

NOTICES OF PROPOSED RULES

(h) The Executive Secretary may reimburse claimants based on pay for performance for the investigation, abatement or remediation of eligible PST fund sites. Under a pay for performance cleanup the claimant is reimbursed on a fixed price schedule as measurable contaminant level goals are reached. The claimant's reimbursement under pay for performance for the work anticipated shall be supported by competitive bidding, sole source justification or reasonable, customary and legitimate costs as approved by the Executive Secretary. Itemization of expenses is not required for payment of a claim unless specifically required in a work plan by the Executive Secretary.

R311-207-9. Third Party Consultant.

(a) A certified UST consultant hired by a third party under Subsection 19-6-409(2)(c) shall:

(1) have an approved PST Trust Fund Statement of Qualifications in accordance with Subsection R311-207-3(c);

(2) have approved PST Trust Fund labor rates in accordance with Section R311-207-7; and

(3) be a licensed professional geologist in accordance with Section 58-76-301 or a licensed professional engineer in accordance with Section 58-22-301.

KEY: financial responsibility, petroleum, underground storage tanks

Date of Enactment or Last Substantive Amendment: ~~May 15, 2006~~ 2011

Notice of Continuation: April 18, 2007

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-409; 19-6-419

Environmental Quality, Environmental Response and Remediation

R311-212

Administration of the Petroleum Storage Tank Loan Fund

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34269

FILED: 12/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The allowable uses of the loan fund are changed to reflect changes to the UST Act made by the 2010 Utah Legislature. The legislative changes removed the reference to the 1998 upgrade deadline, and now allow the loan fund to be used for "upgrades", a more general term. The loan amount and loan term for unsecured loans are increased to reflect higher costs for tank upgrades and to allow for more loans to be made for upgrades and other lower-cost jobs.

The loan application form is changed to reflect higher allowable loan amounts now in the UST Act. Wording regarding Executive Secretary notification in writing of the status of the application review is removed to reflect the current one-step application process. The notification requirements are vestiges of the old two-step process and are no longer necessary. The Executive Secretary does not credit excess loan proceeds; the actual loan amount is adjusted based on the final invoice. Removing the reference to crediting of excess loan proceeds reflects current practice.

SUMMARY OF THE RULE OR CHANGE: Modifies the allowable uses of the loan fund by removing references to the 1998 upgrade deadline and installation of a leak detection monitoring system. Removes the requirement that the Executive Secretary must notify the loan applicant in writing of the status of the loan eligibility review. Removes the requirement that the Executive Secretary must notify the loan applicant in writing of the status of the application when the review is complete. Increases the amount that can be loaned on an unsecured loan from \$15,000 to \$30,000. Increases the loan term for an unsecured loan from five to seven years. Removes wording that allows the Executive Secretary to credit the difference between the approved loan amount and the actual allowable loan amount when the approved loan amount is greater than the allowable amount. Modifies the loan application form to reflect the new allowable loan amounts. Incorporates the new loan application form by reference.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-403 and Section 19-6-405.3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Loan Application, published by Division of Environmental Response and Remediation, Utah DEQ, 08/19/2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The rule changes could result in savings to the Petroleum Storage Tank (PST) Trust Fund if UST owners use the loan fund to remove or upgrade their older tanks before they leak. Some owners may not be able to afford the upgrades or removals otherwise. The savings would depend on the number and severity of releases avoided. Other changes are procedural or reflect changes in the UST Act, and would have no cost or savings associated with them.
- ◆ **LOCAL GOVERNMENTS:** As a tank owner who receives an unsecured loan, a local government could incur an increased yearly cost of up to approximately \$1,520 for payments to repay the loan. \$1,520 is based on a 7-year loan of \$30,000 compared to a 5-year loan of \$15,000. Savings in costs of cleaning up leaks could occur by upgrading tank systems and leak detection monitoring systems through the loan fund. Savings would depend on the number of leaks avoided or caught early by better leak detection monitoring.

♦ **SMALL BUSINESSES:** As a tank owner who receives an unsecured loan, a small business could incur an increased yearly cost of up to approximately \$1,520 for payments to repay the loan. \$1,520 is based on a 7-year loan of \$30,000 compared to a 5-year loan of \$15,000. Savings in costs of cleaning up leaks could occur by upgrading tank systems and leak detection monitoring systems through the loan fund. Savings would depend on the number of leaks avoided or caught early by better leak detection monitoring.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** As a tank owner who receives an unsecured loan, a person could incur an increased yearly cost of up to approximately \$1,520 for payments to repay the loan. \$1,520 is based on a 7-year loan of \$30,000 compared to a 5-year loan of \$15,000. Savings in costs of cleaning up leaks could occur by upgrading tank systems and leak detection monitoring systems through the loan fund. Savings would depend on the number of leaks avoided or caught early by better leak detection monitoring.

COMPLIANCE COSTS FOR AFFECTED PERSONS: An UST owner who applies for an unsecured loan will be able to receive a loan for a higher amount, but will pay more if the loan amount and loan term are increased. The increased amount paid per year would be approximately \$1,520 for a 7-year loan of \$30,000, compared to a 5-year loan of \$15,000. The loan program is voluntary, so the higher costs that may occur are at the discretion of the tank owner/loan applicant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Increasing the dollar limit on unsecured loans gives underground storage tank owners, especially small business owners, the opportunity to upgrade their tank systems with tanks and piping that are less likely to leak, and to install better equipment for preventing and detecting leaks. Cleanup costs will be reduced by preventing leaks and, when leaks do occur, detecting them sooner.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

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

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

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

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

AUTHORIZED BY: Brent Everett, Director

R311. Environmental Quality, Environmental Response and Remediation.

R311-212. Administration of the Petroleum Storage Tank Loan Fund.

R311-212-3. Eligibility Review.

(a) The Executive Secretary shall determine if the applicant meets the eligibility criteria stated in Subsections 19-6-405.3(3), 19-6-405.3(4), 19-6-405.3(5) and 19-6-405.3(6).

(b) To meet the eligibility requirements of 19-6-405.3(4) the applicant must, for all facilities for which the applicant requests a loan, demonstrate current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks, or must be able to achieve compliance with the loan proceeds.

(c) To meet the eligibility requirements of 19-6-405.3(4) the applicant must meet the following for all facilities owned or operated by the applicant for which the applicant does not request a loan:

(1) The applicant has demonstrated current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks;

(2) All regulated underground petroleum storage tanks owned by the applicant have met the requirements of Section 19-6-412(2) and have a current certificate of compliance;

(3) The applicant has paid all underground storage tank registration fees, interest and penalties which have been assessed; and

(4) The applicant has paid all applicable petroleum storage tank fees, interest and penalties which have been assessed.

(d) To meet the requirements of Section 19-6-405.3(3), the loan request must be for the purpose of:

(1) Upgrading ~~[or replacing existing]~~ petroleum USTs ~~[to meet requirements of 40 CFR 280.21];~~

(2) ~~[Installing a leak detection monitoring system]~~ replacing USTs; or

(3) Permanently closing USTs. If an applicant requests a loan for closing USTs which will be replaced by above-ground storage tanks, the loan, if approved, will be only for closing the USTs. The security pledged by the applicant for a loan to replace USTs with above-ground storage tanks shall be subject to the limitations in R311-212-6.

~~(c) The Executive Secretary shall notify the applicant in writing of the status of the eligibility review.]~~

R311-212-5. Loan Application Review.

(a) The applicant shall ensure that the loan application is complete. The completed application with supporting documents

shall contain all information required by the application. If the applicant does not submit a complete application within 60 days of eligibility approval, the applicant's eligibility approval shall be forfeited, and the applicant must re-apply.

(b) All costs incurred in processing the application including appraisals, title reports, or UCC-1 releases shall be the responsibility of and paid for by the applicant. The Executive Secretary may require payment of costs in advance. The Executive Secretary shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

(c) The review and approval of the application shall be based on information provided by the applicant, and:

(1) review of any and all records and documents on file;

(2) verification of any and all information provided by the applicant;

(3) review of credit worthiness and security pledged; and

(4) review of a site construction work plan.

(d) ~~[The Executive Secretary shall notify the applicant in writing of the status of the application when the review is complete.]~~

(e) The applicant must close the loan within 30 days after the Executive Secretary mails the loan documents for the applicant's signature. If the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply. An exception to the 30 day period may be granted by the Executive Secretary if the closing is delayed due to circumstances beyond the applicant's control.

R311-212-6. Security for Loans.

(a) When an applicant applies for a loan of greater than \$30,000~~[\$15,000 or more]~~, the loan applicant must pledge for security personal or real property which meets or exceeds the following criteria:

(1) The loan amount may not be greater than 80 percent of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position, or

(2) The loan amount may not be greater than 60 percent of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.

(b) The applicant shall provide acceptable documentation of the value of the property to be used as security using:

(1) a current written appraisal, performed by a State of Utah certified appraiser;

(2) a current county tax assessment notice, or

(3) other documentation acceptable to the Executive Secretary.

(c) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the Executive Secretary by a title company or appropriate professional person approved by the Executive Secretary.

(d) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department. The Department shall accept no less than a second mortgage position on real property pledged for loan security.

(e) Whenever a corporation seeks a loan, its principals must guarantee the loan personally.

(f) The applicant must provide a complete financial statement with cash flow projections for debt service.

(g) Above ground storage tanks and real property on which they are located shall not be acceptable as security.

(h) Underground storage tanks and the real property on which they are located shall not be acceptable as security unless:

(1) The UST facility offered for security has not had a petroleum release which has not been properly remediated; and

(2) The applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in R311-212-3.

(i) If a loan is made without security, the maximum loan repayment period shall be ~~five~~ seven years.

R311-212-7. Procedure for Making Loans.

(a) Loan funds shall be obligated after all documents to secure a loan are complete, processed, and appropriately signed by the applicant and the Executive Secretary.

(b) Loan proceeds shall be disbursed to the applicant after closing documents are processed, work at the site is completed, and all paperwork and notifications have been received by the Executive Secretary. ~~[If the loan amount exceeds the allowable project costs, the Executive Secretary may credit any difference to the applicant's account rather than disbursing excess proceeds to the applicant.]~~

(c) Loan proceeds shall not be used to pay underground storage tank registration fees, penalties, or interest assessed under Section 19-6-408 or petroleum storage tank fees, penalties, or interest assessed under Section 19-6-411.

(d) Loans shall not be made for work which is performed before the applicant's loan application is approved and the loan is closed.

R311-212-10. Forms.

(a) The forms dated and listed below, on file with the Department, are incorporated by reference as part of Section R311-212, and shall be used by the Executive Secretary for making loans.

(1) Loan Application version ~~[04/02/04]~~ 08/19/10

(2) Balance Sheet version 04/02/04

(3) Loan Commitment Agreement version 06/15/95

(4) Corporate Authorization version 06/15/95

(5) Promissory Note version 06/15/95

(6) Extension and Modification Agreement version

06/15/95

(7) Security Agreement version 06/15/95

(8) Hypothecation Agreement 06/15/95

(9) General Pledge Agreement 06/15/95

(10) Assignment 06/15/95

(11) Assignment of Account 06/15/95

(12) Trust Deed

(i) property with underground storage tanks version 06/15/95; or

(ii) property without underground storage tanks version 06/15/95.

(b) The Executive Secretary may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process. The Executive Secretary may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.