-language pathology services

**Date of Enactment or Last Substantive Amendment:** ~~January~~ April 1, 2010

**Notice of Continuation:** March 9, 2009

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-59-4  
Client Eligibility Requirements**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 33344

FILED: 01/27/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to incorporate by reference the Audiology Services Provider Manual, effective 04/01/2010.

**SUMMARY OF THE RULE OR CHANGE:** This change incorporates by reference the Audiology Services Provider Manual, effective 04/01/2010.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Audiology Services Provider Manual does not create costs or savings to the Department or other state agencies.

◆ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide audiology services to Medicaid clients.

◆ **SMALL BUSINESSES:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Audiology Services Provider Manual does not create costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Audiology Services Provider Manual does not create costs or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because the incorporation of ongoing Medicaid policy described in the Audiology Services Provider Manual does not create additional costs to a Medicaid client or a loss of revenue to a Medicaid provider.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule should not have a direct fiscal impact on business. Incorporation of this section of the Provider Manual by this rule assures that the Medicaid program is implemented through administrative 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 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-59. Audiology-Hearing Services.****R414-59-4. Client Eligibility Requirements.**

(1) Audiology-hearing services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(2) An individual receiving audiology-hearing services may receive audiology services as described in the Audiology Services Provider Manual, effective [January]April 1, 2010, which is incorporated by reference.

(3) An individual receiving audiology-hearing services must meet the criteria established in the Audiology Services Provider Manual and obtain prior approval if required.

**KEY: Medicaid, audiology**

**Date of Enactment or Last Substantive Amendment:** [January 1], 2010

**Notice of Continuation:** November 22, 2005

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3

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

### R414-302-4

#### Residents of Institutions

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33345

FILED: 01/27/2010

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to clarify who can receive Medicaid coverage when residing in a public institution.

**SUMMARY OF THE RULE OR CHANGE:** This change clarifies who can receive Medicaid coverage when residing in a public institution. It further corrects and removes unnecessary incorporated references from the text.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-18-3

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Removes 20 Code of Federal Regulations 416.201, published by Office of the Federal Register, 10/01/1997

- ◆ Removes 20 Code of Federal Regulations 416.211, published by Office of the Federal Register, 10/01/1997
- ◆ Removes 42 Code of Federal Regulations 435.1008, published by Office of the Federal Register, 10/01/1997
- ◆ Adds 42 Code of Federal Regulations 435.1009, published by Office of the Federal Register, 10/01/2009
- ◆ Adds 42 Code of Federal Regulations 435.1010, published by Office of the Federal Register, 10/01/2009

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The Department does not expect any impact to the state budget because this change only specifies the limitations of Medicaid eligibility for residents of public institutions. It neither increases nor decreases coverage for Medicaid clients.
- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide Medicaid services to Medicaid clients.
- ◆ SMALL BUSINESSES: The Department does not expect any change in revenue to small businesses because this change only specifies the limitations of Medicaid eligibility for residents of public institutions. It neither increases nor decreases coverage for Medicaid clients.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not expect any change in revenue to Medicaid providers because this change only specifies the limitations of Medicaid eligibility for residents of public institutions. It neither increases nor decreases coverage for Medicaid clients. Medicaid clients, therefore, will not see additional costs or savings in their Medicaid services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not expect any change in revenue to a single Medicaid provider because this change only specifies the limitations of Medicaid eligibility for residents of public institutions. It neither increases nor decreases coverage for a single Medicaid client. A Medicaid client, therefore, will not see additional costs or savings in his Medicaid services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule updates and clarifies language, with no expected changes to current practice. Therefore no expected fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HEALTH  
 HEALTH CARE FINANCING,  
 COVERAGE AND REIMBURSEMENT POLICY

CANNON HEALTH BLDG  
 288 N 1460 W  
 SALT LAKE CITY, UT 84116-3231  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-302. Eligibility Requirements.**

**R414-302-4. Residents of Institutions.**

(1) The Department provides Medicaid coverage to individuals who are residents of institutions [adopts 20 CFR 416.201 and 416.211, 1997 ed. and] subject to the limitations related to residents of public institutions, patients in an institution for mental diseases who do not meet the age criteria, and patients in an institution for tuberculosis as defined in 42 CFR [435.1008, 1997]435.1009, 2009 ed., which is incorporated by reference. The Department also incorporates by reference the definitions in 42 CFR 435.1010, 2009 ed. [-which are incorporated by reference.]

(2) The Department does not consider persons under the age of 18 to be residents of an institution if they are living temporarily in the institution while arrangements are being made for other placement.

(3) The Department does not consider an individual who resides in a temporary shelter for a limited period of time as a resident of an institution.

(4) The Department considers ineligible residents of institutions for mental disease as non-residents while on conditional or convalescent leave from the institution.

(5) The Department limits Medicaid eligibility for residents of institutions for mental disease to individuals residing in the Utah State Hospital who meet the age requirements and other eligibility criteria.

**KEY: public assistance programs, application, eligibility, Medicaid**

**Date of Enactment or Last Substantive Amendment: [September 1, 2009]2010**

**Notice of Continuation: January 25, 2008**

**Authorizing, and Implemented or Interpreted Law: 26-18**

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-303-3**

**A, B and D Medicaid and A, B and D  
Institutional Medicaid Coverage Groups**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 33346

FILED: 01/27/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to update and correct incorporated materials and to clarify certain eligibility provisions.

**SUMMARY OF THE RULE OR CHANGE:** This change updates and makes corrections to incorporated materials dealing with coverage groups. It also deletes unnecessary incorporated materials. It further clarifies the process used by the Department to determine disability for Medicaid eligibility and updates the incorporated requirements for that process. It also modifies language concerning retroactive coverage to comply with Rule R414-306, and clarifies certain other provisions.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-18-3

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350; Publisher - Office of the Federal Register; Date Issued 10/01/2009
- ◆ Adds 42 CFR 435.232 and 435.236; Publisher - Office of the Federal Register; Date Issued 10/01/2009
- ◆ Removes 42 CFR 435.541; Publisher - Office of the Federal Register; Date Issued 10/01/2001
- ◆ Removes 20 CFR 416.901 through 416.1094; Office of the Federal Register; Date Issued 10/01/2002
- ◆ Updates Section 1634(b), (c) and (d), Section 1902(a)(10)(A)(i)(II), Section 1902(a)(10)(A)(ii)(X), Section 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act; Publisher - Social Security Administration; Date Issued 01/01/2009
- ◆ Updates Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act; Publisher - Social Security Administration; Date Issued 01/01/2009

- ◆ Adds 42 CFR 435.541; Publisher - Office of the Federal Register; Date Issued 10/01/2009
- ◆ Adds 20 CFR 416.901 through 416.998, 416.1015(a) through (e), and 416.1016; Publisher - Office of the Federal Register; Date Issued 10/01/2009

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The Department does not expect any impact to the state budget because this change neither increases nor decreases coverage for Medicaid clients. It only clarifies certain eligibility provisions and does not affect eligibility criteria.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide Medicaid services to Medicaid clients.
- ◆ **SMALL BUSINESSES:** The Department does not expect any change in revenue to small businesses because this change neither increases nor decreases coverage for Medicaid clients. It only clarifies certain eligibility provisions and does not affect eligibility criteria.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not expect any change in revenue to Medicaid providers because this change neither increases nor decreases coverage for Medicaid clients. It only clarifies certain eligibility provisions and does not affect eligibility criteria. Medicaid clients, therefore, will not see additional costs or savings in their Medicaid services.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The Department does not expect any change in revenue to a single Medicaid provider because this change neither increases nor decreases coverage for a single Medicaid client. It only clarifies certain eligibility provisions and does not affect eligibility criteria. A Medicaid client, therefore, will not see additional costs or savings in his Medicaid services.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed rule updates and clarifies language, with no expected changes to current practice. Therefore no expected fiscal impact on business.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at [cdevashrayee@utah.gov](mailto:cdevashrayee@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-303. Coverage Groups.**

**R414-303-3. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.**

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.232, 435.236, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350, 2009 ed., which are incorporated by reference.~~and 435.541, 2001 ed., which are incorporated by reference.~~ ~~The Department provides coverage to individuals as described in 20 CFR 416.901 through 416.1094, 2002 ed., which is incorporated by reference.]~~ The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv)~~(H)~~ of Title XIX of the Social Security Act in effect January 1, ~~[2001]~~2009, which are incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, ~~[2001]~~2009, which is incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An individual can request a disability determination from the State Medicaid Disability Office. The Department adopts the disability determination requirements described in 42 CFR 435.541, 2009 ed., and Social Security's disability requirements for the Supplemental Security Income program as described in 20 CFR 416.901 through 416.998, 416.1015(a) through (e), and 416.1016, 2009 ed., which are incorporated by reference, to decide if an individual is disabled. The Department notifies the Medicaid eligibility agency of its disability decision, who then sends a disability decision notice to the client.

~~(3)a) [An applicant or recipient may request the State Medicaid Disability Office to review medical evidence to determine if the individual is disabled or blind.] If [the client]an individual has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.~~

~~(a)b) If, within the prior 12 months, SSA has determined that the individual is not disabled, the Medicaid agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's~~

~~decision throughout the appeal process, including the final SSA decision.~~

~~(b)c) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.~~

~~(e)d) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.~~

~~(d)e) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.~~

(4) If an individual denied disability status by the Medicaid Disability Review Office requests a fair hearing, the Disability Review Office may reconsider its determination as part of fair hearing process. The individual must request the hearing within the time limit defined in Section R414-301-6.

(a) The individual may provide the [Department]Medicaid eligibility agency additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The ~~[Department shall notify]~~Medicaid eligibility agency notifies the individual of ~~[its decision upon]~~the reconsideration decision. Thereafter, the individual may choose to pursue or abandon ~~[his]the~~ fair hearing~~[rights]~~.

(5) If the ~~[Department]~~Medicaid eligibility agency denies an individual's Medicaid application because ~~[it]the~~ Medicaid Disability Review Office or SSA has determined that the individual is not disabled and that determination is later reversed on appeal, the Medicaid eligibility agency determines the individual's eligibility back to the application that gave rise to the appeal. The individual must meet all other eligibility criteria for such past months.~~and the individual has otherwise been eligible, the individual's eligibility shall extend back to the application that gave rise to the appeal.]~~

(a) Eligibility cannot begin any earlier than the ~~[date]month~~ of disability onset or ~~[the date that is]~~three months before the ~~[date]month~~ of application subject to the requirements [as] defined in Section R414-306-4[(2)], whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the Medicaid eligibility agency to request the Disability Medicaid coverage.

(c) The individual must provide any verifications the Medicaid agency needs to determine eligibility for past ~~[or]and~~ current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown or Medicaid Work Incentive (MWI) premium for one or more months to receive coverage, the spenddown or MWI premium must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 200[+]9, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by [the]such section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv)[(+) of Title XIX of the Social Security Act in effect January 1, [200+]2009, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, [200+]2009, for a given year, or as subsequently authorized by Congress. The Medicaid eligibility agency will deny coverage to applicants[~~Applicants will be denied coverage~~] when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the Department shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The Department shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

**KEY: income, coverage groups, independent foster care adolescent**

**Date of Enactment or Last Substantive Amendment: [September 1, 2009]2010**

**Notice of Continuation: January 25, 2008**

**Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5**

## Human Services, Recovery Services R527-37 Closure Criteria for Support Cases

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33332

FILED: 01/19/2010

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This change is to add the department and office authority for creating, amending, and enforcing administrative rules. In addition, the date of the federal citation was updated to reflect the most recent available version of this section of the federal code which has been incorporated by reference.

**SUMMARY OF THE RULE OR CHANGE:** The change is to add an authority and purpose section to the existing rule. Section 62A-11-107 authorizes the Office of Recovery Services (ORS) to adopt, amend, and enforce rules as necessary. A purpose section was added to provide the federal regulations at 45 CFR 303.11, referenced within the rule, which detail case closure criteria for IV-D agencies.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-1-111 and Section 62A-11-107

### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed changes to the rule are for clarification purposes only and do not affect the current procedures. There is no anticipated change in cost or savings due to this amendment.

◆ **LOCAL GOVERNMENTS:** There is no anticipated change in cost or savings due to this amendment since administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not apply to local government.

◆ **SMALL BUSINESSES:** There will be no financial impact for small businesses due to this amendment of this rule since the basic requirements of the rule will not change.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no financial impact for other persons due to this amendment of this rule since the basic requirements of the rule will not change.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no change in compliance costs due to this amendment since the procedures are not changing with the amendment of the current rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Businesses are not addressed in the rule or in the proposed changes, and the changes will not create any fiscal impact on them.

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

HUMAN SERVICES

RECOVERY SERVICES

515 E 100 S

SALT LAKE CITY, UT 84102-4211

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Shancie Nance by phone at 801-536-8191, by FAX at 801-536-8833, or by Internet E-mail at [snance@utah.gov](mailto:snance@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: Mark Brasher, Director

**R527. Human Services, Recovery Services.  
R527-37. Closure Criteria for Support Cases.  
R527-37-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

2. The purpose of this rule is to provide the federal regulation that is incorporated by reference.

**R527-37-2. Closure Criteria for Support Cases.**

This rule establishes the criteria a support case must meet in order to be eligible for case closure under federal regulations. The Office of Recovery Services adopts the federal regulations as published in 45 CFR 303.11, October 1, [~~1994~~]2008 ed., which are incorporated by reference.

**KEY: child support**

**Date of Enactment or Last Substantive Amendment:**  
[~~1992~~]2010

**Notice of Continuation:** September 7, 2007

**Authorizing, and Implemented or Interpreted Law:**  
62A-11-107; 62A-1-111

**Money Management Council,  
Administration**

**R628-11**

**Maximum Amount of Uninsured Public  
Funds Allowed to Be Held by Any  
Qualified Depository**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 33359

FILED: 02/01/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of these changes is to bring the levels of Tier One capital in line with federal definitions and to clarify when the Council may request collateral or drop an allotment to zero when making adjustments to uninsured public funds allotments based on material changes in depositories financial conditions or formal enforcement actions.

**SUMMARY OF THE RULE OR CHANGE:** The rule uses a ratio of Tier One capital to total assets to base the uninsured

public funds allotment calculation on. The Council changed the bottom percentage to bring it into line with federal criteria which states that a financial institution with a Tier One capital ratio below 4% is undercapitalized. Based on this definition the Council raised the percentage in the lowest category from 3.5% to 4%. Language was also added to allow the Council to drop an allotment to zero if a qualified depository comes under a formal enforcement action and the depository does not have collateral available to cover uninsured public funds. The Council may also ask for collateral if the institution does not provide information regarding their financial status in a timely manner.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 51-7-18.1

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There may be additional actions taken by the Council with regards to various financial institutions that are under-capitalized. However, the actions will most likely be infrequent enough to carry negligible increased costs which the Council will simply absorb.

♦ **LOCAL GOVERNMENTS:** This change in the rule does not require local governments to implement changes.

♦ **SMALL BUSINESSES:** This rule does not govern small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no new fees added that would cost any other organization to comply with this change.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no new fees added that would affect any other persons.

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

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

MONEY MANAGEMENT COUNCIL  
ADMINISTRATION  
ROOM 180 UTAH STATE CAPITOL COMPLEX  
350 N STATE ST  
STE 180  
SALT LAKE CITY, UT 84114  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010**

AUTHORIZED BY: William Wallace, Chair

**R628. Money Management Council, Administration.**  
**R628-11. Maximum Amount of Uninsured Public Funds Allowed to Be Held by Any Qualified Depository.**  
**R628-11-5. General Rule.**

**A. Maximum Insured Public Funds**

Any qualified depository may accept, receive, and hold deposits of public funds without limitation, if the total amount of deposits from each public treasurer does not exceed the applicable federal depository insurance limit.

**B. Maximum Deposits in Excess of the Federal Insurance Limits For Qualified Utah Depository Institutions**

(1) For all qualified Utah depository institutions which receive a qualified opinion issued by an independent certified public accountant upon completion of an annual audit performed in accordance with generally accepted auditing standards, and for all qualified Utah depository institutions which do not have an audit conducted by an independent certified public accountant, the maximum amount of uninsured public funds which may be held shall be according to the following schedule:

TABLE 1

Ratio of Tier one Capital to Total Assets	Uninsured Public Funds Allotment		
5.0% or more	One	X	Capital
<del>[3-5%]</del> 4.00% to 4.99%	.5	X	Capital
Less than <del>[3-5%]</del> 4.00%	None		

(2) A qualified Utah depository institution which receives an unqualified opinion issued by an independent certified public accountant upon completion of an annual audit performed in accordance with generally accepted auditing standards, may submit the audit report within 100 days of the date of the audit to the Department of Financial Institutions for review and the Commissioner of Financial Institutions must authorize that the ratios of Tier one capital to total assets applicable to the institution submitting the audit for determining the maximum amount of uninsured public funds allowed may be according to the following schedule:

TABLE 2

Ratio of Tier one Capital to Total Assets	Uninsured Public Funds Allotment		
5% or more	1.5	X	Capital
<del>[3-5%]</del> 4.00% to 4.99%	.75	X	Capital
Less than <del>[3-5%]</del> 4.00%	None		

C. A qualified out-of-state depository institution will be treated as a qualified Utah depository subject to all the provisions of this section in determining its uninsured public funds allotment except that the uninsured public funds allotment will be reduced by multiplying by a factor of total deposits outstanding at Utah branches of the institution divided by the total deposits at the institution. Nothing in R628-11 shall prohibit an out-of-state depository institution from qualifying as a permitted out-of-state depository in accordance with R628-10.

**R628-11-8. Frequency of Adjustment to the Uninsured Public Funds Allotment.**

A. The uninsured public funds allotment for each qualified depository shall be established quarterly by the Council, based on the reports of condition filed with the Commissioner as of the close of the preceding quarter. The uninsured public funds allotments shall be established in accordance with the following:

TABLE 3

Report of Condition As Of:	Effective Date of Allotment
December 31	April 1
March 31	July 1
June 30	October 1
September 30	January 1

B. The Money Management Council may make interim adjustments in a qualified depository's uninsured public funds allotment if material changes in a qualified depository's financial condition have occurred or if there is a formal enforcement action by the federal or state regulator. These interim adjustments may include but are not limited to reducing a qualified depository's uninsured public funds allotment to zero if there is not sufficient collateral to cover uninsured public funds.

C. Any qualified depository that becomes subject to a formal enforcement action by any federal regulator shall notify the Council within twenty-four hours of the publication of the action taken by a federal regulator. Failure of a qualified depository to comply with this requirement to notify the Council may result in action taken by the Council to require collateralization of uninsured public funds in accordance with Section 51-7-18.1(5) and Section R628-11-7.

**KEY: financial institutions, banking law**  
**Date of Enactment or Last Substantive Amendment: ~~March 22, 2005~~ 2010**  
**Notice of Continuation: October 12, 2005**  
**Authorizing, and Implemented or Interpreted Law: 51-7-18.1(2)**

Natural Resources, Forestry, Fire and State Lands  
**R652-9-200**  
 Consistency Review

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 33353  
 FILED: 01/28/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule change is to give the Division flexibility in the types of decision documents created for Division actions and clarifies to the public that all division actions affecting the rights, obligations, or legal interests of others are subject to a review by the affected party.

**SUMMARY OF THE RULE OR CHANGE:** This rule specifies that all Division actions that affect the rights, obligations, or legal interests of a party shall be accompanied by a written record of decision or other decision document.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 65A-1-4(6)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The rule change merely clarifies that all Division actions are subject to a written finding that changes the rights, obligations, or legal interests of a specific person. Because all division actions are already generating decision documents, there is no change to the resources of the state in time, staffing, or equipment.
- ◆ **LOCAL GOVERNMENTS:** This rule change imposes no budgetary obligation to local government, therefore, no impacts are anticipated for local governments.
- ◆ **SMALL BUSINESSES:** This rule change imposes no budgetary obligation to small business, therefore, no impacts are anticipated for small business.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule change imposes no budgetary obligation to other persons, therefore, no impacts are anticipated for other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance to this rule amendment will not cost affected persons any money, the rule affects the state obligations.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 NATURAL RESOURCES  
 FORESTRY, FIRE AND STATE LANDS  
 1594 W NORTH TEMPLE  
 SUITE 3520  
 SALT LAKE CITY, UT 84116-3154  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Dave Grierson by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at [davegrierson@utah.gov](mailto:davegrierson@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: Richard Buehler, Director

**R652. Natural Resources; Forestry, Fire and State Lands.****R652-9. Consistency Review.****R652-9-200. Consistency Review.**

1. For all division actions directly determining the rights, obligations, or legal interests of specific persons outside of the division, any party aggrieved by such a division action may petition the director to review the division action for consistency with statutes, rules, and policy.

2. All division actions directly determining the rights, obligations, or legal interests of a party shall be accompanied by a written record of decision or other decision document, which states the division actions and the findings of fact, legal authority, and conclusions of law for the decision.

3. The record of decision or other decision document, shall state the rights of any aggrieved party to consistency review pursuant to this rule.

**KEY: right of petition, administrative procedure**

**Date of Enactment or Last Substantive Amendment:** ~~February 15, 1996~~ **2010**

**Notice of Continuation:** June 28, 2006

**Authorizing, and Implemented or Interpreted Law:** 65A-1-4(6)

## Natural Resources, Wildlife Resources

### R657-33

### Taking Bear

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 33331

FILED: 01/19/2010

**RULE ANALYSIS**

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

**SUMMARY OF THE RULE OR CHANGE:** The proposed revisions to the above listed rule: 1) add definitions for "Compensation", "Dog handler", "Private lands", "Public lands", "Restricted pursuit unit", and "Written permission"; 2) set the regulations for pursuit on a restricted pursuit unit; 3)

limit the pack size on any unit during the summer pursuit season; 4) set regulations for Guides and Outfitters concerning compensation and dog use; and 5) remove all reference to the application process for bear permits; this regulation is outlined in Rule R657-62, Drawing Application.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This amendment sets the requirements to pursue bear on restricted units and limits the pack size on summer pursuit units statewide. The Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget since the changes will not increase workload and can be carried out with existing budget.

◆ LOCAL GOVERNMENTS: Since this amendment only sets the requirements to pursue bear on restricted units and limits the pack size on summer pursuit units statewide this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ SMALL BUSINESSES: Since this amendment only sets the requirements to pursue bear on restricted units and limits the pack size on summer pursuit units statewide this should have little to no effect on small businesses. This filing does not create any direct cost or savings impact to small businesses because they are not directly affected by the rule. Nor are small businesses indirectly impacted because the rule does not create a situation requiring services.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments may impose an additional cost on those persons wishing to pursue on a restricted unit, since a separate permit is required. Those wishing to pursue bear on the units not designated as restricted would not see this cost increase. Therefore, the Division feels the amendments do impose an additional requirement on other persons, and generate a cost or savings impact to other persons if they choose to pursue on a restricted pursuit unit.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division of Wildlife Resources (DWR) determines that these amendments may create additional costs for sportsmen wishing to pursue bear in Utah on a restricted pursuit unit. However, sportsmen choosing to pursue bear on a unit not designated as restricted would not see a cost or savings impact.

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

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: James Karpowitz, Director

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**R657. Natural Resources, Wildlife Resources.**

**R657-33. Taking Bear.**

**R657-33-2. Definitions.**

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

(2) In addition:

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

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

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

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

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

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

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

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

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

(j) "Limited entry hunt" means any hunt listed in the hunt table, published in the proclamation of the Wildlife Board for taking bear, which is identified as a limited entry hunt and does not include pursuit only.

(k) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

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

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

(n) "Pursue" means to chase, tree, corner or hold a bear at bay with dogs.

(k)o "Restricted pursuit unit" means a bear pursuit unit where pursuit is allowed only by a dog handler who:

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

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

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

(p)(i) "Valid application" means:

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

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

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

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

(H)q "Waiting period" means a specified period of time that a person who has obtained a bear permit must wait before applying for any other bear permit.

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

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

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

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

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

(v) the appropriate dates; and

(vi) a general description of the property.

### **R657-33-3. Permits for Taking Bear.**

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

(b) ~~Any person who obtains a limited entry bear permit may pursue bear~~; a person must first obtain a valid bear permit without a pursuit permit while hunting on the unit for which the take permit is valid, provided the person is the dog handler.

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

(3) Residents and nonresidents may apply for limited entry bear permits and purchase bear pursuit permits.

(4) To obtain a limited entry bear permit, a person must possess a Utah hunting or combination license.

### **R657-33-4. Permits for Pursuing Bear.**

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

(i) obtain a valid bear pursuit permit ~~[as provided in the proclamation of the Wildlife Board for taking bear]~~ from a division office; or

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

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

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

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

### **R657-33-12. Use of Dogs.**

(1) Dogs may be used to take or pursue bear only during open seasons as provided in the proclamation of the Wildlife Board for taking bear.

(2) ~~The owner and handler of dogs used to take or pursue bear must have a valid bear permit or bear pursuit permit in possession while engaged in taking or pursuing bear.~~ A dog handler may pursue bear provided he or she possesses:

(a) a valid limited entry bear permit issued to the dog handler;

(b) a valid bear pursuit permit; or

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

(3) When dogs are used ~~[in the pursuit of]~~ to pursue a bear, the licensed hunter intending to take the bear must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a bear and there is not an open pursuit season, the ~~owner and~~ dog handler ~~[of the dogs]~~ must have:

(a) a limited entry bear permit issued to the dog handler for the unit being hunted;

(b)(i) a valid bear pursuit permit ~~and~~; and

(ii) be accompanied ~~by a licensed hunter~~, as provided in Subsection (3), ~~[or have a valid limited entry bear permit for the limited entry unit being hunted]~~ by a hunter possessing a limited entry bear permit for the area; or

(c)(i) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation and

(ii) be accompanied, as provided in Subsection (3), by a paying client possessing a limited entry bear permit for the area.

(5) A dog handler may pursue bear under:

(a) a bear pursuit permit only during the season and in the areas designated by the Wildlife Board in proclamation open to pursuit;

(b) a limited entry bear permit only during the season and in the area designated by the Wildlife Board in proclamation for that permit; or

(c) the pursuit for compensation provisions in this rule only during the seasons and in the areas designated by the Wildlife Board in proclamation open to pursuit.

(6) When dogs are used to pursue or take a bear, no more than eight dogs may be used in the field at one time while pursuing

during the summer pursuit seasons as established by the Wildlife Board in proclamation.

#### **R657-33-26. Bear Pursuit.**

(1)  ~~Bear~~(a) Except as provided in rule R657-33-3(b) and Subsection (2), bear may be pursued only by persons who have obtained a bear pursuit permit.

(b) The bear pursuit permit does not allow a person to:

(i) kill a bear[-]; or

(~~a~~)ii) pursue bear for compensation.

(c) A person may pursue bear for compensation only as provided in Subsection (2).

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

(2)(a) A person may pursue bear on public lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue bear;

(ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79 of the Utah Code and authorized to pursue bear;

(iii) possesses on his or her person the Utah hunting guide or outfitter license;

(iv) possesses on his or her person all permits and authorizations required by the applicable public lands managing authority to pursue bear for compensation; and

(v) is accompanied by the client or customer at all times during pursuit.

(b) A person may pursue bear on private lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue bear;

(ii) is accompanied by the client or customer at all times during pursuit; and

(iii) possesses on his or her person written permission from all private landowners on whose property pursuit takes place.

(c) A person who is an employee or agent of the Division of Wildlife Services may pursue bear on public lands and private lands while acting within the scope of their employment.

(3) A pursuit permit is not required to pursue bear under Subsection (2).

(4)(a) A person pursuing bear for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the proclamations of the Wildlife Board regulating the pursuit and take of bear.

(b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the proclamations of the Wildlife Board may be grounds for suspension of the privilege to pursue bear for compensation under this subsection, as determined by a division hearing officer.

(5) Except as provided in Subsection (6), a bear pursuit permit authorizes the holder to pursue bear with dogs on any unit open to pursuing bear during the seasons and under the conditions prescribed by the Wildlife Board in proclamation.

(6) The Wildlife Board may establish or designate in proclamation restricted pursuit units as determined necessary or convenient to better manage wildlife resources, including to protect wildlife, curtail over-utilization of resources, reduce conflict with other recreational activities, reduce conflict with private and public land activities, and protect wildlife habitat.

(a) Bear may not be pursued on a restricted pursuit unit unless the dog handler:

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

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

(iii) is engaged in pursuit for compensation as provided in Subsection (2), and pursuit occurs within the area and during the season established for the:

(A) paying client's limited entry bear permit; or

(B) restricted pursuit unit.

(b) A pursuit permit issued for a restricted pursuit unit authorizes the holder to pursue bear on:

(i) the particular restricted pursuit unit for which the permit is issued; and

(ii) any other bear pursuit unit not designated as a restricted pursuit unit.

(c) Notwithstanding Subsection (6)(a)(i), when two or more dog owners are in the field pursuing bear together with a single pack of eight dogs or less on a restricted pursuit unit, only one must possess a restricted pursuit unit permit.

(7) Pursuit permits may be obtained at division offices, through the Internet and at license agents.

(~~3~~)a) The Division may distribute pursuit permits for restricted pursuit units:

(i) through its offices, license agents, or online resources on a first-come, first-served basis; or

(ii) through a random drawing.

(8) A person may not:

(a) take or pursue a female bear with cubs;

(b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day;[~~or~~]

(c) individually or in combination with another person, use more than eight dogs in the field to pursue a bear during the summer pursuit season as established by the Wildlife Board in proclamation; or

(d) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(i) The weapon restrictions set forth in Subsection (~~e~~)d) do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill bear.

(~~4~~)2) If eligible, a person who has obtained a bear pursuit permit may also obtain a limited entry bear permit.

(~~5~~) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Section R657-33-12.

(~~6~~)10) Season dates, closed areas and bear pursuit permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

#### **R657-33-29. Application Procedure.**

(~~1~~) Applications are available through the division's internet address:

~~(2)(a) Group applications are not accepted. A person may not apply more than once annually.~~

~~(b) Applicants may select up to three hunt unit choices when applying for limited entry bear permits. Hunt unit choices must be listed in order of preference.~~

~~(c) Applicants must specify on the application whether they want a limited entry bear permit or a limited entry bear archery permit.~~

~~(i) The application may be rejected if the applicant does not specify either a limited entry bear permit or limited entry bear archery permit.~~

~~(ii) Any person obtaining a limited entry bear archery permit must also obtain a certificate of registration if intending to use bait as provided in Section R657-33-14.~~

~~(3)(a) Applications must be submitted by the means and date provided in the proclamation of the Wildlife Board for taking bear. Applications filled out incorrectly may be rejected.~~

~~(b) If an error is found on an application, the applicant may be contacted for correction.~~

~~(c) The opportunity to correct an error is not guaranteed.~~

~~(4) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.~~

~~(5) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-33-32(6)(b).~~

~~(6) To apply for a resident permit, a person must establish residency at the time of purchase.~~

~~(7) The posting date of the drawing shall be considered the purchase date of a permit. Limited entry bear permits are issued pursuant to R657-62.~~

**R657-33-31. Drawings and Remaining Permits.**

~~(1) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.~~

~~(2) Applicants will be notified by mail or e-mail of draw results by the date published in the proclamation of the Wildlife Board for taking and pursuing bear.~~

~~(3) Permits remaining after the drawing will be sold on a first-come, first-served basis beginning and ending on the dates provided in the proclamation of the Wildlife Board for taking and pursuing bear. These permits may be purchased by either residents or nonresidents.~~

~~(4) Waiting periods do not apply to the purchase of remaining permits. However, waiting periods are incurred as a result of purchasing remaining permits.~~

~~(5)(a) A person may withdraw their application for the bear drawing provided a written request for such is received by the date published in the proclamation of the Wildlife Board for taking and pursuing bear.~~

~~(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the~~

~~address published in the proclamation of the Wildlife Board for taking bear.~~

~~(6)(a) An applicant may amend their application for the limited entry bear permit drawing provided a written request for such is received by the initial application deadline.~~

~~(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the address published in the proclamation of the Wildlife Board for taking bear.~~

~~(c) The applicant must identify in their statement the requested amendment to their application.~~

~~(d) If the application is amended, and that amendment results in an error, the division reserves the right to reject the entire application.~~

~~(8) Handling fees and hunting or combination license fees will not be refunded. Remaining limited entry bear permits are issued pursuant to R657-62.~~

**R657-33-32. Bonus Points.**

~~(1) A bonus point is awarded for:~~

~~(a) a valid unsuccessful application in the drawing; or~~

~~(b) a valid application when applying for a bonus point in the bear drawing.~~

~~(2)(a) A person may apply for one bear bonus point each year, except a person may not apply in the drawing for both a limited entry bear permit and a bear bonus point in the same year.~~

~~(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit.~~

~~(c) Group applications will not be accepted when applying for bonus points.~~

~~(3)(a) Each applicant receives a random drawing number for:~~

~~(i) the current valid limited entry bear application; and~~

~~(ii) each bonus point accrued.~~

~~(b) The applicant will retain the lowest random number for the drawing.~~

~~(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.~~

~~(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points.~~

~~(c) If reserved permits remain, the reserved permits will be designated by random number to eligible applicants with the next greatest number of bonus points.~~

~~(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that hunt unit remain.~~

~~(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the drawing.~~

~~(5) Bonus points are forfeited if a person obtains a limited entry bear permit except as provided in Subsection (6).~~

~~(6) Bonus points are not forfeited if a person is successful in obtaining a Conservation Permit.~~

~~(7) Bonus points are not transferable.~~

~~(8)(a) Bonus points are tracked using Social Security numbers or division-issued hunter identification numbers.~~

~~(b) The division shall retain paper copies of applications for three years prior to the current bear drawing for the purpose of researching bonus point records.~~

~~(c) The division shall retain electronic copies of applications from 1996 to the current bear drawing for the purpose of researching bonus point records.~~

~~(d) Any requests for researching an applicant's bonus point records must be requested within the time frames provided in Subsection (b) and (c).~~

~~(e) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).~~

~~(f) The division may eliminate any bonus points earned that are obtained by fraud or misrepresentation.] Bonus points are accrued and used pursuant to R657-62-8.~~

**KEY: wildlife, bear, game laws**

**Date of Enactment or Last Substantive Change: [~~March 24, 2009~~2010]**

**Notice of Continuation: December 11, 2007**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-13-2**

## Public Safety, Driver License R708-41 Requirements for Acceptable Documentation, Storage and Maintenance

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33338

FILED: 01/26/2010

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being changed to address certain requirements for acceptable documentation and to allow an applicant to request, in lieu of scanning their U.S. birth certificate, the information shown on their birth certificate is written on their driver license or identification card application.

**SUMMARY OF THE RULE OR CHANGE:** This rule is being changed to allow a foreign passport as one of the acceptable proofs of identity for applicants for a Driving Privilege card. This rule is also being changed to clarify that applicants for a Commercial Driver License (CDL) are only required to provide their Social Security card for the original CDL application. This rule is being changed to clarify proof of ineligibility to obtain a Social Security card is based on the

legal/lawful presence status of the individual. The rule is being changed to clarify that an applicant presenting a U.S. birth certificate may request that in lieu of scanning the birth certificate the information shown on the birth certificate may be written on the license of identification application.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53-3-104 and Section 53-3-205 and Section 53-3-214 and Section 53-3-410 and Section 53-3-804

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget because this amendment broadens some of the document requirements individuals must provide for a driver license or identification card application.

◆ **LOCAL GOVERNMENTS:** Local government is not involved in providing driver licenses or identification cards.

◆ **SMALL BUSINESSES:** Small businesses are not involved in providing driver licenses or identification cards.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment will not be a cost or savings to persons other than small businesses, businesses, or local government entities because it broadens some of the document requirements individuals must provide for a driver license or identification card application.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons because this amendment broadens some of the document requirements individuals must provide for a driver license or identification card application. It does not change the license or identification card application fees.

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

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

PUBLIC SAFETY  
DRIVER LICENSE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 3RD FL  
SALT LAKE CITY, UT 84119-5595  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Jill Laws by phone at 801-964-4469, by FAX at 801-964-4482, or by Internet E-mail at [jlaws@utah.gov](mailto:jlaws@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010**

AUTHORIZED BY: Nannette Rolfe, Director

**R708. Public Safety, Driver License.**

**R708-41. Requirements for Acceptable Documentation, Storage and Maintenance.**

**R708-41-3. Definitions.**

(1) "Acceptable Document" means an original document or a copy certified by the issuing agency, which the division accepts for determining the validity of information submitted in connection with a license certificate or identification card (ID card) application which may include but is not limited to, the applicant's identification, legal/lawful presence, social security number (SSN) or ineligibility to obtain a social security number as a result of the applicant's legal/lawful presence status, individual tax identification number (ITIN) or the Utah residence address. Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that is not legible may not be accepted for licensing and identification card purposes.

(2) "Alternate Document" means a document that may be accepted when the applicant is, for reasons beyond their control, unable to present all necessary documents to establish identity or date of birth as required in definition (6)(a) or U.S. Citizenship as required for proof of legal/lawful presence in definition (8)(a) subject to approval by the Department of Homeland Security (DHS) or the division director or designee.

(3) "Driving Privilege Card" (DPC) means a driving certificate that may only be issued to an applicant who meets the requirements of definition (14) for an undocumented immigrant.

(4) "Exception Process" means a written, defined process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity, date of birth or U.S. Citizenship.

(5) "Full Legal Name Evidence" means the name established on the identity document referenced in definition (6). Any name variation from the original or certified document(s) must be accompanied by legal authorizing documentation, except that, the name established on the division's database may be considered to be the full legal name unless otherwise determined by the division. Upon application for any license certificate or ID card, a change of the applicant's full legal name must be accompanied by an acceptable document which authorizes the name change.

(6) "Identity Document" means an original, government-issued document which contains identifying information about the subject of the document including the full legal name and date of birth or a document approved by DHS or the division director or designee. A copy of an original document must be certified by the issuing agency.

(a) Group A documents are acceptable for applicants for a regular driver license, Commercial Driver License (CDL) or ID card referenced in definition (9)(a):

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants for a limited-term driver license, limited-term CDL or limited-term ID card referenced in definition (9)(b):

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766, or Form I-688B verified through the Systematic Alien Verification for Entitlements system (SAVE) which may provide evidence of both legal/lawful presence; or

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States verified through SAVE which may provide evidence of both legal/lawful presence.

(c) Group C documents are acceptable for applicants for a DPC referenced in definition (14) and at least one of the documents listed below must be presented with a foreign birth certificate including a certified translation if the birth certificate is not in English or a foreign passport including a certified translation if the passport is not in English:

(i) Church records;

(ii) Court records;

(iii) Driver License;

(iv) Employee ID;

(v) Insurance ID card;

(vi) Matricular Consular Card (issued in Utah);

(vii) Mexican Voter Registration card;

(viii) School records;

(ix) Utah DPC;

(x) Other evidence considered acceptable by the division director or designee.

(7) "Individual Tax Identification Number (ITIN) Evidence" means an official document(s) used to verify an individual's assigned ITIN including:

(a) ITIN card issued by the Internal Revenue Service (IRS); or

(b) Document or letter from the IRS verifying the ITIN.

(8) "Legal/lawful Presence or Status" means that an individual's presence in the United States does not violate state or federal law and includes:

(a) Group A applicants who may qualify for a regular driver license, CDL or ID card if they are a:

- (i) United States citizen;
- (ii) National ~~of the United States of America~~; or
- (iii) Legal Permanent Resident Alien.

(b) Group B applicants who may qualify for a limited-term driver license, limited-term CDL, or limited-term ID card if they are an immigrant who has:

- (i) Unexpired immigrant or nonimmigrant visa status for admission into the United States;
- (ii) Pending or approved application for asylum in the United States;
- (iii) Admission into the United States as a refugee;
- (iv) Pending or approved application for temporary protected status in the United States;
- (v) Approved deferred action status; or
- (vi) Pending application for adjustment of status to legal permanent resident or conditional resident.

(9) "Legal/Lawful Presence or Status Evidence" means a document(s) issued by the United States Government or approved by DHS or the division director or designee which shows legal presence of an individual including:

(a) Group A documents are acceptable for applicants referenced in definition (8)(a) for a regular driver license, CDL, or ID card:

- (i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;
- (ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;
- (iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;
- (iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;
- (v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;
- (vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;
- (vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or
- (viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants referenced in definition (8)(b) for a limited-term driver license, limited-term CDL or limited-term ID card with verification from SAVE:

- (i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766 or Form I-688B;

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States;

(iii) A document issued by the U.S. Federal Government that provides proof of one of the statuses listed below verifies lawful entrance into the United States of America:

- (A) Unexpired immigrant or nonimmigrant visa status for admission into the United States issued by the U.S. Federal Government;
- (B) Pending or approved application for asylum in the United States;
- (C) Admission into the United States as a refugee;
- (D) Pending or approved application for temporary protected status in the United States;
- (E) Approved deferred action status; or
- (F) Pending application for adjustment of status to legal permanent resident or conditional resident.

(10) "SAVE Verification" means a document issued by the U.S. Federal government has been verified through the DHS SAVE, or such successor or alternate verification system approved by the Secretary of Homeland Security.

(11) "Social Security Number Evidence" means an official document(s) used to verify an individual's assigned U.S. Social Security Number (SSN) and may be verified through the Social Security On-Line Verification system (SSOLV) during every application process and includes:

- (a) Social Security card issued by the U.S. government that has been signed [~~and has not been laminated~~]-or,
- (b) If the Social Security card is not available, the applicant may present one of the following documents which contain the applicant's name and SSN:
  - (i) W-2 form;
  - (ii) SSA-1099 form;
  - (iii) Non SSA-1099 form;
  - (iv) Pay stub showing the applicant's name and SSN; or
  - (v) Other documents approved by DHS or the division director or designee.

(12) "Social Security Number Ineligibility" means an individual is ineligible to receive a Social Security Number as a result of their legal/lawful presence status.

(13) "Social Security Number Ineligibility Evidence" means letter from the Social Security Administration indicating the individual is not eligible to receive a Social Security Number as a result of their legal/lawful presence status.

(14) "Undocumented Immigrant" means a person who does not meet the qualifications outlined in definition (8) and does not possess the documentation outlined in definition (9) and is only eligible for a DPC.

(15) "U.S. Citizen" means a native or naturalized person of the United States of America.

(16) "Utah Residence Address" means the place where an individual has a fixed permanent home and principal establishment in Utah and in which the individual voluntarily resides, that is not for a special or temporary purpose. Under unique situations that require an individual to be under temporary care, custody, or treatment of a government, public, or private business the division may authorize the sponsoring agency to sign an affidavit verifying

the residence of the applicant. Upon approval of the division director or designee, the division will recognize the sponsoring agency's address as the Utah residence address of the applicant.

(17) "Utah Residence Address Evidence" means the Utah residence address recorded on the Utah Driver License Division database unless otherwise determined by the division or, upon application for a Utah license certificate or ID card if the applicant's Utah residence address has not been recorded by the division or has changed from what is recorded on the division's database, two documents which display the applicant's name and principle Utah residence address including:

- (a) Bank statement (dated within 60 days);
- (b) Court documents;
- (c) Current mortgage or rental contract;
- (d) Major credit card bill (dated within 60 days);
- (e) Property tax notice (statement or receipt dated within one year);
- (f) School transcript (dated within 90 days);
- (g) Utility bill (billing date within 60 days), cell phone bills will not be accepted;
- (h) Valid Utah vehicle registration or title;
- (i) Other documents acceptable to the division upon review, except that only one document printed from the internet may be accepted.

**R708-41-4. Obtaining a Utah Learner Permit, Provisional License Certificate, Regular License Certificate, Limited-Term License Certificate, Driving Privilege Card, CDL Certificate, Limited-Term CDL Certificate, Identification Card, or Limited-Term Identification Card.**

(1) An individual who is applying for a Learner Permit must provide the following documents:

- (a) One legal/lawful presence document as outlined in definition (9)(a) and one identity document as outlined in definition (6)(a); or
- (b) One legal/lawful presence document as outlined in definition (9)(b) and one identity document as outlined in definition (6)(b); or
- (c) Two identity documents as outlined in definition (6)(c) for undocumented immigrants; and
- (d) Evidence of their SSN as outlined in definition (11), or evidence of their ineligibility to obtain a SSN as outlined in definition (12), or evidence of their ITIN as outlined in definition (7); and
- (e) Evidence of their current Utah residence address as outlined in definition (17).

(2) An individual who is applying for a provisional license certificate, regular license certificate, CDL certificate, or identification card must provide the following documents, except that an applicant for an identification card does not need to comply with (2)(e):

- (a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and
- (b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and
- (c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application

process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for ~~[a]an original~~ CDL must provide their Social Security card ~~[for every application]~~; and

(d) Evidence of their current Utah residence address as outlined in definition (17); and

(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(f) CDL applicants must provide a current DOT Medical card.

(3) An individual who is applying for a renewal of a regular license certificate, provisional license certificate, or CDL certificate card must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12) ~~[except that applicants for a CDL must provide their Social Security card for every application]~~; and

(d) Evidence of their current Utah residence address as outlined in definition (17).

(4) An individual who is applying for a duplicate of a regular license certificate, a provisional license certificate, or CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12) ~~[except that applicants for a CDL must provide their Social Security card for every application]~~; and

(d) Evidence of their current Utah residence address as outlined in definition (17).

(5) An individual who is applying for a limited-term license certificate, limited-term provisional certificate, limited CDL certificate, or limited-term identification card must provide the following documents, except that an applicant applying for a limited-term identification card does not need to comply with (5)(e):

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to

obtain a SSN as outlined in definition (12), except that applicants for ~~[a]n original~~ limited-term CDL must provide their Social Security card ~~[for every application]~~; and

(d) Evidence of their current Utah residence address as outlined in definition (17); and

(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(6) An individual who is applying for a renewal of a limited-term license certificate, a limited-term provisional license certificate, or limited-term CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12) ~~], except that applicants for a limited-term CDL must provide their Social Security card for every application]~~; and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(7) An individual who is applying for a duplicate of a limited-term license certificate, a limited-term provisional license certificate or a limited-term CDL certificate, must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12) ~~], except that applicants for a limited-term CDL must provide their Social Security card for every application]~~; and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(8) An individual who is applying for a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6) (c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17); and

(d) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(9) An individual who is applying for a renewal of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6) (c) for undocumented immigrants unless previously recorded by the

division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17).

(10) An individual who is applying for a duplicate of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6) (c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17).

#### **R708-41-6. Document Storage.**

All documents provided to the division by an applicant during a license certificate or identification card application process as proof of identity, proof of lawful/legal presence, proof of SSN, or ineligibility to obtain a SSN, ITIN, address verification, or proof of name change will be imaged and stored in a secure database with controlled access. Except that at the applicant's request the information on a U.S. birth certificate may be written on the license or identification card application rather than scanning the document.

**KEY:** license certificate, limited-term license certificate, identification card, acceptable documents

**Date of Enactment or Last Substantive Amendment:** ~~January 1,~~ 2010

**Authorizing, and Implemented or Interpreted Law:** 53-3-104, 53-3-205, 53-3-214, 53-3-410, 53-3-804

## Public Safety, Fire Marshal R710-6 Liquefied Petroleum Gas Rules

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33357

FILED: 01/31/2010

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Utah Liquefied Petroleum Gas Board met on 09/18/2009, in a regularly scheduled Board meeting and voted to amend Rule R710-6 by updating an incorporated reference, adding a new definition of ASME, and rewriting two existing sections to add verbiage and provide clarity to the rule sections.

**SUMMARY OF THE RULE OR CHANGE:** A summary of the proposed rule amendments are as follows: 1) in Subsection R710-6-1(1.3), the Board proposes to update an incorporated reference and use the 2008 edition of the National Fire Protection Association, NFPA 1192, Standard on Recreational Vehicles, and discontinue the use of the 2005 edition; 2) in Subsection R710-6-2(2.1), the Board proposes to add the definition of ASME Stamp to the definitions section; 3) in Subsection R710-6-8(8.6.1), the Board proposes to redefine the requirements of the ASME stamp marking and move it from the section itself and refer it to the definitions section; and, 4) in Subsection R710-6-8(8.6.2), the Board proposes to redefine the the specific type of LP Gas containers that apply, the size, and the reference to the ASME stamp moved to the definitions section.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53-7-305

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates NFPA 1192 - Standard on Recreational Vehicles, published by National Fire Protection Association, 01/31/2010

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The only aggregate anticipated cost to the State budget would be for the needed purchase of the NFPA 1192 newly incorporated reference at \$37 per copy. The aggregate cost for these incorporated references would be approximately \$185.
- ◆ **LOCAL GOVERNMENTS:** There would be no aggregate anticipated cost or savings to local government because this specific portion of the Liquefied Petroleum Gas Safety Act is not enforced by local government and there would no need to purchase the required NFPA document.
- ◆ **SMALL BUSINESSES:** There would be an aggregate anticipated cost to small businesses of approximately \$37 per volume to purchase the NFPA 1192 incorporated reference. Each small business that works on or services recreational vehicles that use LP Gas would be required to purchase the document for \$37 per volume. A total aggregate cost is impossible to estimate due to the unknown number of copies that would be purchased by each small business.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Those persons in larger corporations and businesses would be required to purchase the incorporated reference at \$37 per volume. There is no local government entity that would be required to purchase the newly proposed incorporated reference.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The only compliance cost for affected persons would be the cost of the incorporated reference at \$37 per volume. The other proposed changes to the rule do not require a compliance cost for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** As with the other industries that are regulated by the State Fire Marshal's Office, this industry prefers to use the most current edition of the safety standard. The most current edition has the newest allowances and the newest methods that are incorporated for safety as the industry evolves. The cost of the standard is \$37 per volume and has never been a significant concern with the industry.

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

PUBLIC SAFETY  
FIRE MARSHALROOM 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 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: Ron Morris, Utah State Fire Marshal

**R710. Public Safety, Fire Marshal.**

**R710-6. Liquefied Petroleum Gas Rules.**

**R710-6-1. Adoption, Title, Purpose and Scope.**

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 2008 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 2009 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, ~~2005~~2008 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, 2006 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-6-8, et seq.

1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

## 1.6 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

## 1.7 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

## 1.8 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

**R710-6-2. Definitions.**

2.1 "ASME Stamp" means the symbol used to designate that the container has been built to the American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code, Section VIII, Divisions 1 or 2, Rules for the Construction of Unfired Pressure Vessels.

2.2 "Board" means the Liquefied Petroleum Gas Board.

2.3 "Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

2.4 "Dispensing System" means equipment in which LP Gas is transferred from one container to another in liquid form.

2.5 "Division" means the Division of the State Fire Marshal.

2.6 "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

2.7 "ICC" means International Code Council, Inc.

2.8 "IFC" means International Fire Code.

2.9 "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

2.10 "LPG" means Liquefied Petroleum Gas.

2.11 "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.12 "NFPA" means the National Fire Protection Association.

2.13 "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.

2.14 "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.

2.15 "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

2.16 "UCA" means Utah State Code Annotated 1953 as amended.

**R710-6-8. Amendments and Additions.**

The following amendments and additions are hereby adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

8.3.1 Those excluded from the act in UCA, Section 53-7-303.

8.3.2 Containers under federal control.

8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

8.3.4 Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 IFC Amendments:

8.5.1 IFC, Chapter 38, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".

8.5.2 IFC, Chapter 38, Section 3803.1 is deleted and rewritten as follows: General. LP Gas equipment shall be installed in accordance with NFPA 54, NFPA 58, the adopted LP Gas Administrative Rules, and the International Fuel Gas Code, except as otherwise provided in this chapter.

8.5.3 IFC, Chapter 38, Section 3809.12 is deleted and rewritten as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721-2,500, the currently stated "5" is deleted and replaced with "10".

8.5.4 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete "20" from line three and replace it with "10".

8.6 NFPA, Standard 58 Amendments:

8.6.1 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall be ~~stamped and meet the requirements listed in ASME, Boiler and Pressure Vessel Code, Section VIII, "Rules for the Construction of Unfired Pressure Vessels"~~ marked with the ASME stamp as defined in Section 2.1 of

these rules. All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah, shall be ~~[stamped and meet the requirements listed in ASME, Boiler and Pressure Vessel Code, Section VIII, "Rules for the Construction of Unfired Pressure Vessels"]~~ marked with the ASME stamp as defined in Section 2.1 of these rules, and shall be inspected for approval by the Division. If the Division has concerns about the integrity or condition of the container, additional nondestructive testing may be required to include but not limited to hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs for additional testing required by the Division shall be the responsibility of the owner.

8.6.2 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (d) If an existing U68, U69, U200 or U201 specification container, more than 5000 water gallons, is relocated within the State of Utah, and does not bear the required ASME ~~[construction]~~ stamp as defined in Section 2.1 of these rules, ~~[the owner may submit to the Division a request for]~~ the container cannot be reinstalled unless the container has received a "Special Classification Permit" from the Division. Specifications of the type of container, container history if known, material specifications and calculations, and condition of the container shall be submitted to the Division by the ~~[owner]~~ person seeking the "Special Classification Permit". The Division shall inspect the container for approval. If the Division has concerns about the integrity or condition of the container, additional nondestructive tests such as hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs of testing and evaluations shall be the responsibility of the owner. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

8.6.3 NFPA, Standard 58, Section 5.2.1.5 is amended to add the following sentence at the end of the section: Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA Standard 58, Sections 5.9.3.2(3)(a) and (b) are deleted and rewritten as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.5 NFPA, Standard 58, Section 6.6.1.2 is amended to add the following at the end of the section: When guard posts are installed they shall be installed meeting the following requirements:

8.6.5.1 Constructed of steel not less than four inches in diameter and filled with concrete.

8.6.5.2 Set with spacing not more than four feet apart.

8.6.5.3 Buried three feet in the ground in concrete not less than 15 inches in diameter.

8.6.5.4 Set with the tops of the posts not less than three feet above the ground.

8.6.6 NFPA, Standard 58, Section 6.6.3 is amended to add the following section: 6.6.3.9 Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

8.6.7 NFPA, Standard 58, Section 6.6.6 is amended to add the following: (L) All metallic equipment and components that are buried or mounded shall have cathodic protection installed to protect the metal and shall meet the following requirements:

8.6.7.1 Sacrificial anodes shall be installed as required by the size of the container. If more than one sacrificial anode is required they shall be evenly distributed around the container.

8.6.7.2 Sacrificial anodes shall be connected to the container or piping as recommended by the manufacturer or using accepted engineering practices.

8.6.7.3 Sacrificial anodes shall be placed as near the bottom of the container as possible and approximately two feet away from the container.

8.6.8 NFPA, Standard 58, Section 6.24.3.16 is added as follows: On dispensing installations, 1000 gallon water capacity or less, where the dispensing cabinet is located next to the LP Gas container, stainless steel wire braid hose of more than 36 inches in length may be used on vapor and liquid return lines only. The hose shall be secured and routed in a safe and professional manner, marked with the date of installation, and shall be replaced every five years from that installation date.

8.6.9 NFPA, Standard 58, Section 6.25.3.2, the last sentence of the section is deleted and rewritten as follows: Existing installations shall comply with this requirement by March 31, 2011.

8.6.10 NFPA, Standard 58, Section 8.4.1.1(1) is amended as follows: On line one remove "5ft (1.5m)" and replace it with "10 ft (3m)".

**KEY: liquefied petroleum gas**

**Date of Enactment or Last Substantive Amendment: ~~[October 8, 2009]~~ March 24, 2010**

**Notice of Continuation: March 30, 2006**

**Authorizing, and Implemented or Interpreted Law: 53-7-305**

## Public Safety, Fire Marshal R710-10-8 Non-Affiliated Fire Service Training

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 33358

FILED: 01/31/2010

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met on 01/12/2010, in a regularly scheduled Board meeting and voted by majority to make some amendments to Section R710-10-8 specifically with regard to non-affiliated firefighter training. The purpose of the proposed amendments is to set a specific time period for non-affiliated training providers to be

required to re-accreditate their training programs, and an established path of communications from the fire academy to the non-affiliated training institutions.

**SUMMARY OF THE RULE OR CHANGE:** The summary of the rule changes are as follows: 1) in Subsection R710-10-8(8.6), the Board proposes to require that any changes in training standards that occur to the Utah Fire and Rescue Academy, Recruit Candidate Academy (RCA) program, are to be provided to the non-affiliated training institutions so that the curriculum is consistent with all the RCA programs; and 2) in Subsection R710-10-8(8.8), a new subsection is created that establishes a specific time period of five years for the non-affiliated training programs to be required to re-accreditate after the initial accreditation.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53-7-204

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget in this issue because this does not involve monies from the state budget.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government because these proposed amendment have no effect on local government.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses because these proposed amendments do not affect small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be an aggregate anticipated savings to government teaching institutions that were expecting to have to re-accreditate every three years. Accreditation will now be every five years and due to the very time consuming and costly process will save several thousands of dollars to educational facilities by extending the time period two years.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no compliance costs for affected persons. There will be a savings to teaching institutions that provide non-affiliated firefighter training in various parts of the state.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no fiscal impact to businesses for the implementation of these proposed rule amendments. There is a savings to teaching institutions and the fire service that is created from the extension of the accreditation for an additional two years.

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

PUBLIC SAFETY  
FIRE MARSHALROOM 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 03/17/2010**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010**

**AUTHORIZED BY: Ron Morris, Utah State Fire Marshal**

**R710. Public Safety, Fire Marshal.**

**R710-10. Rules Pursuant to Fire Service Training, Education, and Certification.**

**R710-10-8. Non-Affiliated Fire Service Training.**

8.1 Those training organizations that desire to offer certification through the Certification System for non-affiliated personnel must receive [approval]accreditation in writing from the Standards Council and the Academy Director.

8.2 Before [approval]accreditation is granted, the training organization requesting approval shall demonstrate the following:

8.2.1 Complete a written application requesting approval to conduct the training course.

8.2.2 Designate an approved course coordinator to oversee the course delivery and insure the course meets each of the applicable objectives.

8.2.3 Insure that qualified instructors are used to teach each subject.

8.2.4 Insure sufficient student to instructor ratios for all subjects or skills to be taught to include those designated high hazard.

8.2.5 Demonstrate that sufficient equipment and facilities will be provided to meet the training requirements of the course being taught.

8.2.6 Maintain course documentation as required through the Certification System to insure that all elements of the necessary training is completed.

8.2.7 Follow the accepted requirements of the Certification System for requesting testing and certification.

8.3 As required in Section 8.2.2 of these rules, the designated course coordinator shall meet the following requirements:

8.3.1 Be currently certified at the certification level as established by the Standards Council.

8.3.2 Insure that all assigned instructors meet the requirements as required in Section 8.4 of these rules.

8.3.3 Insure that the course syllabus and practical skills guide meet the requirements of the Certification System.

8.3.4 Insure that the requirements of Sections 8.2.4, 8.2.5, 8.2.6, and 8.2.7 of these rules are met.

8.4 As required in Section 8.2.3 of these rules, qualified instructors shall meet the following requirements:

8.4.1 Must be currently certified at the certification level as established by the Standards Council.

8.4.2 If the instructor is not certified, instructor qualification can be satisfied by special knowledge, experience or establishment of expertise.

8.5 An Introduction to Emergency Services class shall be completed by the non-affiliated student wishing to receive an RCA within the time period stated in 8.7 of these rules. The Introduction to Emergency Services class may be waived if the applicant can demonstrate to the Academy sufficient competency or prior experience in the fire service to make the class unwarranted.

8.6 Non-affiliated training providers shall follow the curriculum outline that is taught at the Academy in the Recruit Candidate Academy (RCA) program in order to award students an RCA Certificate of Completion. Any changes to the curriculum of the RCA program at the Academy shall be provided by the Academy to the non-affiliated training providers to maintain consistency in the RCA program.

8.7 An RCA Certificate of Completion may be issued to the non-affiliated student by the Academy upon successful completion of the following within a 24 month period:

8.7.1 Introduction to Emergency Services class or accepted waiver.

8.7.2 EMT Basic Course.

8.7.3 Completion of an accredited RCA.

8.8 Non-affiliated training providers that have received accreditation shall be reaccredited every five years from the date of initial accreditation.

**KEY: fire training**

**Date of Enactment or Last Substantive Amendment: [~~July 23, 2008~~ March 24, 2010]**

**Authorizing, and Implemented or Interpreted Law: 53-7-204**

**Tax Commission, Auditing  
R865-91-13**

**Nonresident's share of Pass-Through  
Entity Income Pursuant to Utah Code  
Ann. Sections 59-10-116, 59-10-117,  
59-10-118, 59-10-1403.2 and  
59-10-1405**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 33349  
FILED: 01/28/2010

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment clarifies statutory requirements for a pass-through entity to withhold income tax on behalf of its pass-through entity taxpayers.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment clarifies that a pass-through entity is not required to withhold income tax on behalf of a pass-through entity taxpayer that is exempt from tax under Section 59-7-102.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-10-116 and Section 59-10-118 and Section 59-10-1403.2 and Section 59-10-1405 and Section 59-10-517

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: None--This language clarifies S.B. 23 (2009). Any fiscal impact would have been included in that bill. (DAR NOTE: S.B. 23 (2009) is found at Chapter 312, Laws of Utah 2009, and was effective 03/25/2009.)

◆ LOCAL GOVERNMENTS: None--This language clarifies S.B. 23 (2009). Any fiscal impact would have been included in that bill.

◆ SMALL BUSINESSES: None--This language clarifies S.B. 23 (2009). Any fiscal impact would have been included in that bill.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This language clarifies S.B. 23 (2009). Any fiscal impact would have been included in that bill.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment is necessary so that a pass-through entity does not withhold tax on a taxpayer who is not required to pay tax. Without this amendment, a pass-through entity might believe it must withhold tax on a tax exempt entity, and the tax exempt entity would then need to file a tax return for a refund of the tax.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact on businesses.

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:

◆ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

**R865. Tax Commission, Auditing.**

**R865-9I. Income Tax.**

**R865-9I-13. Nonresident's Share of Pass-Through Entity Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.**

(1) The provisions of this rule apply to a pass-through entity that is not an S corporation. For provisions that apply to a pass-through entity that is an S corporation, see rule R865-9I-56.

(2) A schedule shall be included with the return listing all of the following information for each nonresident pass-through entity taxpayer:

- (a) name;
- (b) address;
- (c) social security number;
- (d) percentage of ownership in pass-through entity;
- (e) Utah income attributable to that pass-through entity taxpayer.

(3) A pass-through entity shall calculate the tax it withholds on behalf of its nonresident pass-through entity taxpayers by:

(a) multiplying the income of the pass-through entity attributable to nonresident pass-through entity taxpayers by the tax rate in effect under Section 59-10-104; and

(b) subtracting from the amount calculated in Subsection (3)(a) any amounts withheld from the pass-through entity under Section 59-6-102 attributable to nonresident pass-through entity taxpayers.

(4) A pass-through entity is not required to withhold a tax on behalf of a pass-through entity taxpayer that is exempt from taxation under Subsection 59-7-102.

~~(4)~~(5) The pass-through entity's federal identification number shall be used on the form TC-65 in place of a social security number.

**KEY:** historic preservation, income tax, tax returns, enterprise zones

**Date of Enactment or Last Substantive Amendment:** ~~September 17, 2009~~2010

**Notice of Continuation:** March 20, 2007

**Authorizing, and Implemented or Interpreted Law:** 59-10-108 through 59-10-122; 59-10-1403.2; 59-10-1405

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 33348

FILED: 01/28/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendment is drafted after an agency determination that payment of Utah income tax by nonresident professional basketball players is unsatisfactory, and nonexistent by nonresident team members playing other professional sports.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment provides that professional athletic teams are required to withhold Utah income tax from their nonresident team members. This is a change from the prior language that allowed a team member to elect to have the team withhold tax from the team member. In addition, the amendment reorganizes the structure of the rule and deletes language that no longer applies.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-10-116 and Section 59-10-117 and Section 59-10-118

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Increase of at least \$250,000. This estimate is based on a sampling of professional basketball teams. The amount of revenues associated with other professional sports teams is unknown.

◆ **LOCAL GOVERNMENTS:** None--Utah income tax does not go to local government.

◆ **SMALL BUSINESSES:** Minimal cost to withhold and remit state income taxes for all team members.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Minimal cost to withhold and remit state income taxes for all team members.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Professional athletic teams will be required to withhold Utah income tax for their nonresident team members. While some teams are currently withholding Utah income tax for some of their nonresident team members, all teams will now be required to withhold Utah income tax for all of their nonresident team members.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The impact will be on professional athletic teams. It is anticipated it will be a minimal cost to withhold and remit Utah State income taxes for all team members.

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

TAX COMMISSION  
AUDITING

Tax Commission, Auditing

**R865-9I-44**

Compensation Received by

Nonresident Professional Athletes

Pursuant to Utah Code Ann. Sections

59-10-116, 59-10-117, and 59-10-118

210 N 1950 W  
 SALT LAKE CITY, UT 84134  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: D'Arcy Dixon, Commissioner

**R865. Tax Commission, Auditing.**

**R865-91. Income Tax.**

**R865-91-44. [Compensation Received by] Mandatory Withholding of Income for Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.**

~~[A. The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.~~

~~B. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.~~

~~C. (1) Definitions.~~

~~(a) "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.~~

~~(i) Duty days includes:~~

~~(A) days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in Subsection (1)(a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team; and~~

~~(B) game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.~~

~~(ii) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.~~

~~(iii) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.~~

~~(iv) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.~~

~~(v) Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.~~

~~1. "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team.~~

~~2. (b) "Member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers, and trainers.~~

~~(c) "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team that is not incorporated or organized under the laws of this state.~~

~~3. "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.~~

~~a) Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in 3., for example, participation in instructional leagues, the Pro Bowl, or other promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.~~

~~b) Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.~~

~~c) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.~~

~~d) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.~~

~~e) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.~~

~~4. "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:~~

~~a) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and~~

~~b) during the taxable year on a date that does not fall within the period in 4.a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.~~

~~5.](d) "Total compensation" includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.~~

~~(a)(i) Total compensation shall does not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.~~

~~(b)(ii) For purposes of this rule, "bonuses" subject to the allocation procedures described in A-]Subsection (5) are:~~

~~(1)(A) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and~~

~~(2)(B) bonuses paid for signing a contract, unless all of the following conditions are met:~~

~~(a)(I) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;~~

~~(b)(II) the signing bonus is payable separately from the salary and any other compensation; and~~

~~(c)(III) the signing bonus is nonrefundable.~~

~~(e) "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:~~

~~(i) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and~~

~~(ii) during the taxable year on a date that does not fall within the period in Subsection (1)(e)(i), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.~~

~~2.](2) The purpose of this rule is to apportion to the state, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the provisions of this rule will result in a fair and equitable apportionment of that compensation. Where it is demonstrated that the method provided under this rule does not fairly and equitably apportion that compensation, the commission may require the member of a professional athletic team to apportion that compensation under a method the commission prescribes, as long as the prescribed method results in a fair and equitable apportionment.~~

~~1.](3) If a nonresident member of a professional athletic team demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, that member may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully~~

explained in the nonresident member of a professional athletic team's nonresident personal income tax return for the state.

~~(4) A professional athletic team:~~

~~(a) is an employer for purposes of Title 59, Chapter 10, Part 4, Withholding of Tax; and~~

~~(b) may not be relieved from the requirements imposed on an employer under Title 59, Chapter 10, Part 4, Withholding of Tax.~~

~~E.](5) Nonresident professional athletes shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission]commission of the part of their adjusted gross income that was derived from or connected with sources in this state.~~

~~(6) The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.~~

~~F.](7)(a) Professional athletic teams shall file a composite return, on a form prescribed by the commission,]withhold and remit tax on behalf of nonresident professional athletes [that meet all of the following conditions]on a form prescribed by the commission.~~

~~1. Nonresident professional athletes included on the return may not have other income from Utah sources. Resident professional athletes may not be included on a composite return.~~

~~2.](b) A schedule shall be included with the return, listing all of the following information for each nonresident member of a professional [athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete]athletic team:~~

~~(a)(i) name;~~

~~(b)(ii) address;~~

~~(c)(iii) social security number;~~

~~(d)(iv) [Utah]income attributable to [that]Utah for the nonresident member of a professional [athlete]athletic team;~~

~~(v) total compensation paid to the nonresident member of a professional athletic team by the professional athletic team;~~

~~(vi) the nonresident member of a professional athletic team's duty days both within and without the state;~~

~~(vii) the nonresident member of a professional athletic team's duty days within the state;~~

~~(viii) Utah tax deducted and withheld; and~~

~~(ix) federal income tax deducted and withheld.~~

~~(8) A nonresident member of a professional athletic team is not required to file an individual income tax return if:~~

~~(a) the professional athletic team deducts and withholds a tax on behalf of the nonresident member of a professional athletic team;~~

~~(b) the nonresident member of a professional athletic team does not seek to claim a tax credit under Title 59, Chapter 10, Individual Income Tax Act; and~~

~~(c) the nonresident member of a professional athletic team does not have adjusted gross income derived from or connected with Utah sources other than the income the member of a~~

~~professional athletic team receives from the professional athletic team.~~

~~3. Nonresident professional athletes that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Non or Part-year Resident Individual Income Tax Return.~~

~~4. Participating team members must acknowledge through their election that the composite return constitutes an irrevocable filing and that they may not file an individual income tax return in the taxing state for that year.~~

~~G. The tax due on the composite return shall be computed as follows:~~

~~1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident professional athletes included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.~~

~~2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.~~

~~H. The professional athletic team's federal identification number shall be used on the composite form in place of a social security number.~~

~~I. This rule has retrospective application to January 1, 1995.]~~

**KEY:** historic preservation, income tax, tax returns, enterprise zones

**Date of Enactment or Last Substantive Amendment:** [September 17, 2009]2010

**Notice of Continuation:** March 20, 2007

**Authorizing, and Implemented or Interpreted Law:** 59-10-108 through 59-10-122

**Tax Commission, Auditing  
R865-91-56**

**Determination of Amounts Withheld by  
a Pass-Through entity that is an S  
Corporation Pursuant to Utah Code  
Ann. Section 59-10-116, 59-10-117,  
59-10-118, 59-10-1403.2, and  
59-10-1405**

**NOTICE OF PROPOSED RULE  
(Amendment)  
DAR FILE NO.: 33351  
FILED: 01/28/2010**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendment clarifies statutory requirements for a pass-through entity to withhold income tax on behalf of its pass-through entity taxpayers.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment clarifies that a pass-through entity is not required to withhold income tax on behalf of a pass-through entity taxpayer that is exempt from tax under Section 59-7-102.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-10-116 and Section 59-10-117 and Section 59-10-118 and Section 59-10-1403.2 and Section 59-10-1405

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--This language clarifies S.B. 23 (2009). Any fiscal impact would have been included in that bill. (DAR NOTE: S.B. 23 (2009) is found at Chapter 312, Laws of Utah 2009, and was effective 03/25/2009.)

♦ **LOCAL GOVERNMENTS:** None--This language clarifies S.B. 23 (2009). Any fiscal impact would have been included in that bill.

♦ **SMALL BUSINESSES:** None--This language clarifies S.B. 23 (2009). Any fiscal impact would have been included in that bill.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This language clarifies S.B. 23 (2009). Any fiscal impact would have been included in that bill.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The proposed amendment is necessary so that a pass-through entity does not withhold tax on a taxpayer who is not required to pay tax. Without this amendment, a pass-through entity might believe it must withhold tax on a tax exempt entity and the tax exempt entity would then need to file a tax return for a refund of the tax.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No impact on businesses.

**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:**

♦ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

**R865. Tax Commission, Auditing.**

**R865-9I. Income Tax.**

**R865-9I-56. Determination of Amounts Withheld by a Pass-Through Entity that is an S Corporation Pursuant to Utah Code Ann. Section 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.**

(1) The provisions of this rule apply to a pass-through entity that is an S corporation. For provisions that apply to a pass-through entity that is not an S corporation, see rule R865-9I-13.

(2) A pass-through entity that is an S corporation with nonresident shareholders shall complete Schedule N of form TC-20S, and shall provide the following information for each nonresident pass-through entity taxpayer:

- (a) name;
- (b) address;
- (c) social security number;
- (d) percentage of S corporation held; and
- (e) amount of Utah tax paid or withheld on behalf of that pass-through entity taxpayer.

(3) The income of a pass-through entity that is an S corporation shall be calculated by:

(a) adding back to the line on the Schedule K labeled "Income/loss reconciliation" the amount included on that schedule for:

- (i) charitable contributions;
- (ii) total foreign taxes paid or accrued; and
- (iii) recapture of a benefit derived from a deduction under Section 179, Internal Revenue Code; or

(b) if the pass-through entity that is an S corporation was not required to complete the line labeled "Income/loss reconciliation" on the Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the "Income/loss reconciliation" line shall be used for purposes of this rule.

(4) A pass-through entity that is an S corporation shall calculate the tax it withholds on behalf of its nonresident pass-through entity taxpayers by:

(a) multiplying the income of the pass-through entity by the rate in effect under Section 59-10-104; and

(b) subtracting from the amount calculated in Subsection (4)(a) any amounts withheld under Section 59-6-102.

(5) A pass-through entity that is an S corporation is not required to withhold a tax on behalf of a pass-through entity taxpayer that is exempt from taxation under Subsection 59-7-102.

**KEY:** historic preservation, income tax, tax returns, enterprise zones

**Date of Enactment or Last Substantive Amendment:** [September 17, 2009]2010

**Notice of Continuation: March 20, 2007**

**Authorizing, and Implemented or Interpreted Law: 59-10-108 through 59-10-122; 59-10-1403.2; 59-10-1405**

**Tax Commission, Auditing**  
**R865-12L-5**  
**Place of Sale Pursuant to Utah Code**  
**Ann. Section 59-12-207**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 33350

FILED: 01/28/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The section is removed since all sourcing provisions are now in Sections 59-12-211 through 215, and the section this is based on no longer exists in statute.

**SUMMARY OF THE RULE OR CHANGE:** Section is removed.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-12-207

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--The section has no force since statutory provisions govern the sourcing of local sales tax revenues.

♦ **LOCAL GOVERNMENTS:** None--The section has no force since statutory provisions govern the sourcing of local sales tax revenues.

♦ **SMALL BUSINESSES:** None--The section has no force since statutory provisions govern the sourcing of local sales tax revenues.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The section has no force since statutory provisions govern the sourcing of local sales tax revenues.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The removed section impacts how the Tax Commission distributes local sales tax revenues to the various local governments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No impact on businesses.

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:

♦ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

**R865. Tax Commission, Auditing.**

**R865-12L. Local Sales and Use Tax.**

~~[R865-12L-5. Place of Sale Pursuant to Utah Code Ann. Section 59-12-207.~~

~~(1) All retail sales shall be deemed to occur at the place of business of the retailer.~~

~~(2) It is immaterial that delivery of the tangible personal property is made in a county or municipality other than that in which the retailer's place of business is located. There is no exemption from local sales or use tax on the basis of residence of or use by the purchaser in a county other than that in which the sale is made.~~

] **KEY: taxation, sales tax, restaurants, collections**

**Date of Enactment or Last Substantive Amendment:**  
~~[September 17, 2009]~~2010

**Notice of Continuation:** March 16, 2007

**Authorizing, and Implemented or Interpreted Law:** 59-12-207

**Tax Commission, Auditing**

**R865-12L-6**

**Place of Transaction Pursuant to Utah Code Ann. Section 59-12-207**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 33352

FILED: 01/28/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The section is removed since the statute it is based on no longer exists in statute. The substance of the section will be the subject of 2010 legislation.

**SUMMARY OF THE RULE OR CHANGE:** The section is removed.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-12-207

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--The rule applies only to local sales tax revenue and not to state sales tax revenue.

♦ **LOCAL GOVERNMENTS:** None--While statutes do not currently direct how these transactions will be distributed to local governments, these transactions continue to occur and sellers continue this practice. This practice will be codified in 2010 legislation.

♦ **SMALL BUSINESSES:** None--Current statutes direct how local sales tax shall be collected.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Current statutes direct how local sales tax shall be collected.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--Current statutes direct how local sales tax shall be imposed on sellers.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**  
 No impact on businesses.

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:

♦ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

**R865. Tax Commission, Auditing.****R865-12L. Local Sales and Use Tax.****[R865-12L-6. Place of Transaction Pursuant to Utah Code Ann. Section 59-12-207.**

~~\_\_\_\_\_Taxpayers having one or more places of business in Utah shall report all purchases subject to use tax, as defined in rule R865-19S-1, according to the location of the place of business at which the tangible personal property is initially delivered.~~

]

**KEY:** taxation, sales tax, restaurants, collections

**Date of Enactment or Last Substantive Amendment:**

**[September 17, 2009]2010**

**Notice of Continuation:** March 16, 2007

**Authorizing, and Implemented or Interpreted Law:** 59-12-207

**Workforce Services, Employment  
Development  
R986-200-214  
Assistance for Specified Relatives**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 33356

FILED: 01/28/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to make it easier for the Division of Child and Family Services (DCFS) to make appropriate placement of children.

**SUMMARY OF THE RULE OR CHANGE:** The Department has been working with DCFS to help allow more appropriate placement of children. Currently, specified relative assistance is only available for children who are related by blood or law to the specified relative. This has resulted in some half siblings being removed from the home or not eligible for assistance which is not an optimum result. With this change, children who are related to the qualifying child can be eligible for assistance resulting in keeping families together.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-302(5)(b)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** This 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 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 03/17/2010**

**THIS RULE MAY BECOME EFFECTIVE ON:** 03/24/2010

**AUTHORIZED BY:** Kristen Cox, Executive Director

**R986. Workforce Services, Employment Development.**

**R986-200. Family Employment Program.**

**R986-200-214. Assistance for Specified Relatives.**

- (1) Specified relatives include:
- (a) grandparents;
  - (b) brothers and sisters;
  - (c) stepbrothers and stepsisters;
  - (d) aunts and uncles;
  - (e) first cousins;
  - (f) first cousins once removed;
  - (g) nephews and nieces;
  - (h) people of prior generations as designated by the prefix grand, great, great-great, or great- great-great;
  - (i) brothers and sisters by legal adoption;
  - (j) the spouse of any person listed above;
  - (k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated; and

(m) former stepparents.

(2) The Department shall require compliance with Section 30-1-4.5

(3) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated or have a blood relationship to a dependent child who in the home and who is included in the household for assistance purposes;[-]

(b) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(c) The child must be currently living with, and not just visiting, the specified relative;

(d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(e) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(4) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(5) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(6) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(7) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(8) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

**KEY: family employment program**

**Date of Enactment or Last Substantive Amendment:**  
[November 3, 2009]2010

**Notice of Continuation: September 14, 2005**

**Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.**

## Workforce Services, Unemployment Insurance **R994-402** Extended Benefits

### NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 33354

FILED: 01/28/2010

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to update the rule to ensure it complies with federal regulation.

**SUMMARY OF THE RULE OR CHANGE:** Extended benefits have not been available since 1984 and while they are not available now, it is possible with the current recession the state will hit the trigger for these benefits. The current rule is repetitive and leaves out some of the federal requirements for extended benefits. Making the necessary changes with the usual method of cross out and underlining was too confusing so the Department decided to repeal and reenact. There is nothing in the new proposed rule that is not mandated by federal regulations.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(b)

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This is a federal program and there will be no costs or savings to the state budget as a result of these changes. Extended benefits may result in costs to the state but not as a result of anything in these changes.

◆ **LOCAL GOVERNMENTS:** This is federally funded and there will be no costs or savings to local governments as a result of these changes.

◆ **SMALL BUSINESSES:** Small businesses will not be affected by these changes. There are no substantive changes to this amendment not in current rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs or savings to any other persons. This is a federally-funded program, some reimbursable employers may incur costs if extended benefits is triggered but not as a result of any of these rule changes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance 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. These changes will have no impact on any employers contribution tax rate.

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

WORKFORCE SERVICES  
UNEMPLOYMENT INSURANCE  
140 E 300 S  
SALT LAKE CITY, UT 84111-2333  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: Kristen Cox, Executive Director

**R994. Workforce Services, Unemployment Insurance.**

**~~[R994-402. Extended Benefits.~~**

**~~R994-402-201. General Definition.~~**

~~Extended benefits (EB) are paid during certain periods of high unemployment within a state. The maximum benefit amount for a claimant is one-half of the amount of his original regular claim up to a maximum of 13 times the weekly benefit amount. All extended benefits stop when the unemployment rate drops below a certain level. When the claimant has been unable to find work for an extended period of time and has exhausted all rights to regular benefits, extended benefits may be paid providing the state is in an extended benefit period as defined by Subsection 35A-4-402(7). A claimant does not have to have additional wage credits to qualify for extended benefits as the original claim is extended with the same weekly benefit amount. If the claimant does have sufficient additional wage credits and can qualify for a new regular claim, extended benefits are not allowed. There is no waiting week on an extended benefit claim. Availability requirements for extended benefits are different from those for regular claimants. The EB claimant must have no occupational restrictions, must reduce wage expectations and increase his work search efforts beyond those expected of regular benefit claimants. The only exception to this requirement is for claimants who have Department approval while attending school.~~

**~~R994-402-202. Federal Requirements for Extended Benefits.~~**

~~(1) Notwithstanding the provisions of the Utah Employment Security Act concerning regular benefits, an individual shall be ineligible for payment of extended benefits for any week of~~

~~unemployment in his eligibility period if the Department finds that during such period:~~

~~(a) he failed to accept any offer of suitable work or failed to apply for any suitable work to which he was referred by the Department; or~~

~~(b) he failed to actively engage in seeking work as prescribed under Sections R994-405-305 and R994-403-118.~~

~~(2) Any individual who has been found ineligible for extended benefits by reason of the provisions in Subsection R994-402-202(1) shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than 6 times the extended weekly benefit amount.~~

~~(3) For the purpose of extended benefits, the term "suitable work" means with respect to any individual, any work which is within such individual's capabilities, provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:~~

~~(a) the individual's extended weekly benefit amount, plus~~

~~(b) the amount, if any, of supplemental unemployment benefits payable to such individual for such week; and further,~~

~~(c) pays wages not less than the higher of:~~

~~(i) the minimum wage provided by Title 29 U.S. Code Section 216(b) of the Fair Labor Standards Act of 1938, without regard to any exemption; or~~

~~(ii) the applicable state or local minimum wage;~~

~~(4) Notwithstanding R994-402-202(3), no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described in that subsection if:~~

~~(a) the position was not offered to such individual in writing and was not listed with the Department of Workforce Services;~~

~~(b) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of R994-402-202(3);~~

~~(c) the individual furnishes satisfactory evidence to the Department that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) without regard to the definition specified by R994-402-202(3).~~

~~(5) No work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code and set forth herein under Subsection 35A-4-405(3).~~

~~(6) For the purpose of Subsection R994-402-202(1)(b), an individual shall be treated as actively engaged in seeking work during any week if:~~

~~(a) the individual has engaged in a systematic and sustained effort to obtain work during such week; and~~

~~(b) the individual furnishes tangible evidence that he has engaged in such effort during such week.~~

~~\_\_\_\_\_ (7) The Department of Workforce Services shall refer any claimant entitled to extended benefits to any suitable work which meets the criteria prescribed in R994-402-203(3).~~

~~\_\_\_\_\_ (8) An individual who has been denied benefits under the provisions of Section 35A-4-405(2)(b) shall not be eligible to receive extended benefits until after the end of the 52-week denial period and is then otherwise eligible for extended benefits and has subsequent to the date of such disqualification performed services in bona fide covered employment and earned wages for such services equal to at least six times the individual's weekly benefit amount.~~

~~\_\_\_\_\_ (9)(a) Except as provided in subparagraph (9)(b) of this rule, payment of extended compensation shall not be made to any individual if he is filing against Utah from any other state under the interstate benefit payment plan, and an extended benefit period is not in effect that week in that state.~~

~~\_\_\_\_\_ (b) Subparagraph (9)(a) of this rule shall not apply to the first two weeks for which extended compensation is payable to the individual.~~

**R994-402-203. Elements to Qualify for Extended Benefits.**

~~\_\_\_\_\_ To be eligible for extended benefits the claimant must:~~

~~\_\_\_\_\_ (1) exhaust regular benefits as defined by Subsection 35A-4-402(7)(h) or his benefit year must have ended after the beginning of the EB period;~~

~~\_\_\_\_\_ (2) be ineligible for a regular claim in Utah or any other state or under any federal unemployment program;~~

~~\_\_\_\_\_ (3) file for extended benefits in accordance with instructions;~~

~~\_\_\_\_\_ (4) meet federal requirements for availability and work search; and~~

~~\_\_\_\_\_ (5) accept suitable work which is offered in writing.~~

**R994-402-204. Suitable Work.**

~~\_\_\_\_\_ (1) Suitable work for EB claimants includes work:~~

~~\_\_\_\_\_ (a) in any occupation within the claimant's capabilities unless he can show that his prospects for obtaining work in his regular occupation are good, as defined in Subsection R994-402-202(3)(d)(iii); and~~

~~\_\_\_\_\_ (b) paying at least the federal or state minimum wage provided the gross average pay exceeds the claimant's weekly benefit amount plus any supplemental unemployment benefit.~~

~~\_\_\_\_\_ (2) Suitable work for EB claimants does not include work:~~

~~\_\_\_\_\_ (a) available as the result of a strike or labor dispute;~~

~~\_\_\_\_\_ (b) having wages, hours or other conditions of the work which are substantially less favorable to the claimant than those prevailing for similar work in the locality (for example, a skilled claimant, such as a carpenter, may be required to take a job paying the minimum wage in another occupation, but he does not have to take a carpenter job paying minimum wage if that wage is substantially less than the prevailing wage for carpenter work in his locality);~~

~~\_\_\_\_\_ (c) which requires the claimant as a condition of being employed to join a union or to resign from or refrain from joining any bona fide labor organization;~~

~~\_\_\_\_\_ (d) requiring modifications of other conditions of work which would not be considered suitable for a regular claimant, such as unsafe working conditions, work requiring a move or travel~~

~~beyond normal commuting distance, etc.; except with regard to the type of occupation and the wages, standards for determining the suitability of work are the same for EB claimants as for regular claimants.~~

**R994-402-205. Good Prospects.**

~~\_\_\_\_\_ When a claimant has a definite assurance of full-time employment in his customary occupation to begin within four weeks he is considered to have good prospects. He must continue to seek work, but it is not necessary to seek or accept employment consistent with the definition of suitable work for EB claimants. He may restrict his availability to occupations and conditions of employment as permitted for regular claimants.~~

**R994-402-206. Position Offered in Writing.**

~~\_\_\_\_\_ A position is considered "offered in writing" if it is listed with the Department and the claimant is referred or offered a referral by the Department even if the claimant is given the referral orally. If an employer makes a verbal offer of work and the job is not listed with the Department, the provisions of Section 35A-4-405(3) may apply.~~

**R994-402-207. Systematic and Sustained Work Search.**

~~\_\_\_\_\_ (1) A systematic and sustained work search means that the claimant must register for work with the Department and contact at least 5 employers including 3 in-person contacts each week, unless advised otherwise by an authorized Department representative. The claimant should have a realistic plan for finding employment. All of the employer contacts cannot be made on the same day except in circumstances where a work search on several days of the week is impractical. Work search contacts must be with employers not previously contacted. A claimant may not argue that in-person employer contacts are limited because of traditional methods of seeking work in a particular occupation or because of a limited number of employers in an occupation because the claimant may not limit himself to any particular occupation.~~

~~\_\_\_\_\_ (2) There is no good cause for failure to make a systematic and sustained work search after the claimant has received instructions with regard to the required work search. If the claimant is ill or otherwise unable to seek work, but files a claim for benefits after being instructed with regard to work search requirements, benefits must be denied under Section 35A-4-402 and not under Section 35A-4-403(1)(e) unless the claimant was on jury duty. Benefits may be allowed if the claimant failed to make the required work search because he was on jury duty and benefits would have been allowed under similar circumstances to a claimant for regular benefits. If the claimant made the required work search but was unable to work for more than half the normal workweek, he or she may not be eligible in accordance with Sections R994-403-111e and R994-403-112e.~~

~~\_\_\_\_\_ (3) If the claimant has obtained part-time work, he is still required to make a work search on those days when he is not working. The number of contacts may be reduced if the amount of time working is substantial.~~

**R994-402-208. Filing Requirements.**

~~\_\_\_\_\_ Extended benefit claimants must report information as requested on special EB claim forms. If a claim form is submitted with information that clearly shows the claimant did not intend to~~

receive benefits, but was merely providing information, benefits will be denied under Subsection 35A-4-403(1)(a) rather than under EB provisions which require an indefinite disqualification under the federal regulations.

**R994-402-209. Burden of Proof.**

The claimant has the responsibility to keep records of all employers contacted in search of work including the name and address of the employer, the date of the contact, the person contacted, the result of the contact, and the type of work sought, etc. Failure to keep such records or provide such information will result in a conclusion that a work search was not made unless other convincing evidence is provided.

**R994-402-210. Period of Disqualification.**

A claimant who fails to accept an offer of suitable work or fails to actively seek work must be denied benefits for the week in which such failure occurs and for the following weeks until he has had employment during at least four subsequent weeks and earned at least six times his weekly benefit amount. The earnings do not have to be in consecutive weeks, but must be bona fide employment. It is not necessary for the work to be in "covered" employment but it may not be self-employment.

**R994-402-211. Requalification Requirement Following 5b2 Disqualification.**

All disqualifications issued under the state provisions of the Employment Security Act continue to be in effect as provided by those laws on EB claims. In addition, a claimant who has been denied benefits under Subsection 35A-4-405(2)(b) is not eligible to receive extended benefits until he has returned to bona fide covered employment and earned at least six times his weekly benefit amount in employment subsequent to the disqualifying separation, even if the disqualification period has ended.

**R994-402-212. Out of State Claimants.**

Claimants filing EB claims against Utah who are living in states which are not in an EB period will be entitled to receive only two weeks of extended benefits. The amount of the payment, whether it is a full or partial payment, is immaterial. When a payment of any amount has been made for each of two weeks, whether or not consecutive, no further payments can be made.

**R994-402-213. Overpayments.**

Overpayments established on extended benefit payments are collectible in accordance with the provisions of Subsections 35A-4-406(4) and 35A-4-406(5).

**R994-402-601. Notice.**

Immediately after it has been determined that an extended benefit period will become effective or will end in the state, the Department of Workforce Services shall make public announcement and give personal notice calculated to reach the largest practicable number of interested persons within the state. Such notice at the beginning of an extended benefit period will state the first date on which potential claimants may file a claim for and become eligible for extended benefit payments, which group of claimants may qualify for extended benefits, what action must be taken to protect

their benefit rights, and the date by which claimants must file to qualify at the beginning of the extended benefit period.

**R994-402-602. Effective Date of EB Claim.**

Claims for extended benefit payments will be filed on forms prescribed by the Department. The effective date of claims for extended benefits shall be the Sunday of the first week during which extended benefits are payable in accordance with Subsection 35A-4-402(7) provided the claimant has filed as instructed. The effective date of the EB claim will be backdated under Subsection 35A-4-403(1)(a) up to two weeks for claimants who were not given personal notice of the extended benefit period. The Department may further extend the time during which claims for extended benefits may be backdated upon a showing of good cause under Subsections 35A-4-403(1) and 35A-4-401(1)(b). ]

**R994-402. Extended Benefits (EB).**

**R994-402-201. General Definition.**

When a claimant has been unable to find work for an extended period of time and has exhausted all of his or her regular benefits, EB may be paid providing the state is in an extended benefit period as defined by Subsection 35A-4-402(7). A claimant does not have to have additional wage credits to qualify for EB as the original claim is extended with the same weekly benefit amount. The maximum benefit amount for a claimant is one-half of the amount of his or her original regular claim up to a maximum of 13 times the weekly benefit amount. All EB stop when the unemployment rate drops below a certain level, even if the claimant has not used all of his or her EB. If the claimant has sufficient additional wage credits and can qualify for a new regular claim, EB are not allowed. There is no waiting week on an EB claim. Availability requirements for EB are different from those for regular claimants. Unless the claimant has good prospects as defined in R994-402-205, the EB claimant must have no occupational restrictions, must reduce wage expectations and increase his or her work search efforts beyond those expected of regular benefit claimants. The only exception to this requirement is for claimants who have Department approval while attending school.

**R994-402-202. General Requirements for EB.**

(1) Notwithstanding the provisions of the Act concerning regular benefits, a claimant is ineligible for EB during any week of unemployment in the claimant's eligibility period if the Department finds that during such period:

(a) the claimant failed to accept any offer of suitable work as defined in R994-402-204 or failed to apply for any suitable work to which he or she was referred by the Department; or

(b) he or she failed to make an active, good faith effort to secure employment as provided in Section R994-402-207.

(2) Any claimant who has been found ineligible for EB under Subsection R994-402-202(1) will be denied benefits until he or she has performed services in bona fide covered employment for at least four subsequent weeks, whether or not consecutive, and earned wages for such services equal to at least six times the claimant's weekly benefit amount.

(3) Notwithstanding R994-402-204, no claimant will be denied EB for failure to accept an offer of, or apply for, any job which meets the definition of suitability as described in that subsection if:

(a) the position was not offered to the claimant in writing as defined in R994-402-206 or was not listed with the Department of Workforce Services;

(b) such failure would not result in a denial of benefits under the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of R994-402-204 or

(c) the claimant meets the requirements of "good prospects" as defined in R994-402-205.

(4) No work is considered to be suitable work unless it complies with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code as provided in Subsection 35A-4-405(3).

(5) The Department shall refer any claimant entitled to EB to any suitable work which meets the criteria prescribed in R994-402-204.

#### **R994-402-203. Eligibility for EB.**

To be eligible for EB the claimant must:

(1) exhaust regular benefits as defined by Subsection 35A-4-402(7)(h) and his or her benefit year must have ended after the beginning of the EB period;

(2) be ineligible for a regular claim in Utah or any other state or under any federal unemployment program;

(3) file for EB in accordance with instructions;

(4) meet EB requirements for availability and work search; and

(5) accept suitable work.

#### **R994-402-204. Suitable Work.**

(1) Suitable work for EB claimants includes work:

(a) in any occupation within the claimant's capabilities unless he or she can show that his or her prospects for obtaining work in his or her regular occupation are good, as defined in Subsection R994-402-205 and

(b) paying the greater of the federal or state minimum wage provided the gross average pay exceeds the claimant's weekly benefit amount plus any supplemental unemployment benefit.

(2) Suitable work for EB claimants does not include work:

(a) available as the result of a strike or labor dispute;

(b) having wages, hours or other conditions of the work which are substantially less favorable to the claimant than those prevailing for similar work in the locality (for example, a skilled claimant, such as a carpenter, may be required to take a job paying the minimum wage in another occupation, but he or she does not have to take a carpenter job paying minimum wage if that wage is substantially less than the prevailing wage for carpenter work in his or her locality);

(c) which requires the claimant as a condition of being employed to join a union or to resign from or refrain from joining any labor organization;

(d) which would not be considered suitable for a regular claimant, such as unsafe working conditions or work requiring a move or travel beyond normal commuting distance. Except with regard to the type of occupation and the wages, standards for determining the suitability of work are the same for EB claimants as for regular claimants.

#### **R994-402-205. Good Prospects.**

When a claimant has a definite assurance of full-time employment in his or her customary occupation to begin within four weeks the claimant is considered to have good prospects. He or she must continue to seek work, but suitability will be determined under the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) without regard to the definition in R994-402-204.

#### **R994-402-206. Position Offered in Writing.**

A position is considered "offered in writing" if it is listed with the Department and the claimant is referred or offered a referral by the Department even if the claimant is given the referral verbally. If an employer makes a verbal offer of work and the job is not listed with the Department, the provisions of Section 35A-4-405(3) may apply.

#### **R994-402-207. Systematic and Sustained Work Search.**

(1) A systematic and sustained work search means that the claimant must register for work with the Department and contact at least 4 employers each week, unless advised otherwise by an authorized Department representative. The claimant should have a realistic plan for finding employment. All of the employer contacts cannot be made on the same day except in circumstances where a work search on several days of the week is impractical. Work search contacts must be with employers not contacted within the last 90 days.

(2) Except for claimants who have received Department approval under section R944-403-201, there is no good cause exception for failure to make a systematic and sustained work search after the claimant has received instructions with regard to the required work search. If the claimant is ill or otherwise unable to seek work, but files a claim for benefits after being instructed with regard to work search requirements, benefits must be denied under Section 35A-4-402 and not under Section 35A-4-403(1)(c) unless the claimant was hospitalized for treatment of an emergency or life-threatening condition. Benefits may be allowed if the claimant failed to make the required work search because he or she was on jury duty and regular unemployment benefits would have been allowed under similar circumstances. If the claimant made the required work search but was unable to work or unavailable for work for more than half the normal workweek, he or she might be found ineligible under Sections R994-403-111c and R994-403-112c.

(3) If the claimant has obtained part-time work, he or she is still required to make a work search on those days when he or she is not working. The number of contacts may be reduced if the claimant is working a substantial amount of time in the part-time job.

(4) Work search requirements may be suspended if the Department determines that severe weather conditions or other calamity has forced a suspension of such activities by most members of the community.

#### **R994-402-208. Claimant Responsibilities.**

(1) EB claimants must report all information as requested by the Department.

(2) An EB claimant is required to keep a detailed record of the employers contacted including:

\_\_\_\_\_ (a) the name and address of the employer,  
 \_\_\_\_\_ (b) the date of contact with the employer,  
 \_\_\_\_\_ (c) the person contacted if personal contact is made,  
 \_\_\_\_\_ (d) the result of the contact,  
 \_\_\_\_\_ (e) the type of work sought.  
 \_\_\_\_\_ (3) Failure to keep records or provide such information will result in a conclusion that a work search was not made unless other convincing evidence is provided.

**R994-402-209. Period of Disqualification.**

\_\_\_\_\_ A claimant who fails to accept an offer of suitable work or fails to actively seek work will be denied benefits for the week in which such failure occurs and for the following weeks until he or she has had employment during at least four subsequent weeks and has earned at least six times his or her weekly benefit amount. The earnings do not have to be in consecutive weeks, but must be bona fide, covered, employment.

**R994-402-210. Requalification Requirement Following a Disqualification for a Crime in Connection with Employment.**

\_\_\_\_\_ All disqualifications for regular unemployment benefits continue to be in effect on EB claims. In addition, a claimant who has been denied benefits under Subsection 35A-4-405(2)(b) is not eligible to receive EB until he or she has returned to bona fide covered employment and earned at least six times his or her weekly benefit amount in employment subsequent to the disqualifying separation, even if the disqualification period has ended.

**R994-402-211. Out of State Claimants.**

\_\_\_\_\_ A claimant who resides in another state but is filing against Utah under the interstate benefit payment plan is only entitled to two weeks of EB while residing in another state if the state of residence is not in an extended benefit period. The amount of the payment, whether it is a full or partial payment, is immaterial. When a payment of any amount has been made for each of two weeks, whether or not consecutive, no further payments can be made.

**R994-402-212. Overpayments.**

\_\_\_\_\_ Overpayments established on extended benefit payments are collectible in accordance with the provisions of Subsections 35A-4-406(4) and 35A-4-406(5).

**R994-402-601. Notice.**

\_\_\_\_\_ (1) Immediately after it has been determined that an extended benefit period will become effective or will end in the state, the Department will make a public announcement and give personal notice calculated to reach the largest practicable number of potentially eligible persons within the state.

\_\_\_\_\_ (2) The notice given at the beginning of an extended benefit period will state

\_\_\_\_\_ (a) the first date on which potential claimants may file a claim for, and become eligible for, extended benefit payments,

\_\_\_\_\_ (b) eligibility criteria for EB, and

\_\_\_\_\_ (c) what action individuals must take to protect their benefit rights.

\_\_\_\_\_ (3) Whenever there has been a determination that an EB period will end, the Department will provide notice to all claimants currently filing claims for EB of the forthcoming end of the EB period and its effect on the claimant's right to EB.

**R994-402-602. Effective Date of EB Claim.**

\_\_\_\_\_ The effective date of claims for EB will be the Sunday of the first week during which EB are payable in accordance with Subsection 35A-4-402(7) provided the claimant has filed as instructed. The effective date of the EB claim may be backdated upon a showing of good cause under Subsections 35A-4-403(1) and 35A-4-401(1)(b).

**KEY: unemployment compensation, employee recruitment, extended benefits**

**Date of Enactment or Last Substantive Amendment: [November 15, 2007]2010**

**Notice of Continuation: May 17, 2007**

**Authorizing, and Implemented or Interpreted Law: 35A-4-402(2); 35A-4-402(6)(a)**

Workforce Services, Unemployment  
Insurance  
**R994-406-203**  
Waiver of Recovery of Nonfault  
Overpayments

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 33355

FILED: 01/28/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** No not allow waiver of nonfault overpayments for claimants filing in other states.

**SUMMARY OF THE RULE OR CHANGE:** The Department allows waiver of a nonfault overpayment if a claimant meets certain criteria and is filing a new claim. The rule was intended to allow waivers only for claimants filing in Utah. The Division has recently received requests from other states to waive the Utah nonfault overpayment for claimants filing in other states. It is too difficult to determine if those out-of-state claimants meet Utah's criteria for a waiver and it was not the intended purpose of the rule to allow waivers for out-of-state claimants.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This is a federally-funded program and there are no costs or savings to the state.
- ◆ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs of savings to local government.
- ◆ SMALL BUSINESSES: There are no costs or savings to small businesses as there are no fees associated with this program and it is federally funded.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these changes and no persons will be affected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employers contribution tax rate.

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

WORKFORCE SERVICES  
 UNEMPLOYMENT INSURANCE  
 140 E 300 S  
 SALT LAKE CITY, UT 84111-2333  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: Kristen Cox, Executive Director

**R994. Workforce Services, Unemployment Insurance.**

**R994-406. Fraud, Fault and Nonfault Overpayments.**

**R994-406-203. Waiver of Recovery of Nonfault Overpayments.**

(1) The Department may waive recovery of a nonfault overpayment if the claimant:

(a) is currently eligible to receive unemployment benefits from the state of Utah and has filed a weekly claim against Utah within the last 27 days.

([a]b) requests a waiver within 10 days of notification of the opportunity to request a waiver, within 10 days of the first offset of benefits following a reopening, or upon a showing of a significant change in the claimant's financial circumstances. Good cause will be considered if the claimant can show the failure to request a waiver within these time limitations was due to circumstances which were beyond the claimant's control or were compelling and reasonable; and

([b]c) can show that recovery of the 50% offset as provided in R994-406-202 would render the claimant unable to pay for the basic needs of survival for his or her immediate family, dependents and other household members.

(i) The claimant must provide verification of financial resources and the social security numbers of family members, dependents and household members.

(ii) Before granting the waiver, the Department must consider all potential financial resources of the claimant, the claimant's family, dependents and other household members.

(iii) "Unable to pay for the basic needs of survival" means "economically disadvantaged" and is defined as 70% of the Lower Living Standard Income Level (LLSIL). Therefore, if the claimant's total family resources in relation to family size are not in excess of 70% of the LLSIL, the waiver will be granted provided the economic circumstances are not expected to change within the next 90 days. Individual expenses will not be considered. Available financial resources, current income, and anticipated income will be included and averaged for the three months.

(2) Any nonfault overpayment outstanding at the time the request is granted is forgiven and the claimant has no further repayment obligation.

(3) A waiver cannot be granted retroactively for any payments made against an overpayment or any of the overpayment which has already been offset except if the offset was made pending a decision on a timely waiver request which is ultimately granted.

**KEY: overpayments, unemployment compensation**

**Date of Enactment or Last Substantive Amendment:**  
~~December 3, 2008~~ 2010

**Notice of Continuation:** May 22, 2007

**Authorizing, and Implemented or Interpreted Law:**  
 35A-4-406(2); 35A-4-406(3); 35A-4-406(4); 35A-4-406(5)

**End of the Notices of Proposed Rules Section**



## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive public comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends March 17, 2010.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules will include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through June 15, 2010, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses and the agency must start the process over.

**CHANGES IN PROPOSED RULES** are governed by Section 63G-3-303; Rule R15-2; and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

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

## Environmental Quality, Water Quality R317-1-1 Definitions

### NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 33232

FILED: 01/28/2010

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed changes are being made in response to issues brought before the Water Quality Board during the public comment period for amendments to the Utah Water Quality Standards.

**SUMMARY OF THE RULE OR CHANGE:** Clarifications were made to the definitions for "assimilative capacity" and "existing use". (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the December 15, 2009, issue of the Utah State Bulletin, on page 43. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-5-105

#### ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No costs or savings to the state budget are anticipated. The proposed amendment clarifies two definitions.
- ◆ **LOCAL GOVERNMENTS:** No costs or savings to the local government are anticipated. The proposed amendment clarifies two definitions in support of concurrent amendments to Rule R317-2.
- ◆ **SMALL BUSINESSES:** No costs or savings to small businesses are anticipated. The proposed amendment clarifies two definitions.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No costs or savings to other persons are anticipated. The proposed amendment clarifies two definitions.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No additional compliance costs are anticipated. The proposed amendment clarifies two definitions.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed amendments clarifies two definitions. No impacts to businesses are anticipated.

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

- ◆ Dave Wham by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at [dwham@utah.gov](mailto:dwham@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: Walter Baker, Director

### R317. Environmental Quality, Water Quality.

#### R317-1. Definitions and General Requirements.

##### R317-1-1. Definitions.

1.1 "Assimilative Capacity" means the difference between the numeric criteria and the concentration in the waterbody of interest where the concentration is less than the criterion.

1.2 "Board" means the Utah Water Quality Board.

1.3 "BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

1.4 "Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

1.5 "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

1.6 "CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

1.7 "COD" means chemical oxygen demand.

1.8 "Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water Regulations.

1.9 "Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

1.10 "Division" means the Utah State Division of Water Quality.

1.11 "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

1.12 "Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

1.13 "Existing Uses" means those uses actually ~~obtained~~attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

1.14 "Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

1.15 "Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

1.16 "Influent" means the total wastewater flow entering a wastewater treatment works.

1.17 "Great Salt Lake impounded wetland" means wetland ponds which have been formed by dikes or berms to control and retain the flow of freshwater sources in the immediate proximity of Great Salt Lake.

1.18 "Large underground wastewater disposal system" means the same type of device as an onsite wastewater system except that it is designed to handle more than 5,000 gallons per day of domestic wastewater, or wastewater that originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other underground wastewater disposal system not covered under the definition of an onsite wastewater system. The Board controls the installation of such systems.

1.19 "Onsite wastewater system" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorption system.

1.20 "Operating Permit" is a State issued permit issued to any wastewater treatment works covered under R317-3 or R317-5 with the following exceptions:

A. Any wastewater treatment permitted under Ground Water Quality Protection R317-6.

B. Any wastewater treatment permitted under Underground Injection Control (UIC) Program R317-7.

C. Any wastewater treatment permitted under Utah Pollutant Discharge Elimination System (UPDES) R317-8.

D. Any wastewater treatment permitted under Approvals and Permits for a Water Reuse Project R317-13.

E. Any wastewater treatment permitted by a Local Health Department under Onsite Wastewater Systems R317-4.

1.21 "Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

1.22 "Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

1.23 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.24 "Sewage" is synonymous with the term "domestic wastewater".

1.25 "Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

1.26 "Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

1.27 "SS" means suspended solids.

1.28 Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

1.29 "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

1.30 "TSS" means total suspended solids.

1.31 "Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It includes onsite wastewater systems and large underground wastewater disposal systems.

1.32 "Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

1.33 "Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

1.34 "Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

**KEY: water pollution, waste disposal, industrial waste, effluent standards**

**Date of Enactment or Last Substantive Amendment: 2010**

**Notice of Continuation: October 2, 2007**

**Authorizing, and Implemented or Interpreted Law: 19-5**

## Environmental Quality, Water Quality R317-2 Standards of Quality for Waters of the State

### NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 33233

FILED: 01/28/2010

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed changes are being made in response to issues brought before the Water Quality Board during the public comment period for amendments to the Utah Water Quality Standards.

**SUMMARY OF THE RULE OR CHANGE:** Portions of Subsection R317-2-3(3.5) were deleted because they refer to Subsection R317-2-3(3.5)(b) that was previously stricken. The language in Subsection R317-2-5.5b(1) that describes when an antidegradation review does not have to be conducted was clarified. In Table 2.14.1 Numeric Criteria for Domestic, Recreation, and Agricultural Uses, the word dissolved was stricken from the inorganic analytes in response to comments. In Table 2.14.1 Numeric Criteria for Domestic, Recreation, and Agricultural Uses, Footnote 4, a site-specific standard for total dissolved solids and sulfate was added for Quitchupah and Ivie Creeks in Emery County in response to comments. In Subsection R317-2-14(2.14.2) Footnote 2a, clarifying language was added: "To ensure protection of uses, the Executive Secretary shall develop reasonable protocols and guidelines that quantify the physical, chemical, and biological integrity of these waters. These protocols and guidelines will include input from local governments, the regulated community, and the general public. The Executive Secretary will inform the Water Quality Board of any protocols or guidelines that are developed." (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the December 15, 2009, issue of the Utah State Bulletin, on page 45. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all

of the changes that will be enforceable should the agency make this rule effective.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-5-105

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The proposed changes are made in response to comments received during the public comment period and in discussions with the Water Quality Board. The changes provide clarifying language or are of a technical or editorial nature and are not anticipated to result in costs or savings to state government beyond those identified in the original rulemaking.

◆ **LOCAL GOVERNMENTS:** The proposed changes are made in response to comments received during the public comment period and in discussions with the Water Quality Board. The changes provide clarifying language or are of a technical or editorial nature and are not anticipated to result in costs or savings to local government beyond those identified in the original rulemaking.

◆ **SMALL BUSINESSES:** The proposed changes are made in response to comments received during the public comment period and in discussions with the Water Quality Board. The changes provide clarifying language or are of a technical or editorial nature and are not anticipated to result in costs or savings to small businesses beyond those identified in the original rulemaking.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed changes are made in response to comments received during the public comment period and in discussions with the Water Quality Board. The changes provide clarifying language or are of a technical or editorial nature and are not anticipated to result in costs or savings to other persons beyond those identified in the original rulemaking.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The site-specific total dissolved solids standards change for Quitchupah Creek will affect the compliance costs of a company that discharges into Quitchupah Creek. A savings is implied because the company requested the change. We do not anticipate any other changes to compliance beyond those identified in the original rulemaking.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed changes are made in response to comments received during the public comment period and in discussions with the Water Quality Board. The changes provide clarifying language or are of a technical or editorial nature and are not anticipated to result in costs or savings to businesses beyond those identified in the original rulemaking.

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

ENVIRONMENTAL QUALITY  
WATER QUALITY  
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:  
 ♦ Dave Wham by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at [dwham@utah.gov](mailto:dwham@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

AUTHORIZED BY: Walter Baker, Director

**R317. Environmental Quality, Water Quality.**  
**R317-2. Standards of Quality for Waters of the State.**  
**R317-2-3. Antidegradation Policy.**

3.1 Maintenance of Water Quality

Waters whose existing quality is better than the established standards for the designated uses will be maintained at high quality unless it is determined by the Board, after appropriate intergovernmental coordination and public participation in concert with the Utah continuing planning process, allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. However, existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.

In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Federal Clean Water Act.

3.2 Category 1 Waters

Waters which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters. New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the Regulations for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.

Projects such as, but not limited to, construction of dams or roads will be considered where pollution will result only during the actual construction activity, and where best management practices will be employed to minimize pollution effects.

Waters of the state designated as Category 1 Waters are listed in R317-2-12.1.

3.3 Category 2 Waters

Category 2 Waters are designated surface water segments which are treated as Category 1 Waters except that a point source discharge may be permitted provided that the discharge does not

degrade existing water quality. Waters of the state designated as Category 2 Waters are listed in R317-2-12.2.

3.4 Category 3 Waters

For all other waters of the state, point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5.

3.5 Antidegradation Review (ADR)

An antidegradation review will determine whether the proposed activity complies with the applicable antidegradation requirements for receiving waters that may be affected.

An antidegradation review (ADR) may consist of two parts or levels. A Level I review is conducted to insure that existing uses will be maintained and protected. ~~[In addition, a Level I review evaluates the criteria in Section 3.5b to determine if any degradation is de minimis in nature and therefore does not require a Level II review. A Level II review as described in Section 3.5e is needed when the impacts are not de minimis.]~~

Both Level I and Level II reviews will be conducted on a parameter-by-parameter basis. A decision to move to a Level II review for one parameter does not require a Level II review for other parameters. Discussion of parameters of concern is those expected to be affected by the proposed activity.

Antidegradation reviews shall include opportunities for public participation, as described in Section 3.5e.

a. Activities Subject to Antidegradation Review (ADR)

1. For all State waters, antidegradation reviews will be conducted for proposed federally regulated activities, such as those under Clean Water Act Sections 401 (FERC and other Federal actions), 402 (UPDES permits), and 404 (Army Corps of Engineers permits). The Executive Secretary may conduct an ADR on any[other] projects with the potential for major impact on the quality of waters of the state. The review will determine whether the proposed activity complies with the applicable antidegradation requirements for the particular receiving waters that may be affected.

2. For Category 1 Waters and Category 2 Waters, reviews shall be consistent with the requirement established in Sections 3.2 and 3.3, respectively.

3. For Category 3 Waters, reviews shall be consistent with the requirements established in this section

b. An Anti-degradation Level II review is not required where any of the following conditions apply:

1. Water quality will not be lowered by the proposed activity or for existing permitted facilities, water quality will not be further lowered by the proposed activity, examples include situations where: ~~[For example,]~~

(a) the proposed concentration-based effluent limit is less than or equal to the ambient concentration in the receiving water during critical conditions; or

(b) a UPDES permit is being renewed and the proposed effluent concentration [value and pollutant loading is equal to or less than the existing permitted concentrations and corresponding pollutant loading. If waste loads are not defined in an existing permit, the design capacity of the facility, of both concentrations and loads, will be used to determine whether a proposed project lowers water quality.] and loading limits are equal to or less than the concentration and loading limits in the previous permit; or

(c) a UPDES permit is being renewed and new effluent limits are to be added to the permit, but the new effluent limits are based on maintaining or improving upon effluent concentrations and loads that have been observed, including variability; or

(d) a new or renewed UPDES permit is being issued, and water quality-based effluent limits are not required for a specific pollutant because it has been determined that the discharge will not cause, have reasonable potential to cause, or contribute to an exceedance of a State water quality standard for the pollutant.

2. Assimilative capacity (based upon concentration) is not available or has previously been allocated, as indicated by water quality monitoring or modeling information. This includes situations where:

(a) the water body is included on the current 303(d) list for the parameter of concern; or

(b) existing water quality for the parameter of concern does not satisfy applicable numeric or narrative water quality criteria; or

(c) discharge limits are established in an approved TMDL that is consistent with the current water quality standards for the receiving water (i.e., where TMDLs are established, and changes in effluent limits that are consistent with the existing load allocation would not trigger an antidegradation review).

Under conditions (a) or (b) the effluent limit in an UPDES permit may be equal to the water quality numeric criterion for the parameter of concern.

3. Water quality impacts will be temporary and related only to sediment or turbidity and fish spawning will not be impaired,

4. The water quality effects of the proposed activity are expected to be temporary and limited. As general guidance, CWA Section 402 general permits, CWA Section 404 nationwide and general permits, or activities of short duration, will be deemed to have a temporary and limited effect on water quality where there is a reasonable factual basis to support such a conclusion. The 404 nationwide permits decision will be made at the time of permit issuance, as part of the Division's water quality certification under CWA Section 401. Where it is determined that the category of activities will result in temporary and limited effects, subsequent individual activities authorized under such permits will not be subject to further antidegradation review. Factors to be considered in determining whether water quality effects will be temporary and limited may include the following:

(a) Length of time during which water quality will be lowered.

(b) Percent change in ambient concentrations of pollutants of concern

(c) Pollutants affected

(d) Likelihood for long-term water quality benefits to the segment (e.g., dredging of contaminated sediments)

(e) Potential for any residual long-term influences on existing uses.

(f) Impairment of the fish spawning, survival and development of aquatic fauna excluding fish removal efforts.

c. Anti-degradation Review Process

For all activities requiring a Level II review, the Division will notify affected agencies and the public with regards to the requested proposed activity and discussions with stakeholders may be held. In the case of Section 402 discharge permits, if it is

determined that a discharge will be allowed, the Division of Water Quality will develop any needed UPDES permits for public notice following the normal permit issuance process.

The ADR will cover the following requirements or determinations:

1. Will all Statutory and regulatory requirements be met?

The Executive Secretary will review to determine that there will be achieved all statutory and regulatory requirements for all new and existing point sources and all required cost-effective and reasonable best management practices for nonpoint source control in the area of the discharge. If point sources exist in the area that have not achieved all statutory and regulatory requirements, the Executive Secretary will consider whether schedules of compliance or other plans have been established when evaluating whether compliance has been assured. Generally, the "area of the discharge" will be determined based on the parameters of concern associated with the proposed activity and the portion of the receiving water that would be affected.

2. Are there any reasonable less-degrading alternatives?

There will be an evaluation of whether there are any reasonable non-degrading or less degrading alternatives for the proposed activity. This question will be addressed by the Division based on information provided by the project proponent. Control alternatives for a proposed activity will be evaluated in an effort to avoid or minimize degradation of the receiving water. Alternatives to be considered, evaluated, and implemented to the extent feasible, could include pollutant trading, water conservation, water recycling and reuse, land application, total containment, etc.

For proposed UPDES permitted discharges, the following list of alternatives should be considered, evaluated and implemented to the extent feasible:

(a) innovative or alternative treatment options

(b) more effective treatment options or higher treatment levels

(c) connection to other wastewater treatment facilities

(d) process changes or product or raw material substitution

(e) seasonal or controlled discharge options to minimize discharging during critical water quality periods

(f) pollutant trading

(g) water conservation

(h) water recycle and reuse

(i) alternative discharge locations or alternative receiving waters

(j) land application

(k) total containment

(l) improved operation and maintenance of existing treatment systems

(m) other appropriate alternatives

An option more costly than the cheapest alternative may have to be implemented if a substantial benefit to the stream can be realized. Alternatives would generally be considered feasible where costs are no more than 20% higher than the cost of the discharging alternative, and (for POTWs) where the projected per connection service fees are not greater than 1.4% of MAGHI (median adjusted gross household income), the current affordability criterion now being used by the Water Quality Board in the wastewater revolving loan program. Alternatives within these cost ranges should be carefully considered by the discharger. Where State financing is

appropriate, a financial assistance package may be influenced by this evaluation, i.e., a less polluting alternative may receive a more favorable funding arrangement in order to make it a more financially attractive alternative.

It must also be recognized in relationship to evaluating options that would avoid or reduce discharges to the stream, that in some situations it may be more beneficial to leave the water in the stream for instream flow purposes than to remove the discharge to the stream.

### 3. Special Procedures for 404 Permits.

For 404 permitted activities, all appropriate alternatives to avoid and minimize degradation should be evaluated. Activities involving a discharge of dredged or fill materials that are considered to have more than minor adverse effects on the aquatic environment are regulated by individual CWA Section 404 permits. The decision-making process relative to the 404 permitting program is contained in the 404(b)(1) guidelines (40 CFR Part 230). Prior to issuing a permit under the 404(b)(1) guidelines, the Corps of Engineers:

- (a) makes a determination that the proposed activity discharges are unavoidable (i.e., necessary);
- (b) examines alternatives to the proposed activity and authorize only the least damaging practicable alternative; and
- (c) requires mitigation for all impacts associated with the activity. A 404(b)(1) finding document is produced as a result of this procedure and is the basis for the permit decision. Public participation is provided for in the process. Because the 404(b)(1) guidelines contains an alternatives analysis, the executive secretary will not require development of a separate alternatives analysis for the anti-degradation review. The division will use the analysis in the 404(b)(1) finding document in completing its anti-degradation review and 401 certification.

### 4. Does the proposed activity have economic and social importance?

Although it is recognized that any activity resulting in a discharge to surface waters will have positive and negative aspects, information must be submitted by the applicant that any discharge or increased discharge will be of economic or social importance in the area.

The factors addressed in such a demonstration may include, but are not limited to, the following:

- (a) employment (i.e., increasing, maintaining, or avoiding a reduction in employment);
- (b) increased production;
- (c) improved community tax base;
- (d) housing;
- (e) correction of an environmental or public health problem; and
- (f) other information that may be necessary to determine the social and economic importance of the proposed surface water discharge.

5. The applicant may submit a proposal to mitigate any adverse environmental effects of the proposed activity (e.g., instream habitat improvement, bank stabilization). Such mitigation plans should describe the proposed mitigation measures and the costs of such mitigation. Mitigation plans will not have any effect on effluent limits or conditions included in a permit (except possibly where a previously completed mitigation project has resulted in an improvement in background water quality that affects

a water quality-based limit). Such mitigation plans will be developed and implemented by the applicant as a means to further minimize the environmental effects of the proposed activity and to increase its socio-economic importance. An effective mitigation plan may, in some cases, allow the Executive Secretary to authorize proposed activities that would otherwise not be authorized.

### 6. Will water quality standards be violated by the discharge?

Proposed activities that will affect the quality of waters of the state will be allowed only where the proposed activity will not violate water quality standards.

### 7. Will existing uses be maintained and protected?

Proposed activities can only be allowed if "existing uses" will be maintained and protected. No UPDES permit will be allowed which will permit numeric water quality standards to be exceeded in a receiving water outside the mixing zone. In the case of nonpoint pollution sources, the non-regulatory Section 319 program now in place will address these sources through application of best management practices to ensure that numeric water quality standards are not exceeded.

8. If a situation is found where there is an existing use which is a higher use (i.e., more stringent protection requirements) than that current designated use, the Division will apply the water quality standards and anti-degradation policy to protect the existing use. Narrative criteria may be used as a basis to protect existing uses for parameters where numeric criteria have not been adopted. Procedures to change the stream use designation to recognize the existing use as the designated use would be initiated.

### d. Special Procedures for Drinking Water Sources

An Antidegradation Level II Review will be required by the Executive Secretary for discharges to waters with a Class 1C drinking water use assigned.

Depending upon the locations of the discharge and its proximity to downstream drinking water diversions, additional treatment or more stringent effluent limits or additional monitoring, beyond that which may otherwise be required to meet minimum technology standards or in stream water quality standards, may be required by the Executive Secretary in order to adequately protect public health and the environment. Such additional treatment may include additional disinfection, suspended solids removal to make the disinfection process more effective, removal of any specific contaminants for which drinking water maximum contaminant levels (MCLs) exists, and/or nutrient removal to reduce the organic content of raw water used as a source for domestic water systems.

Additional monitoring may include analyses for viruses, Giardia, Cryptosporidium, other pathogenic organisms, and/or any contaminant for which drinking water MCLs exist. Depending on the results of such monitoring, more stringent treatment may then be required.

The additional treatment/effluent limits/monitoring which may be required will be determined by the Executive Secretary after consultation with the Division of Drinking Water and the downstream drinking water users.

### e. Public Notice

The public will be provided notice and an opportunity to comment on the conclusions of all completed antidegradation reviews. Where possible, public notice on the antidegradation review conclusions will be combined with the public notice on the proposed permitting action. In the case of UPDES permits, public

notice will be provided through the normal permitting process, as all draft permits are public noticed for 30 days, and public comment solicited, before being issued as a final permit. The Statement of Basis for the draft UPDES permit will contain information on how the ADR was addressed including results of the Level I and Level II reviews. In the case of Section 404 permits from the Corps of Engineers, the Division of Water Quality will develop any needed 401 Certifications and the public notice will be published in conjunction with the US Corps of Engineers public notice procedures. Other permits requiring a Level II review will receive a separate public notice according to the normal State public notice procedures.

f. Implementation Procedures

The Executive Secretary shall establish reasonable protocols and guidelines (1) for completing technical, social, and economic need demonstrations, (2) for review and determination of adequacy of Level II ADRs and (3) for determination of additional treatment requirements. Protocols and guidelines will consider federal guidance and will include input from local governments, the regulated community, and the general public. The Executive Secretary will inform the Water Quality Board of any protocols or guidelines that are developed.

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**R317-2-14. Numeric Criteria.**

TABLE 2.14.1  
 NUMERIC CRITERIA FOR DOMESTIC,  
 RECREATION, AND AGRICULTURAL USES

Parameter	Domestic	Recreation and		Agri-
	Source 1C	Aesthetics 2A	2B	culture 4
<b>BACTERIOLOGICAL</b>				
(30-DAY GEOMETRIC MEAN) (NO.)/100 ML	(7)			
E. coli	206	126	206	
<b>MAXIMUM</b>				
(NO.)/100 ML (7)				
E. coli	668	409	668	
<b>PHYSICAL</b>				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
<b>METALS (DISSOLVED, MAXIMUM MG/L) (2)</b>				
Arsenic	0.01			0.1
Barium	1.0			
Beryllium	<0.004			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.015			0.1
Mercury	0.002			
Selenium	0.05			0.05
Silver	0.05			
<b>INORGANICS</b>				
(DISSOLVED, MAXIMUM MG/L)				
Bromate	0.01			
Boron				0.75
Chlorite	<1.0			
Fluoride (3)	1.4-2.4			

Nitrates as N	10		
Total Dissolved Solids (4)			1200
RADIOLOGICAL			
(MAXIMUM pCi/L)			
Gross Alpha	15		15
Gross Beta	4 mrem/yr		
Radium 226, 228 (Combined)	5		
Strontium 90	8		
Tritium	20000		
Uranium	30		
ORGANICS			
(MAXIMUM UG/L)			
Chlorophenoxy			
Herbicides			
2,4-D	70		
2,4,5-TP	10		
Methoxychlor	40		
POLLUTION			
INDICATORS (5)			
BOD (MG/L)	5	5	5
Nitrate as N (MG/L)	4	4	
Total Phosphorus as P (MG/L) (6)	0.05	0.05	

FOOTNOTES:

- (1) Reserved
- (2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.
- (3) Maximum concentration varies according to the daily maximum mean air temperature.

TEMP (C)	MG/L
12.0	2.4
12.1-14.6	2.2
14.7-17.6	2.0
17.7-21.4	1.8
21.5-26.2	1.6
26.3-32.5	1.4

(4) Site-specific criteria for total dissolved solids may be adopted by rulemaking where it is demonstrated that: (a) a less stringent criterion is appropriate because of natural or un-alterable conditions; or (b) a less stringent, site-specific criterion and/or date-specified criterion is protective of existing and attainable agricultural uses; or (c) a more stringent criterion is attainable and necessary for the protection of sensitive crops. For water quality assessment purposes, up to 10% of representative samples may exceed the standard.

SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)

- Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;
- Cottonwood Creek from the confluence with Huntington Creek to I-57: 3,500 mg/l;
- Ferron Creek from the confluence with San Rafael River to Highway 10: 3,500 mg/l;
- Huntington Creek and tributaries from the confluence with Cottonwood Creek to U-10: 4,800 mg/l;
- Ilvie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitcupah Creek: ~~to U-10: 2,600 mg/l;~~

3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Ivie Creek and its tributaries from the confluence with Quitchupah Creek to U10: 2,600 mg/l;

Lost Creek from the confluence with Sevier River to U.S. Forest Service Boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek to U-10: 2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with Ivie Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to U-119 Crossing: 9,700 mg/l;

Price River and tributaries from confluence with Green River to confluence with Coal Creek: 3,000 mg/l;

Price River and tributaries from the confluence with Coal Creek to Carbon Canal Diversion: 1,700 mg/l

Quitcupah Creek from the confluence with Ivie Creek to U-10: [1,700 mg/l]; 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use

Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Clear Lake: 3,370 mg/l;

South Fork Spring Creek from confluence with Pelican Pond Slough Stream to US 89  
 1,450 mg/l (Apr.-Sept.)  
 1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs: 2,360 mg/l

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.

(6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(7) Where the criteria are exceeded and there is a reasonable basis for concluding that the indicator bacteria E. coli are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the criteria may be considered attained provided the density attributable to non-wildlife sources is less than the criteria. Exceedences of E. coli from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and local nonpoint source programs

Measurement of E. coli using the "Quanti-Tray 2000" procedure

is approved as a field analysis. Other EPA approved methods may also be used.

For water quality assessment purposes, up to 10% of representative samples may exceed the 668 per 100 ml criterion (for 1C and 2B waters) and 409 per 100 ml (for 2A waters). For small datasets, where exceedences of these criteria are observed, follow-up ambient monitoring should be conducted to better characterize water quality.

TABLE 2.14.2  
 NUMERIC CRITERIA FOR AQUATIC WILDLIFE

Parameter	Aquatic Wildlife				5
	3A	3B	3C	3D	
<b>PHYSICAL</b>					
Total Dissolved Gases	(1)	(1)			
<b>Minimum Dissolved Oxygen (MG/L) (2) (2a)</b>					
30 Day Average	6.5	5.5	5.0	5.0	
7 Day Average	9.5/5.0	6.0/4.0			
Minimum	8.0/4.0	5.0/3.0	3.0	3.0	
Max. Temperature(C)(3)	20	27	27		
Max. Temperature Change (C)(3)	2	4	4		
pH (Range)(2a)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0	
<b>Turbidity Increase (NTU)</b>					
	10	10	15	15	
<b>METALS (4) (DISSOLVED, UG/L)(5)</b>					
<b>Aluminum</b>					
4 Day Average (6)	87	87	87	87	
1 Hour Average	750	750	750	750	
<b>Arsenic (Trivalent)</b>					
4 Day Average	150	150	150	150	
1 Hour Average	340	340	340	340	
<b>Cadmium (7)</b>					
4 Day Average	0.25	0.25	0.25	0.25	
1 Hour Average	2.0	2.0	2.0	2.0	
<b>Chromium (Hexavalent)</b>					
4 Day Average	11	11	11	11	
1 Hour Average	16	16	16	16	
<b>Chromium (Trivalent) (7)</b>					
4 Day Average	74	74	74	74	
1 Hour Average	570	570	570	570	
<b>Copper (7)</b>					
4 Day Average	9	9	9	9	
1 Hour Average	13	13	13	13	
<b>Cyanide (Free)</b>					
4 Day Average	5.2	5.2	5.2		
1 Hour Average	22	22	22	22	
Iron (Maximum)	1000	1000	1000	1000	
<b>Lead (7)</b>					
4 Day Average	2.5	2.5	2.5	2.5	
1 Hour Average	65	65	65	65	
<b>Mercury</b>					

4 Day Average	0.012	0.012	0.012	0.012
1 Hour Average	2.4	2.4	2.4	2.4
Nickel (7)				
4 Day Average	52	52	52	52
1 Hour Average	468	468	468	468
Selenium				
4 Day Average	4.6	4.6	4.6	4.6
1 Hour Average	18.4	18.4	18.4	18.4
Selenium (14) Gilbert Bay (Class 5A) Great Salt Lake Geometric Mean over Nesting Season (mg/kg dry wt)				
				12.5
Silver				
1 Hour Average (7)	1.6	1.6	1.6	1.6
Zinc (7)				
4 Day Average	120	120	120	120
1 Hour Average	120	120	120	120
INORGANICS (MG/L) (4)				
Total Ammonia as N (9)				
30 Day Average	(9a)	(9a)	(9a)	(9a)
1 Hour Average	(9b)	(9b)	(9b)	(9b)
Chlorine (Total Residual)				
4 Day Average	0.011	0.011	0.011	0.011
1 Hour Average	0.019	0.019	0.019	0.019
Hydrogen Sulfide (13) (Undissociated, Max. UG/L)				
Phenol (Maximum)	0.01	0.01	0.01	0.01
RADIOLOGICAL (MAXIMUM pCi/L)				
Gross Alpha (10)	15	15	15	15
ORGANICS (UG/L) (4)				
Aldrin				
1 Hour Average	1.5	1.5	1.5	1.5
Chlordane				
4 Day Average	0.0043	0.0043	0.0043	0.0043
1 Hour Average	1.2	1.2	1.2	1.2
4,4' -DDT				
4 Day Average	0.0010	0.0010	0.0010	0.0010
1 Hour Average	0.55	0.55	0.55	0.55
Diazinon				
4 Day Average	0.17	0.17	0.17	0.17
1 Hour Average	0.17	0.17	0.17	0.17
Dieldrin				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.24	0.24	0.24	0.24
Alpha-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.11	0.11	0.11	0.11
beta-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Day Average	0.11	0.11	0.11	0.11
Endrin				
4 Day Average	0.036	0.036	0.036	0.036
1 Hour Average	0.086	0.086	0.086	0.086

Heptachlor				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Heptachlor epoxide				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Hexachlorocyclohexane (Lindane)				
4 Day Average	0.08	0.08	0.08	0.08
1 Hour Average	1.0	1.0	1.0	1.0
Methoxychlor (Maximum)				
Mirex (Maximum)	0.001	0.001	0.001	0.001
Nonylphenol				
4 Day Average	6.6	6.6	6.6	6.6
1 Hour Average	28.0	28.0	28.0	28.0
Parathion				
4 Day Average	0.013	0.013	0.013	0.013
1 Hour Average	0.066	0.066	0.066	0.066
PCB's				
4 Day Average	0.014	0.014	0.014	0.014
Pentachlorophenol (11)				
4 Day Average	15	15	15	15
1 Hour Average	19	19	19	19
Toxaphene				
4 Day Average	0.0002	0.0002	0.0002	0.0002
1 Hour Average	0.73	0.73	0.73	0.73
POLLUTION INDICATORS (11)				
Gross Beta (pCi/L)	50	50	50	50
BOD (MG/L)	5	5	5	5
Nitrate as N (MG/L)	4	4	4	
Total Phosphorus as P(MG/L) (12)	0.05	0.05		

FOOTNOTES:

- (1) Not to exceed 110% of saturation.
- (2) These limits are not applicable to lower water levels in deep impoundments. First number in column is for when early life stages are present, second number is for when all other life stages present.
- (2a) These criteria are not applicable to Great Salt Lake impounded wetlands. Surface water in these wetlands shall be protected from changes in pH and dissolved oxygen that create significant adverse impacts to the existing beneficial uses. To ensure protection of uses, the Executive Secretary shall develop reasonable protocols and guidelines that quantify the physical, chemical, and biological integrity of these waters. These protocols and guidelines will include input from local governments, the regulated community, and the general public. The Executive Secretary will inform the Water Quality Board of any protocols or guidelines that are developed.
- (3) The temperature standard shall be at background where it can be shown that natural or un-alterable conditions prevent its attainment. In such cases rulemaking will be undertaken to modify the standard accordingly.  
Site Specific Standards for Temperature  
Ken's Lake: From June 1<sup>st</sup> - September 20<sup>th</sup>, 27 degrees C.
- (4) Where criteria are listed as 4-day average and 1-hour average concentrations, these concentrations should not be exceeded more often than once every three years on the average.
- (5) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by

EPA approved laboratory methods for the required detection levels.

(6) The criterion for aluminum will be implemented as follows:

Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO<sub>3</sub> in the receiving water after mixing, the 87 ug/l chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute aluminum criterion (expressed as total recoverable).

(7) Hardness dependent criteria. 100 mg/l used. Conversion factors for ratio of total recoverable metals to dissolved metals must also be applied. In waters with a hardness greater than 400 mg/l as CaCO<sub>3</sub>, calculations will assume a hardness of 400 mg/l as CaCO<sub>3</sub>. See Table 2.14.3 for complete equations for hardness and conversion factors.

(8) Reserved

(9) The following equations are used to calculate Ammonia concentrations:

(9a) The thirty-day average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.

Fish Early Life Stages are Present:

$$\text{mg/l as N (Chronic)} = ((0.0577/(1+10^{7.688-\text{pH}})) + (2.487/(1+10^{\text{pH}-7.688})))$$

$$* \text{MIN} (2.85, 1.45*10^{0.028*(25-T)})$$

Fish Early Life Stages are Absent:

$$\text{mg/l as N (Chronic)} = ((0.0577/(1+10^{7.688-\text{pH}})) + (2.487/(1+10^{\text{pH}-7.688})))$$

$$* 1.45*10^{0.028*(25-\text{MAX}(T,7))}$$

(9b) The one-hour average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average the acute criterion calculated using the following equations.

Class 3A:

$$\text{mg/l as N (Acute)} = (0.275/(1+10^{7.204-\text{pH}})) + (39.0/1+10^{\text{pH}-7.204})$$

Class 3B, 3C, 3D:

$$\text{mg/l as N (Acute)} = 0.411/(1+10^{7.204-\text{pH}}) + (58.4/(1+10^{\text{pH}-7.204}))$$

In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion.

The "Fish Early Life Stages are Present" 30-day average total ammonia criterion will be applied by default unless it is determined by the Division, on a site-specific basis, that it is appropriate to apply the "Fish Early Life Stages are Absent" 30-day average criterion for all or some portion of the year. At a minimum, the "Fish Early Life Stages are Present" criterion will apply from the beginning of spawning through the end of the early life stages. Early life stages include the pre-hatch embryonic stage, the post-hatch free embryo or yolk-sac fry stage, and the larval stage for the species of fish expected to occur at the site. The division will consult with the Division of Wildlife Resources in making such determinations. The Division will maintain information regarding the waterbodies and time periods where application of the "Early Life Stages are Absent" criterion is determined to be appropriate.

(10) Investigation should be conducted to develop more information where these levels are exceeded.

(11) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.

(12) Total Phosphorus as P (mg/l) as a pollution indicator for lakes and reservoirs shall be 0.025.

(13) Formula to convert dissolved sulfide to un-dissociated hydrogen sulfide is:  $\text{H}_2\text{S} = \text{Dissolved Sulfide} * e^{((-1.92 + \text{pH}) + 12.05)}$

(14) The selenium water quality standard of 12.5 (mg/kg dry weight) for Gilbert Bay is a tissue based standard using the complete egg/embryo of aquatic dependent birds using Gilbert Bay based upon a minimum of five samples over the nesting season.

Assessment procedures are incorporated as a part of this standard as follows:

Egg Concentration Triggers: DWQ Responses

Below 5.0 mg/kg: Routine monitoring with sufficient intensity to determine if selenium concentrations within the Great Salt Lake ecosystem are increasing.

5.0 mg/kg: Increased monitoring to address data gaps, loadings, and areas of uncertainty identified from initial Great Salt Lake selenium studies.

6.4 mg/kg: Initiation of a Level II Antidegradation review by the State for all discharge permit renewals or new discharge permits to Great Salt Lake. The Level II Antidegradation review may include an analysis of loading reductions.

9.8 mg/kg: Initiation of preliminary TMDL studies to evaluate selenium loading sources.

12.5 mg/kg and above: Declare impairment. Formalize and implement TMDL.

Antidegradation

Level II Review procedures associated with this standard are referenced at R317-2-3.5.C.

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**KEY: water pollution, water quality standards**  
**Date of Enactment or Last Substantive Amendment: 2010**  
**Notice of Continuation: October 2, 2007**  
**Authorizing, and Implemented or Interpreted Law: 19-5**

**Labor Commission, Antidiscrimination  
 and Labor, Labor  
 R610-3-22  
 Payment of Wages Via Pay Cards**

**NOTICE OF CHANGE IN PROPOSED RULE**  
 DAR FILE NO.: 33299  
 FILED: 02/01/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to permit employers to use pay cards to pay employee wages, and to establish requirement for use of such pay cards. When this rule was originally filed, an incorrect version of the proposed text was attached. This change in proposed rule attaches the correct text.

**SUMMARY OF THE RULE OR CHANGE:** The proposed rule authorizes employers to use pay cards to pay wages provided that the pay cards allow withdrawal of the full amount of wages once without cost to the employee. (DAR

NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the February 1, 2010, issue of the Utah State Bulletin, on page 53. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34-23-101 et seq. and Section 34-28-1 et seq. and Section 34-40-101 et seq. and Section 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This proposed amendment will not impose any additional implementation or regulation costs on the Labor Commission, which is the state agency charged with enforcing Utah's wage payment laws. Regarding costs to the state in its capacity as an employer, the proposed rule permits, but does not require, use of pay cards. Consequently, the rule does not impose any cost on the state. However, it is possible that use of pay cards could reduce costs associated with already-existing payroll methods, thereby resulting in some degree of savings to that state.

◆ LOCAL GOVERNMENTS: The proposed rule permits, but does not require, use of pay cards. Consequently, the rule will not impose any costs on local government. However, it is possible that use of pay cards could reduce costs associated with already-existing payroll methods, thereby resulting in some degree of savings to local governments.

◆ SMALL BUSINESSES: The proposed rule permits, but does not require, use of pay cards. Consequently, the rule will not impose any costs on small businesses. However, it is possible that use of pay cards could reduce costs associated with already-existing payroll methods, thereby resulting in some degree of savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed rule permits, but does not require, use of pay cards. Consequently, the rule will not impose any costs on persons other than small businesses, businesses, or local government entities. However, it is possible that use of pay cards could reduce costs associated with already-existing payroll methods, thereby resulting in some degree of savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule does not require any employer to use pay cards, but merely permits pay cards as an alternative to existing methods of paying wages, such as payroll checks and electronic transfers. Consequently, an employer will only incur compliance costs as a result of this rule if the employer voluntarily chooses to pay wages with pay cards. Also, because the proposed rule does not permit any costs associated with use of a pay card system to be assessed to employees, there will be no compliance costs for employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Commission is promulgating this rule amendment at the request of employers who desire to use pay cards to pay wages. The proposal has been discussed and endorsed by the Antidiscrimination Advisory Council. Because the rule establishes an alternative method of paying wages but does not mandate use of that method, each business can evaluate its particular circumstances and determine whether use of a pay card system is advantageous, financially or otherwise, for that business.

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

LABOR COMMISSION  
ANTIDISCRIMINATION AND LABOR, LABOR  
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:

◆ Brent Asay by phone at 801-530-6802, by FAX at 801-530-7601, or by Internet E-mail at basay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2010

AUTHORIZED BY: Sherrie Hayashi, Commissioner

**R610. Labor Commission, Antidiscrimination and Labor, Labor.**

**R610-3. Filing, Investigation, and Resolution of Wage Claims.**

**R610-3-22. Payment of Wages Via Pay Cards.**

~~[A. An employer may pay wages by providing the employee a pay card subject to the following conditions:~~

~~1. The employee must be able to use the pay card for full payment of wages on the designated pay day.~~

~~2. The employee must be able to use the pay card twice in a pay period to withdraw funds without incurring a fee or charge.~~

~~][A pay card is a stored value card that can be used at an ATM-type machine to access wages that are credited to the card. An employer may use a pay card to pay an employee's wages if the following conditions are met:~~

~~A. With one use, the employee shall be able to withdraw the full amount of earned wages without incurring a fee. "One use" means a single transaction.~~

~~B. The full amount of wages for a pay period shall be available for the employee via the pay card on the applicable payday.~~

~~C. On each payday, the employer shall provide the employee a statement of deductions from the employee's gross wages for the subject pay period. This statement shall be provided:~~

~~1. in writing, or~~

2. electronically, provided that the employee must be able to easily and immediately access the information and print a paper copy of the same, without cost.

**Notice of Continuation: November 30, 2006**  
**Authorizing, and Implemented or Interpreted Law: 34-23-101 et seq.; 34-28-1 et seq.; 34-40-101 et seq.; 63G-4-102 et seq.**

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**KEY: wages, minors, labor, time**

**Date of Enactment or Last Substantive Amendment: 2010**

**End of the Notices of Changes in 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, Facilities Construction and Management **R23-26** Dispute Resolution

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33360  
FILED: 02/01/2010

### 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 enacted under the authority of Section 63A-5-103, which directs the Utah Building Board to make rules necessary for the discharge of duties of the Division of Facilities, Construction and Management (DFCM); and Subsection 63A-5-208(6) which establishes a process for resolving disputes involved with contracts under the Division's procurement authority.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DFCM and the Utah Building Board have not received written comments, either in support or opposition to Rule R23-26.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R23-26 establishes a process for resolving disputes involved with contracts under the Division's

procurement authority. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at [abachman@utah.gov](mailto:abachman@utah.gov)
- ◆ La Priel Dye by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at [ldye@utah.gov](mailto:ldye@utah.gov)
- ◆ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at [phanderson@utah.gov](mailto:phanderson@utah.gov)

AUTHORIZED BY: D. Gregg Buxton, Director

EFFECTIVE: 02/01/2010

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## Agriculture and Food, Animal Industry **R58-21** Trichomoniasis

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33340  
FILED: 01/27/2010

**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: Section 4-31-21 authorizes the Department to enact rules that will develop a program that will control and prevent trichomoniasis.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The rule was revised September of 2009. Concerns were raised that the May 31st date to have all bulls tested was too late to prevent bulls from being turned out that may have trichomoniasis. This date was changed to April 30th. Entry requirements for bulls were changed to reflect the entry requirements of surrounding states.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There is still a need for the program in the state. Utah has had approximately 40 bulls a year test positive for trichomoniasis. This rule is critical for implementing good "cattle health" management practices and to control or minimize the spread of disease among the livestock (cattle) industry. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
 ♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov  
 ♦ Terry Menlove by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at tmenlove@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/27/2010

Commerce, Administration  
**R151-1**  
 Department of Commerce General Provisions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 33336  
 FILED: 01/25/2010

**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: Article IV, Section 10, of the Utah Constitution requires all officers to take the oath of office before commencing their duties; this includes Commission and Board members and special function officers hired by the Department. Rule R151-1 is the rule promulgated by the Department of Commerce. Section R151-1-1 indicates who may give the oath of office to these officers. Section 52-4-207 in the Open and Public Meetings Act requires state agencies who wish to conduct meetings electronically to promulgate a rule regarding electronic meetings.

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 regarding this rule have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As indicated above, Rule R151-1 enables the Department to give oaths of office to its officers as required by Article IV, Section 10, of the Utah Constitution. The Open and Public Meetings Act requires a rule regarding electronic meetings. Therefore, this rule should be continued.

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

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

AUTHORIZED BY: Francine Giani, Executive Director

EFFECTIVE: 01/25/2010

## Insurance, Administration

### **R590-132**

#### Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 33330

FILED: 01/19/2010

#### **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: Subsections 31A-2-201(3) and (4) authorize the commissioner to write rules to implement the code. The rule identifies and restricts certain underwriting, classification, or declination practices that have been used to discriminate against individuals with HIV infection. The rule also provides guidelines regarding confidentiality of AIDS-related testing.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule makes sure that persons with HIV infection will not be singled out for either unfair discrimination or preferential treatment for insurance purposes. The rule also sets guidelines for HIV testing and use of test results to protect consumers and their information. Therefore, this rule should be continued.

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

INSURANCE  
ADMINISTRATION

ROOM 3110 STATE OFFICE BLDG

450 N MAIN ST

SALT LAKE CITY, UT 84114-1201

or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 01/19/2010

## Natural Resources, Water Rights

### **R655-3**

#### Reports of Water Rights Conveyance

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 33347

FILED: 01/27/2010

#### **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: These rules are issued pursuant to Section 73-1-10 which provides that the state engineer shall adopt rules that specify when a water right owner is authorized to prepare a Report of Conveyance to the state engineer; the kinds of information required in such reports; and the procedures for processing such reports.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is still required for processing reports of conveyance. Therefore, this rule should be continued.

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

NATURAL RESOURCES  
WATER RIGHTSROOM 220  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

AUTHORIZED BY: Kent Jones, State Engineer/Director

EFFECTIVE: 01/27/2010

**Technology Services, Administration**

**R895-9**

**Utah Geographic Information Systems  
Advisory Council**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 33334

FILED: 01/20/2010

**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: The rule is issued by the Chief Information Officer (CIO) under the authority of Section 63F-1-206 of the Technology Governance Act, which authorizes the CIO to provide for project oversight of technology projects. The rule is issued by the CIO under the

authority of Section 63G-3-201 (formerly 63-46a-3) of the Utah Rulemaking Act, Utah Code, which allows the agency to authorize an action.

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 and since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule establishes an advisory council for the Utah Geographic Information Systems that is integral to the operations of the State CIO, the Automated Geographic Reference Center, and the Department of Technology Services. The rule defines the responsibilities of the advisory council. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
TECHNOLOGY SERVICES  
ADMINISTRATION  
ROOM 6000 STATE OFFICE BUILDING  
450 N STATE ST  
SALT LAKE CITY, UT 84114  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Stephanie Weiss by phone at 801-538-3284, by FAX at 801-538-3622, or by Internet E-mail at stweiss@utah.gov

AUTHORIZED BY: J Stephen Fletcher, CIO and Executive Director

EFFECTIVE: 01/20/2010

**End of the Five-Year Notices of Review and Statements of Continuation Section**

## 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

### Agriculture and Food

Animal Industry  
No. 33217 (AMD): R58-20-5. Facilities  
Published: 12/15/2009  
Effective: 01/27/2010

### Alcoholic Beverage Control

Administration  
No. 33153 (AMD): R81-1-11. Multiple-Licensed Facility  
Storage and Service  
Published: 12/15/2009  
Effective: 01/26/2010

No. 33154 (AMD): R81-1-26. Criminal History Background  
Checks  
Published: 12/15/2009  
Effective: 01/26/2010

No. 33152 (AMD): R81-3-13. Operational Restrictions  
Published: 12/15/2009  
Effective: 01/26/2010

No. 33155 (AMD): R81-4D-1. Licensing  
Published: 12/15/2009  
Effective: 01/26/2010

No. 33156 (AMD): R81-4D-14. Reporting Requirement  
Published: 12/15/2009  
Effective: 01/26/2010

No. 33157 (NEW): R81-4E. Resort Licenses  
Published: 12/15/2009  
Effective: 01/26/2010

### Commerce

Consumer Protection  
No. 33168 (AMD): R152-1-1. Purposes, Policies and Rules  
of Construction  
Published: 12/15/2009  
Effective: 01/21/2010

No. 33169 (AMD): R152-11-1. Purposes, Rules of  
Construction  
Published: 12/15/2009  
Effective: 01/21/2010

Occupational and Professional Licensing  
No. 33175 (AMD): R156-78B-4. General Provisions  
Published: 12/15/2009  
Effective: 01/21/2010

Real Estate  
No. 33158 (AMD): R162-101. Authority and Definitions  
Published: 12/15/2009  
Effective: 01/27/2010

No. 33180 (AMD): R162-102. Application Procedures  
Published: 12/15/2009  
Effective: 01/27/2010

No. 33224 (AMD): R162-104. Experience Requirement  
Published: 12/15/2009  
Effective: 01/27/2010

No. 33225 (AMD): R162-105. Scope of Authority  
Published: 12/15/2009  
Effective: 01/27/2010

### Community and Culture

Arts and Museums  
No. 32949 (NEW): R207-3. Capital Funds Request  
Prioritization  
Published: 10/01/2009  
Effective: 01/27/2010

NOTICES OF RULE EFFECTIVE DATES

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Library

No. 32936 (NEW): R223-3. Capital Funds Request  
Prioritization  
Published: 10/01/2009  
Effective: 01/27/2010

Health

Health Care Financing, Coverage and Reimbursement Policy  
No. 33214 (AMD): R414-1. Utah Medicaid Program  
Published: 12/15/2009  
Effective: 01/27/2010

No. 33216 (AMD): R414-14A. Hospice Care  
Published: 12/15/2009  
Effective: 01/28/2010

Health Systems Improvement, Licensing  
No. 33221 (AMD): R432-2-6. Application  
Published: 12/15/2009  
Effective: 01/27/2010

Human Services

Aging and Adult Services  
No. 33027 (R&R): R510-401. Utah Caregiver Support  
Program  
Published: 11/01/2009  
Effective: 01/19/2010

Substance Abuse and Mental Health  
No. 33142 (AMD): R523-21. Division of Substance Abuse  
and Mental Health Rules  
Published: 12/01/2009  
Effective: 01/20/2010

Labor Commission

Industrial Accidents  
No. 33230 (NEW): R612-13. Proceedings to Impose Non-  
Reporting Penalties Against Employers  
Published: 12/15/2009  
Effective: 01/21/2010

Public Safety

Driver License  
No. 33143 (AMD): R708-41. Requirements for Acceptable  
Documentation, Storage and Maintenance  
Published: 12/01/2009  
Effective: 01/25/2010

Tax Commission

Administration  
No. 33231 (AMD): R861-1A-43. Electronic Meetings  
Pursuant to Utah Code Ann. Section 52-4-207  
Published: 12/15/2009  
Effective: 01/21/2010

Auditing

No. 33113 (AMD): R865-9I-17. Time for Withholding Tax  
Returns and Payment of Withholding Taxes Pursuant to Utah  
Code Ann. Sections 59-10-406 and 59-10-407  
Published: 11/15/2009  
Effective: 01/21/2010

**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, including notices of effective date received through February 1, 2010. The Rules Index is published in the Utah State Bulletin and in the annual Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index is not included in this issue of the Utah State Bulletin. The release of eRules version 2.0 has introduced different functionality with regards to the index; this functionality has yet to be fully tested. Persons interested in alternative methods of acquiring the same information should visit "Researching Administrative Rules" at: <http://www.rules.utah.gov/research.htm>

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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