

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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Nancy L. Lancaster, Managing Editor

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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: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. Additional rulemaking information and electronic versions of all administrative rule publications are available at <http://www.rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Office of Administrative Rules, Salt Lake City 84114

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## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between January 04, 2017, 12:00 a.m., and January 17, 2017, 11:59 p.m. are included in this, the February 01, 2017, issue of the *Utah State Bulletin*.

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

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them (~~example~~). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Office 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 3, 2017. 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 1, 2017, the agency may notify the Office 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 Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

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

**Administrative Services, Finance**  
**R25-7**  
**Travel-Related Reimbursements for**  
**State Employees**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41147

FILED: 01/11/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The changes to the times for meal reimbursements is necessary to match meals that are reimbursed to state employees through the state payroll system. Also, the IRS announced a rate decrease in rate for private vehicle use from 54 cents per mile to 53.5 cents per mile. The Division has determined that the reimbursement rate for private vehicles should decrease to 53 cents per mile to avoid exceeding federal mileage reimbursements.

**SUMMARY OF THE RULE OR CHANGE:** The times in the rule need to change to match the times that state payroll has in its system for reimbursement for meals to state employees, and the rule decreases reimbursement rate for mileage on private vehicles. (Editor's Note: A corresponding 120-day (emergency) rule that is effective as of 01/06/2017 is under Filing No. 41127 in this issue, February 1, 2017, of the Bulletin.)

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is a potential increase or decrease in meal reimbursements for state employees, because the times for the day of travel reimbursement for meals is changing to match the times in the state payroll systems for meal reimbursements through the payroll system. There will potentially be a decrease in cost to the state as mileage reimbursements are decreasing. However, the Division cannot determine exactly what the decrease will be because it is impossible to anticipate how much travel state employees will do.

◆ **LOCAL GOVERNMENTS:** There will not be costs to local governments because the rule only governs reimbursements by the state to individuals traveling on state business.

◆ **SMALL BUSINESSES:** Small businesses may see an increase or decrease in revenue for meal reimbursements. However, the Division cannot determine exactly what the increase or decrease will be as that depends on the time of day traveled by individuals eligible for meal reimbursement. The mileage rate change deals only with reimbursement rates for mileage for state employees. Therefore, small businesses are not affected.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals eligible for reimbursements may see an increase or decrease in their meal reimbursements for travel. However, the Division cannot determine exactly what the increase or decrease will be as that depends on the time of day individuals travel. Individuals eligible for mileage reimbursement will see a slight decrease in mileage reimbursement for travel in private vehicles.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Because the amendment only changes times for reimbursement for meals and mileage reimbursements for travel in private vehicles, and does not require any new action on the part of persons applying for reimbursements, there are not compliance costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed these changes with the Division of Finance Director and believe these changes are reasonable and warranted. Small business may see an increase or decrease in revenue; however, the Division cannot determine exactly what the increase or decrease will be as that depends on the time of day individuals travel and are eligible for meal reimbursement. There will be no impact on small businesses for the mileage change, because the change deals only with reimbursement rate for mileage for state employees.

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

ADMINISTRATIVE SERVICES  
 FINANCE  
 ROOM 2110 STATE OFFICE BLDG  
 450 N STATE ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017**

**AUTHORIZED BY: John Reidhead, Director**

**R25. Administrative Services, Finance.**

**R25-7. Travel-Related Reimbursements for State Employees.**

**R25-7-1. Purpose.**

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

**R25-7-2. Authority and Exemptions.**

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

**R25-7-3. Definitions.**

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Home-Base" means the location the employee leaves from and/or returns to.

(6) "Per diem" means an allowance paid daily.

(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(8) "Rate" means an amount of money.

(9) "Reimbursement" means money paid to compensate an employee for money spent.

(10) "State employee" means any person who is paid on the state payroll system.

**R25-7-4. Eligible Expenses.**

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

**R25-7-5. Approvals.**

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

**R25-7-6. Reimbursement for Meals.**

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is \$41.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$17.00
Total	\$41.00

(b) The daily travel meal allowance for out-of-state travel is \$46.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$22.00
Total	\$46.00

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$66 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$57 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:

Tier I Location

(i) If breakfast is provided deduct \$15, leaving a premium allowance for lunch and dinner of actual up to \$51.

(ii) If lunch is provided deduct \$20, leaving a premium allowance for breakfast and dinner of actual up to \$46.

(iii) If dinner is provided deduct \$31, leaving a premium allowance for breakfast and lunch of actual up to \$35.

Tier II Location

(i) If breakfast is provided deduct \$13, leaving a premium allowance for lunch and dinner of actual up to \$44.

(ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to \$40.

(iii) If dinner is provided deduct \$27, leaving a premium allowance for breakfast and lunch of actual up to \$30.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed the actual meal cost, with original receipts, not to exceed the United States Department of State Meal and Incidental Expenses (M and IE) rate for their location.

(a) The traveler may combine the reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter a.m.	2nd Quarter a.m.	3rd Quarter p.m.	4th Quarter p.m.
12:00-5:59	6:00-11:59	12:00-5:59	6:00-11:59
*B, L, D	*L, D	*D	*no meals
In-State			
\$41.00	\$31.00	\$17.00	\$0
Out-of-State			
\$46.00	\$36.00	\$22.00	\$0

\*B = Breakfast, L = Lunch, D = Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter a.m.	2nd Quarter a.m.	3rd Quarter p.m.	4th Quarter p.m.
12:00-[5+59]6:00	[6+00]6:01-[11+59]12:00	[12+00]12:01-[5+59]6:00	[6+00]6:01-11:59

	*B	*B, L	*B, L, D
In-State	\$0	\$24.00	\$41.00
Out-of-State	\$0	\$24.00	\$46.00

\*B = Breakfast, L = Lunch, D = Dinner

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns at 6 p.m. or later.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

**R25-7-7. Meals for Statutory Non-Salaried State Boards.**

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

**R25-7-8. Reimbursement for Lodging.**

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

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

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to \$70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

TABLE 5

Cities with Differing Rates

Beaver	\$75.00 plus tax and mandatory fees
Blanding	\$75.00 plus tax and mandatory fees
Bluff	\$90.00 plus tax and mandatory fees

Brigham City	\$80.00 plus tax and mandatory fees
Bryce Canyon City	\$75.00 plus tax and mandatory fees
Cedar City	\$80.00 plus tax and mandatory fees
Duchesne	\$80.00 plus tax and mandatory fees
Ephraim	\$75.00 plus tax and mandatory fees
Farmington	\$85.00 plus tax and mandatory fees
Fillmore	\$75.00 plus tax and mandatory fees
Garden City	\$80.00 plus tax and mandatory fees
Green River	\$85.00 plus tax and mandatory fees
Heber	\$85.00 plus tax and mandatory fees
Kanab	\$85.00 plus tax and mandatory fees
Layton	\$85.00 plus tax and mandatory fees
Logan	\$85.00 plus tax and mandatory fees
Moab	\$100.00 plus tax and mandatory fees
Monticello	\$80.00 plus tax and mandatory fees
Ogden	\$85.00 plus tax and mandatory fees
Park City/Midway	\$100.00 plus tax and mandatory fees
Price	\$75.00 plus tax and mandatory fees
Provo/Orem/Lehi/American Fork/ Springville	\$85.00 plus tax and mandatory fees
Roosevelt/Ballard	\$90.00 plus tax and mandatory fees
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	\$100.00 plus tax and mandatory fees
St. George/Washington/Springdale/ Hurricane	\$85.00 plus tax and mandatory fees
Torrey	\$85.00 plus tax and mandatory fees
Tremonton	\$90.00 plus tax and mandatory fees
Vernal	\$95.00 plus tax and mandatory fees
All Other Utah Cities	\$70.00 plus tax and mandatory fees

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

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

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50

miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

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

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

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

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

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

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

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

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel. These instances will be audited 100% by the State Finance Post-Auditors.

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

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

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

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

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

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

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

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

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

- (i) \$25 per night with no receipts required or
- (ii) Actual cost up to \$40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

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

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

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

#### **R25-7-9. Reimbursement for Incidentals.**

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

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, transportation costs, maid service, and bellman. Gratuities/tips for various services such as assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of \$5.00 per day.

- (a) Tips for doormen and meals are not reimbursable.
- (b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above \$19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of \$20 or more.

(3) Registration should be paid in advance on a state warrant, with a state purchase card, or with a state travel card.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original

lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to \$2.50 per night.

(b) Five to eleven nights - actual amount up to \$20.00

(c) Twelve nights to thirty nights - actual amount up to \$30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to \$18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

#### **R25-7-10. Reimbursement for Transportation.**

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

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the long term parking rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of \$20 or more.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or [54]53 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at [54]53 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Any exceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director or designee.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) A comparison printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.

(d) Reimbursement will be made at [54]53 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

**KEY: air travel, per diem allowances, state employees, transportation**

**Date of Enactment or Last Substantive Amendment: [August 22, 2016]2017**

**Notice of Continuation: April 15, 2013**  
**Authorizing, and Implemented or Interpreted Law: 63A-3-107;**  
**63A-3-106**

**Commerce, Occupational and  
Professional Licensing  
R156-46b-202  
Informal Adjudicative Proceedings**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 41169  
FILED: 01/12/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** H.B. 265 passed during the 2016 General Session, required the Division to make rules to allow a psychiatrist or a psychiatric mental health nurse practitioner to apply for and receive a tax credit certificate from the Division under certain circumstances. The amendments to this rule help accomplish that mandate.

**SUMMARY OF THE RULE OR CHANGE:** This section is amended to include in the classification of an informal adjudicative proceeding, initiated by other than a notice of agency action, the Division's approval or denial of an application for a tax credit certificate under Section 58-1-111.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 58-1-106(1)(a) and Subsection 63G-4-102(6)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. The designation of these matters as informal adjudicative proceedings will reduce the time and expense incurred by the Division in processing the applications. The amount of the savings cannot be estimated as it will vary depending on circumstances.

◆ **LOCAL GOVERNMENTS:** The proposed amendment only applies to psychiatrists or psychiatric mental health practitioners who apply for a tax credit certificate. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** No cost to small business is anticipated as a result of this amendment. There may be some savings to small business owners who submit applications, due to the reduced time and expense that will be required to process their applications. The amount of the savings cannot be estimated as it will vary depending on circumstances.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost to licensees is anticipated as a result of this amendment. There may be some savings to licensees who submit applications due to the reduced time and expense that will be required to process their applications. The amount of the savings cannot be estimated as it will vary depending on the circumstances.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendment only applies to psychiatrists or psychiatric mental health practitioners who apply for a tax credit certificate. The Division anticipates no compliance costs for these affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Section R156-46b-202 is amended to meet the mandate of H.B. 265 (2016). The amendment adds to the list of adjudicative proceedings that are classified as informal adjudicative proceedings the approval or denial of application for a tax credit certificate by a psychiatrist, psychiatric mental health nurse practitioner, or volunteer retired psychiatrist. No fiscal impact on businesses will result from this change.

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

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Dane Ishihara by phone at 801-530-7632, by FAX at 801-530-6511, or by Internet E-mail at dishihara@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017**

**AUTHORIZED BY: Mark Steinagel, Director**

**R156. Commerce, Occupational and Professional Licensing.  
R156-46b. Division Utah Administrative Procedures Act Rule.  
R156-46b-202. Informal Adjudicative Proceedings.**

(1) The following adjudicative proceedings initiated by other than a notice of agency action are classified as informal adjudicative proceedings:

(a) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;

(b) denial of application for initial licensure or relicensure;

- (c) denial of application for renewal or reinstatement of licensure;
- (d) approval or denial of application for inactive or emeritus licensure status;
- (e) board of appeal under Subsection 15A-1-207(3);
- (f) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11;
- (g) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);
- (h) approval or denial of request to surrender licensure;
- (i) approval or denial of request for entry into diversion program under Section 58-1-404;
- (j) matters relating to diversion program;
- (k) citation hearings held in accordance with citation authority established under Title 58;
- (l) approval or denial of request for modification of disciplinary order;
- (m) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;
- (n) approval or denial of request for correction of procedural or clerical mistakes;
- (o) approval or denial of request for correction of other than procedural or clerical mistakes;
- (p) disciplinary sanctions imposed in a stipulation or memorandum of understanding with an applicant for licensure; ~~and~~
- (q) approval or denial of application for a tax credit certificate by a psychiatrist, psychiatric mental health nurse practitioner, or volunteer retired psychiatrist under Section 58-1-11; and
- ([e]r) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).
- (2) The following adjudicative proceedings initiated by a notice of agency action are classified as informal adjudicative proceedings:
- (a) nondisciplinary proceeding which results in cancellation of licensure;
- (b) disciplinary proceedings against:
- (i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;
- (ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and
- (iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306.
- (c) disciplinary proceedings initiated by a notice of agency action and order to show cause concerning violations of an order governing a license;
- (d) disciplinary proceedings initiated by a notice of agency action in which the allegations of misconduct are limited to one or more of the following:
- (i) Subsection 58-1-501(2)(c) or (d); or
- (ii) Subsections R156-1-501(1) through (5).

**KEY:** administrative procedures, government hearings, occupational licensing

**Date of Enactment or Last Substantive Amendment:**  
~~[November 21, 2013]~~2017

**Notice of Continuation:** January 5, 2016

**Authorizing, and Implemented or Interpreted Law:** 63G-4-102(6); 58-1-106(1)(a)

## Crime Victim Reparations, Administration R270-1-20 Medical Awards

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41142

FILED: 01/09/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendment establishes the percentage the agency can pay toward a victim's medical costs and may be adjusted to ensure viability of the victim's fund. The percentage will be decreased by 10% (from 70% to 60%) to address rising medical costs.

**SUMMARY OF THE RULE OR CHANGE:** The percentage of a victim's medical expense the agency can pay will be decreased by 10% (from 70% to 60%) to address rising medical costs.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63M-7-521.5(3)

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The change will not affect the state budget in that the savings will be reflected only in the Crime Victims Trust account as defined in Section 51-9-404 which is an expendable special revenue fund. The "fund" may realize an estimated \$250,000 savings per calendar year. The exact costs and savings cannot be determined because medical costs will vary from case to case and circumstance to circumstance.

◆ **LOCAL GOVERNMENTS:** Local government will not be affected because this change affects only medical service providers, crime victims, and the agency.

◆ **SMALL BUSINESSES:** Small independent medical providers may experience a minimal decrease from the change. The agency assists crime victims with out-of-pocket, crime-related costs. This change will affect only victims who have no health insurance, Medicaid, Medicare, or other source of payment for medical expenses. Pursuant to this change, service providers will receive 60% of the amount billed rather than 70% of the amount billed. The exact costs and savings cannot be determined because medical costs will vary from case to case and circumstance to circumstance.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Hospitals and large medical service providers may encounter a minimal, proportionate discount to the payments they receive from the agency. The agency assists crime victims with out-of-pocket, crime-related costs. This change will affect only victims who have no health insurance, Medicaid, Medicare, or other source of payment for medical expenses. Pursuant to this change, service providers will receive 60% of the amount billed rather than 70% of the amount billed. The exact costs and savings cannot be determined because medical costs will vary from case to case and circumstance to circumstance.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs that affect any group other than the agency. The agency is solely responsible for the implementation and compliance of the rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Annually, the agency pays approximately \$4,500,000 on medical expenses for services provided to victims of crime. Of that total, only the expenses for those persons that do not have insurances or other sources to cover medical expenses will be reduced. Medical co-payment and deductible amounts paid on behalf of a victim, will not be reduced in addition to the reductions made by the primary payer. The agency anticipates an approximate \$250,000 annual savings from the rule change and that \$250,000 savings would be generated from small contributions from each medical provider in the state that submits a bill for payment. The exact costs and savings cannot be determined because medical costs will vary from case to case and circumstance to circumstance.

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

CRIME VICTIM REPARATIONS  
ADMINISTRATION  
ROOM 200  
350 E 500 S  
SALT LAKE CITY, UT 84111-3347  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Gary Scheller by phone at 801-238-2362, by FAX at 801-533-4127, or by Internet E-mail at garys@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017

AUTHORIZED BY: Gary Scheller, Director

## **R270. Crime Victim Reparations, Administration.**

### **R270-1. Award and Reparation Standards.**

#### **R270-1-20. Medical Awards.**

Pursuant to Subsection 63M-7-511(4)(b), medical awards are subject to limitations as follows:

(1) All medical costs must be related directly to the victimization and all treatment must be considered usual and customary.

(2) The reparations officer reserves the right to audit any and all billings associated with medical care.

(3) The reparations officer will not pay any interest, finance, or collection fees as part of the award.

(4)(i) If the claimant has no medical insurance or other collateral source for payment of the victim's medical bill, the office shall pay 60%[~~70%~~] of billed charges for eligible medical bills.

(ii) If the claimant has medical insurance or another collateral source for payment of the victim's medical bills, the office shall pay the portion of the eligible medical bills that the claimant is obligated to pay pursuant to the insurance agreement.

(iii) This rule does not apply to expenses governed by R270-1-5 or R270-1-23.

(5) This rule supersedes any other agreements regarding payment of medical bills by the office.

(6) Child endangerment examinations for children that have been exposed to drugs shall be paid for when the health and safety of the child is at risk and no other collateral source is available. The cost of the exam needs to be an expense incurred by the victim. The writing of evidentiary reports and any form of lab testing shall not be covered as part of the examination.

**KEY: victim compensation, victims of crimes**

**Date of Enactment or Last Substantive Amendment:**  
~~[November 21, 2016]~~**2017**

**Notice of Continuation: June 15, 2016**

**Authorizing, and Implemented or Interpreted Law: Title 63M, Chapter 7, Part 5**

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## Education, Administration **R277-118** Board of Education Conflict of Interest Avoidance

### **NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 41187

FILED: 01/17/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to provide procedures to prevent conflict of interest issues within the Utah State Board of Education (Board) when a Board employee separates or retires from the Board.

**SUMMARY OF THE RULE OR CHANGE:** This new rule defines terms; provides post separation or post retirement employment restrictions; and provides procedures for contract termination for a contractor who violates the terms of this rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This new rule provides procedures to avoid conflicts of interest, which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This new rule provides procedures to avoid conflicts of interest, which likely will not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** This new rule provides procedures to avoid conflicts of interest, which likely will not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule provides procedures to avoid conflicts of interest, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This new rule provides procedures to avoid conflicts of interest, which could result in contract/agreement termination if a contractor/subcontractor violates this rule and the terms of the contractor's/subcontractor's contract/agreement. It is anticipated, however, that that a contractor/subcontractor will be clear about consequences, so it is likely that there will be no compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** To the best of my knowledge, there should be no fiscal impact on businesses resulting from this new rule.

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

EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

**R277. Education, Administration.**

**R277-118. Board of Education Conflict of Interest Avoidance.**

**R277-118-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and
  - (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to:
  - (a) define necessary terms;
  - (b) reduce the appearance or existence of conflicts of interest within the Board;
  - (c) establish rules for the prevention of pre and post separation or retirement conflicts of interest; and
  - (d) ensure that revolving door issues which could lead to compromise of sound ethical principles do not exist within the Board.

**R277-118-2. Definitions.**

- (1)(a) "Agreement" means a written instrument used to transfer funding from the Board to an enterprise.
- (b) "Agreement" does not include a grant.
- (2)(a) "Board employee" means anyone employed by the Board on or after March 1, 2017.
- (b) "Board employee" does not include a Board member elected in accordance with Title 20A, Chapter 14, Part 1, State School Board - Nomination and Election.
- (3)(a) "Compensation" means any monetary payment or financial benefit received either directly or indirectly under a contract, subcontract, or agreement.
- (b) "Compensation" does not include deferred payments, separation payments, or retirement-related payments which are made as a result of service while an employee of the Board.
- (4)(a) "Direct and significant involvement" means meaningful participation in:
  - (i) creation of requirements for a contract or agreement;
  - (ii) creation of evaluation criteria for evaluation of an offer;
  - (iii) a bidders' pre-bid conferences for a contract or agreement;
  - (iv) evaluation of offers;
  - (v) determining that an enterprise is eligible to receive payment under a contract or agreement based on approval of work performed or materials furnished;
  - (vi) negotiation, award or modification of a contract or agreement;

\_\_\_\_\_ (vii) evaluating or monitoring performance of a contractor; or

\_\_\_\_\_ (viii) any other involvement that has a meaningful and significant impact on the compensation or benefits received by an outside contractor, vendor, or consultant, or other direct or indirect recipient of Board funding.

\_\_\_\_\_ (b) "Direct and significant involvement" does not include administrative or clerical involvement only.

\_\_\_\_\_ (5) "Employment" means either direct or indirect employment by a prime or subcontractor and also includes consultants at either a prime or sub-tier level.

\_\_\_\_\_ (6) "Enterprise" means a form of business association, including a profit or not for profit corporation, partnership, sole proprietorship, limited liability company, or cooperative association.

**R277-118-3. Post Separation or Post Retirement Employment Restrictions.**

\_\_\_\_\_ (1) The restrictions described in this R277-118 are not intended to alter or replace the post retirement employment restrictions that are mandated by Section 49-11-12, but are intended to be additions to the restrictions in Section 49-11-12.

\_\_\_\_\_ (2) A former Board employee may not receive compensation for a period of two years after separating or retiring from the Board from an enterprise:

\_\_\_\_\_ (a) that has received a contract or agreement from the Board:

\_\_\_\_\_ (i) within the previous three years;

\_\_\_\_\_ (ii) either at a prime or sub-tier level;

\_\_\_\_\_ (iii) to perform services for or deliver products to the Board; and

\_\_\_\_\_ (iv) at a total contract value of \$50,000.00 or more in any calendar year; and

\_\_\_\_\_ (b) where the former Board employee had direct and significant involvement in the procurement or contract administration process prior to the Board employee's separation or retirement.

**R277-118-4. Contract Termination.**

\_\_\_\_\_ (1) A contract, subcontract, or other agreement with a Board contractor or subcontractor who provides compensation to a former Board employee in violation of Section R277-118-3 may be terminated at the discretion of the Board.

\_\_\_\_\_ (2) Any contractor whose contract or subcontract is terminated as described in Subsection (1) shall receive the portion of the contract price reasonably attributable to goods or services already provided and accepted by the Board.

\_\_\_\_\_ (3) Notice of the restrictions and termination provisions described in this R277-118 shall be included as a term in each Board contract or agreement.

**KEY: conflicts of interest**

**Date of Enactment of Last Substantive Amendment: 2017 Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401**

Education, Administration  
**R277-417**  
 Prohibiting LEAs and Third Party  
 Providers from Offering Incentives or  
 Reimbursements for Enrollment or  
 Participation

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41188

FILED: 01/17/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to provide greater clarity to local education agencies (LEAs) on prohibited uses of state funding for incentives and certain disbursements to parents and students.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to this rule provide changes to definitions; add and remove language for LEA or third party provider's use of public funds for incentives and disbursements; and provide procedures for LEAs that contract with third party providers for provision of educational services.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The amendments to this rule provide greater clarity to LEAs on prohibited uses of state funding for incentives and certain disbursements to parents and students, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments to this rule provide greater clarity to LEAs prohibited uses of state funding for incentives and certain disbursements to parents and students, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments to this rule provide greater clarity to LEAs on prohibited uses of state funding for incentives and certain disbursements to parents and students, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to this rule provide greater clarity to LEAs on prohibited uses of state funding for incentives and certain disbursements to parents and students, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule provide greater clarity to LEAs on prohibited uses of state funding for incentives and certain disbursements to parents and students, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

**R277. Education, Administration.**

**R277-417. Prohibiting LEAs and Third Party Providers from Offering Incentives or ~~[Reimbursements]~~Disbursement for Enrollment or Participation.**

**R277-417-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) ~~S[ubs]ection 53A-1-401[~~(3)~~], which allows the Board to [adopt]make rules [in accordance with its responsibilities]to execute the Board's duties and responsibilities under the Utah Constitution and state law.~~

(2) The purpose of this rule is:

(a) to provide standards and procedures for prohibiting LEAs and third party providers from offering incentives for student enrollment[-]; and

(b) to provide standards for an LEA working with a third party provider to ensure the third party provider complies with this R277-417.

**R277-417-2. Definitions.**

(1)(a) "~~[Reimbursement]~~Disbursement" means the payment of money or provision of other item of value greater than

\$10, per school year, offered as payment or compensation to a student or to a parent or guardian for:

- (i) a student's enrollment in an LEA; or
- (ii) a student's participation in an LEA's program.

(b) "~~[Reimbursement]~~Disbursement" does not include a reimbursement paid by an LEA to a student, parent or guardian, for an expenditure incurred by the student, parent or guardian on behalf of the LEA if:

(i) the expenditure is for an item that will be the property of the LEA; and

(ii) the expenditure was preauthorized by the LEA, as evidenced by preauthorization documentation.

(1)2) "Incentive" means one of the following given to a student or to the student's parent or guardian by an LEA or by a third party provider as a condition of the student's enrollment in an LEA or specific program for any length of time, during any school year:

- (a) money greater than \$10; or
- (b) an item of value greater than \$10.

(2)3) "Program" means a program within a school that is designed to accomplish a predetermined curricular objective or set of objectives.

(4) "Section 504 accommodation plan" required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(5) "Third party provider" means a third party who provides educational services on behalf of an LEA.

**R277-417-3. LEA and Third Party Provider Use of Public Funds for Incentives and ~~[Reimbursements]~~Disbursement.**

(1) ~~[Except as provided in Subsection (3), a]~~An LEA or a third party provider may not use public funds, as defined under Subsection 51-7-3(26), to provide the following to a student, parent or guardian, individual, or group of individuals:

- (a) an incentive for a student's:
  - (i) enrollment in an LEA; or
  - (ii) participation in an LEA's program; or
- (b) a referral bonus for a student's:
  - (i) enrollment in an LEA; or
  - (ii) participation in an LEA's program.

(2) ~~[Except as provided in Subsection (3), an]~~An LEA or third party provider may not use public funds to provide a ~~[reimbursement]~~disbursement to a student or the student's parent or guardian for:

- (a) curriculum exclusively selected by a parent;
- (b) instruction not provided by the LEA;
- (c) private lessons or classes not ~~[managed or facilitated by the LEA;]~~provided by:

- (i) an employee of the LEA; or
- (ii) a third party provider who meets all of the requirements of R277-417-4;
- (d) technology devices exclusively selected by a parent;

or

- (e) other educational expense exclusively selected by a parent.

(3) An LEA may use public funds to provide:

(a) uniforms, technology devices, curriculum, or materials and supplies ~~[, or instructional services]~~ to a student if the uniforms, technology devices, curriculum, or materials and supplies ~~[, or instructional services]~~ are:

(i) available to all students enrolled in the LEA or program within the LEA; or

(ii) authorized by the student's college and career readiness plan, IEP, or 504 accommodation plan; or

(b) internet access for instructional purposes to a student:

(i) in kindergarten through grade 6; or

(ii) in grade 7 through grade 12 if:

(A) the internet access is provided in accordance with the fee waiver policy requirements of Section R277-407-6; or

(B) failure to provide the internet access will cause economic hardship on the student or parent.

(4) An LEA or third party provider shall ensure that equipment purchased or leased by the LEA or third party provider remains the property of the LEA and is subject to the LEA's asset policies if:

(a) the LEA or third party provider purchases equipment;

and

(b) provides the equipment to a student or to the student's parent or guardian.

~~[(5) An LEA shall establish monitoring procedures to ensure that a third party provider who provides educational services to a student on behalf of the LEA complies with the provisions of this rule.~~

~~[(6) The Board or the Superintendent may require an LEA to repay public funds to the Superintendent if:~~

~~(a) an LEA or an LEA's third party provider fails to comply with the provisions of this rule; and~~

~~(b) the repayment is made in accordance with the procedures established in Rule R277-114.]~~

#### **R277-417-4. Third Party Provider Provision of Educational Services.**

(1) An LEA that contracts with a third party provider to provide services on behalf of the LEA shall:

(a) establish monitoring and compliance procedures to ensure that a third party provider who provides educational services to a student on behalf of the LEA complies with the provisions of this rule;

(b) develop a written monitoring plan to supervise the activities and services provided by the third party provider;

(c) ensure the third party provider is complying with:

(i) federal law;

(ii) state law; and

(iii) Board rules;

(d) monitor and supervise all activities of the third party provider related to services provided by the third party provider to the LEA; and

(e) maintain documentation of the LEA's supervisory activities consistent with the LEA's administrative records retention schedule.

(2) An LEA shall:

(a) verify the accuracy and validity of a student's enrollment verification data, prior to enrolling a student in the LEA; and

(b) provide a student and the student's parent or guardian with notification of the student's enrollment in a school or program within the LEA.

(3) The Board or the Superintendent may require an LEA to repay public funds to the Superintendent if:

(a) the LEA or the LEA's third party provider fails to comply with the provisions of this rule; and

(b) the repayment is made in accordance with the procedures established in R277-114.

**KEY: students, enrollment, incentives**

**Date of Enactment or Last Substantive Amendment: [November 23, 2015]2017**

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

## Education, Administration **R277-507-3** Endorsement Requirements

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41189

FILED: 01/17/2017

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-507 was published in the December 1, 2016, Utah State Bulletin and subject to a 30-day comment period. Section R277-507-3 is amended in response to public comment received during the 30-day comment period.

SUMMARY OF THE RULE OR CHANGE: Section R277-507-3 is amended to add Career and Technical Education as an area of concentration, making an educator with a Career and Technical Education area of concentration, among other requirements, eligible to have a driver education endorsement added to the educator's license.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-13-208 and Subsection 53A-1-402(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The amendments to Section R277-507-3 add Career and Technical Education as an area of concentration, which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: The amendments to Section R277-507-3 add Career and Technical Education as an area of concentration, which likely will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: The amendments to Section R277-507-3 add Career and Technical Education as an area of

concentration, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Section R277-507-3 add Career and Technical Education as an area of concentration, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The amendments to Section R277-507-3 add Career and Technical Education as an area of concentration, which likely will not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to Section R277-507-3.

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

EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

**R277. Education, Administration.  
R277-507. Driver Education Endorsement.  
R277-507-3. Endorsement Requirements.**

(1) A driver education endorsement shall be added to an educator's Level 1, 2, or 3 license if the educator:

(a) has a valid and current Level 1, 2, or 3 license with an area of concentration in one or more of the following:

- (i) Secondary Education;
- (ii) Special Education; ~~or~~
- (iii) School Counselor; or
- (iv) Career and Technical Education;

(b) has a valid Utah automobile operator's license;

(c) has not had an automobile operator's license suspended or revoked during the two year period immediately prior to applying for the endorsement; and

(d) has completed the professional preparation requirements set forth in Subsection (2).

(2) A high school driver education teacher shall complete professional preparation which includes sixteen (16) semester hours in the area of driver and safety education, as follows[;]:

(a) a minimum of twelve (12) semester hours shall be in the area of driver and safety education, including a practicum covering classroom, on-street, simulator, and driving range instruction;

(b) a minimum of two (2) semester hours of Driver Education State Law and Policy through Utah Education Network;

(c) a minimum of one (1) semester hour of current/valid first aid and CPR training; and

(d) a minimum of one (1) semester hour of DLD online examiners training.

(3) In order for a high school driver education teacher to be certified as a driver license examiner by the DLD, the teacher shall first be licensed and endorsed as provided in this Section R277-507-3 by the Board.

(4) After meeting the criteria of Subsection(1), a high school driver education teacher shall obtain a valid and current certificate from the DLD to administer written and driving tests, in accordance with Section 53A-13-208.

**KEY: professional education, driver education, educator licensure**

**Date of Enactment or Last Substantive Amendment: 2017**

**Notice of Continuation: November 15, 2016**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-1-401; 53A-13-208**

**Education, Administration**  
**R277-702**  
**Procedures for the Utah High School**  
**Completion Diploma**

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 41190  
FILED: 01/17/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-702 is amended to remove all references to the General Educational Development (GED) Test and the test administration vendor and to replace the term with a more general descriptor of high school equivalency exam. Additionally, technical and conforming changes are provided throughout the rule in accordance with the rulewriting style manual.

**SUMMARY OF THE RULE OR CHANGE:** The GED test is changed to a more general term of high school equivalency exam (HSE exam). Also, technical, conforming, and terminology changes are provided throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Subsection 53A-1-402(1)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The amendments to Rule R277-702 change the title of the exam and make technical and conforming changes, which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: The amendments to Rule R277-702 change the title of the exam and make technical and conforming changes, which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: The amendments to Rule R277-702 change the title of the exam and make technical and conforming changes, which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to Rule R277-702 change the title of the exam and make technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-702 change the title of the exam and make technical and conforming changes, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

## R277. Education, Administration.

### R277-702. Procedures for the Utah High School Completion Diploma.

#### R277-702-[2]1. Authority and Purpose.

~~[A:]~~(1) This rule is authorized by:

~~\_\_\_\_\_~~ (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board[;];

~~\_\_\_\_\_~~ (b) Subsection 53A-1-402(1)(b), which directs the Board to adopt rules regarding access to programs, competency levels, and graduation requirements[;]; and

~~\_\_\_\_\_~~ (c) Section 53A-1-401[~~(3)~~], which allows the Board to ~~[adopt]make~~ rules ~~[in accordance with its]to execute the Board's~~ duties and responsibilities ~~under the Utah constitution and state law.~~

~~[B:]~~(2) The purpose of this rule is to describe the standards and procedures ~~required for an individual to obtain[ing]~~ a Utah High School Completion Diploma.

#### R277-702-[1]2. Definitions.

~~[\_\_\_\_\_~~ A. "Board" means the Utah State Board of Education.

~~\_\_\_\_\_~~ B. "GED Test" means the General Educational Development Test developed by the American Council on Education.]

~~\_\_\_\_\_~~ (1) "High school equivalency exam" or "HSE exam" means a Board approved examination whose test modules are aligned with:

~~\_\_\_\_\_~~ (a) current high school core standards; and

~~\_\_\_\_\_~~ (b) adult education college and career readiness standards.

~~[C:]~~(2) "Out-of-school youth" means an individual 16 to 19 years of age whose high school ~~[class]cohort~~ has not graduated and who is no longer enrolled in a K-12 program of instruction.

~~[D:]~~(3) "Utah ~~[H]high [S]school [C]completion [D]diploma~~" means a completion diploma issued by the Board and distributed by a ~~[GED Testing Center or GED Testing Service (GEDTS) as agents of the Board]Board-approved contractor~~, to an individual who has passed all~~[-five]~~ subject modules of ~~[the GED Test]the HSE exam~~ at a Utah ~~[GED Testing]HSE exam testing [C]center~~, ~~[based on Utah passing standards; measuring the major and lasting outcomes and concepts associated with a traditional four-year high school experience.]~~

#### R277-702-3. Administrative Procedures and Standards for Testing and Certification.

~~[\_\_\_\_\_~~ A. The Board contracts with the General Educational Testing Service of the American Council on Education to administer the GED Testing Program in the state.]

~~\_\_\_\_\_~~ (1)(a) The Superintendent shall contract with a third party contractor in accordance with state procurement law to administer HSE exams in the state.

~~\_\_\_\_\_~~ (b) The ~~[Board]Superintendent~~ may contract with ~~[educational]public non-profit~~ institutions within the state to administer ~~[the tests]HSE exams~~ and provide related testing services.

~~\_\_\_\_\_~~ (c) The Superintendent shall determine the number and location of the institutions designated as testing centers ~~[is determined]~~ in a manner that ensures that the test is reasonably accessible to potential applicants.~~[Testing centers shall meet the~~

GED Testing Service requirements in the GED Examiner's Manual, available at all Board-approved GED Testing Centers and from the USOE.]

(d) The Superintendent shall develop requirements for HSE exam testing centers in conjunction with the contractor approved in accordance with Subsection (1)(a).

~~\_\_\_\_\_ B. Individuals desiring to take a GED Test shall follow GED Test registration procedures established by GEDTS and Pearson VUE as approved by the Board and be eligible to take the GED Test under R277-702-4.~~

~~\_\_\_\_\_ C. Individuals desiring to obtain a Utah High School Completion Diploma shall obtain a standard score of at least 410 on each of the five test modules of the GED Test and obtain an overall average standard score of 450 on the five test modules combined.~~

(2) The Superintendent shall develop minimum scores required for passing an HSE exam in conjunction with a vendor chosen in accordance with Subsection (1)(a).

(3) The Superintendent shall award a diploma to a candidate who receives a passing score on an HSE exam.

~~\_\_\_\_\_ D. The Board recognizes that a GED is only one type of equivalency diploma that could be offered or accepted by the Board.~~

#### **R277-702-4. Eligibility for [GED]HSE Testing.**

~~[A.](1) Any individual may take a Utah HSE exam [GED testing is open to all individuals] regardless of:~~

- ~~\_\_\_\_\_ (a) race[;];~~
- ~~\_\_\_\_\_ (b) color[;];~~
- ~~\_\_\_\_\_ (c) national origin[;];~~
- ~~\_\_\_\_\_ (d) gender; [or disabilities]~~
- ~~\_\_\_\_\_ (e) disability; or [and is open to all individuals regardless of Utah]~~
- ~~\_\_\_\_\_ (f) state of residency.~~

~~\_\_\_\_\_ B. Admission to a GED Test requires the following:~~

~~(1) that the candidate be at least 16 years of age and is not enrolled in any Utah K-12 school that issues high school credits or diplomas or both;~~

~~(2) A candidate for the HSE exam:~~

- ~~(a) shall be at least 16 years of age; and~~
- ~~(b) may not be enrolled in any Utah k-12 school.~~

~~[(2)3] [if the candidate is age 16, the] A 16-year-old candidate shall[:~~

~~(a) as part of the GED testing registration process, complete] submit a completed state of Utah [GED Testing]HSE Exam Application for 16-18 Year Old Non-Graduates [available from public schools, public charter schools, private or residential special purpose schools], which shall include:~~

~~[(i)a] [completed by the school district, charter school, private or residential special purpose school not associated with a school district, stating] verification in a manner approved by the Superintendent that the candidate is not enrolled in a school[;]; [and]~~

~~(b) verification that the candidate understands and accepts the consequences and educational choices associated with the candidate's withdrawal from a K-12 program of instruction, including the prohibition from returning to a K-12 program anywhere in Utah upon successful passing of [all five modules of the GED Test]an HSE exam; and~~

~~[(ii)c] signed acknowledgment[by] from the candidate's parent['] or guardian specifically stating that the candidate and parent['] or guardian;~~

~~(i) understand and accept the consequences and educational choices associated with the candidate's decision to withdraw from a K-12 program of instruction[;]; and~~

~~(ii) [authorizing]authorize the candidate to take [the GED Test]an HSE exam; [or]and~~

~~[(iii)d] [signed by]verification from a representative[s-from] of a Utah state-sponsored [A]adult [E]education [D]district [P]program [stating]that the candidate demonstrates academic competencies to meet with success in passing the [GED Test; and]HSE exam.~~

~~[(iv)4] A 16 year-old candidate may provide a marriage certificate in lieu of [the parent/guardian signature]the requirement of Subsection (3)(c) if the candidate is married.~~

~~[(3)5] [if the candidate is 17 or 18 years of age and the candidate's graduating class]A 17 or 18 year-old candidate whose cohort has not graduated[, the GED testing candidate] shall submit a state of Utah [GED Testing]HSE exam Application for 16-18 Year Old Non-Graduates[ to a Utah state-sponsored Adult Education School District Program], which shall include:~~

~~(a) [completed by the school district, charter school, private or residential special purpose school not associated with a school district, stating] verification in a manner approved by the Superintendent that the candidate is not enrolled in school; and~~

~~(b) the [signed by]signature of the candidate's parent['] or guardian authorizing the test[; or].~~

~~[(e)6] A candidate may submit a marriage certificate in lieu of the [parent/guardian signature]requirement contained in Subsection (5)(b) if the candidate is married.~~

~~[E.](7) An out-of-school youth of school age who has not successfully passed all [five GED Test]HSE exam modules shall be allowed to return to a [school district, charter school, private or special purpose school not associated with a school district]k-12 public school prior to the time his class graduates with the understanding and expectation that all necessary requirements for the traditional [K]k-12 diploma shall be completed [for a]prior to issuance of a regular high school diploma.~~

~~[D.](8) An out-of-school youth of school age who has received a Utah [H]high [S]school completion [D]diploma is not eligible to return to a [K]k-12 [high]public school unless it is required for provision of a free appropriate public education [(FAPE)]under the Individuals with Disabilities Education Act [(IDEA)], 20 U.S.C., Chapter 33.~~

~~[E.](9) The Superintendent shall classify an [An] out-of-school youth of school age who has successfully passed all [five GED Test]HSE exam modules and received a Utah [H]high [S]school [C]completion [D]diploma [shall be reported]as a graduate for [K]k-12 graduation [A]annual [Y]yearly [P]progress outcomes.~~

~~[F.](10) An [F]individual[s, as] who is required by an employer or higher education institution to provide academic competency[, who] and cannot offer proof of high school completion may, upon approval of the [USOE GED Testing Administrator]Superintendent, take [the GED Test]an HSE exam.~~

~~[G.](11) An [F]individual[s] who [have]has previously passed [GED Test]HSE exam modules but seeks higher [GED~~

~~Test~~ HSE exam scores for specific post-secondary institution admission may seek permission to retake ~~the GED Test~~ an HSE exam module~~(s)~~ from the ~~USOE GED Testing Administrator~~ Superintendent.

#### R277-702-5. Fees.

~~[A:]~~(1) The Superintendent, with approval of ~~[F]the Board, [or its designee,]~~ shall adopt uniform fees for the ~~[General Educational Development Certificate]~~ Utah high school completion diploma and uniform forms, deadlines, and accounting procedures to administer this program for inclusion with the contract with the contractor identified in accordance with Subsection R277-702-3(1)(a). ~~[as defined by GED Testing Service and Pearson VUE.]~~

~~[B:]~~(2) ~~[A GED Testing Center, after consultation with the Board or its designee, shall adopt fees and forms for GED testing as defined by GED Testing Service and Pearson VUE.]~~ An approved testing center may only collect a fee in accordance with the amounts and procedures approved pursuant to Subsection (1).

#### R277-702-6. Official Transcripts.

(1) The Board shall accept HSE exam ~~[Test]~~ scores ~~[shall be accepted by the Board]~~ when an original score~~s are~~ is reported by:

~~[A:]~~(a) a Board-approved ~~[GED]~~ HSE exam ~~[F]testing [C]center[s];~~

~~[B:]~~(b) the ~~[F]transcript service of the Defense Activity for Non-Traditional Educational Support~~ ~~[(DANTES)];~~

~~[C:]~~(c) a Veterans Administration hospital~~s and~~ or center~~s];~~ or

~~[D:]~~(d) ~~[GED Testing Service or]~~ a contractor selected by the Superintendent in accordance with Subsection R277-702-3(1)(a) or the contractor's authorized agent~~s].~~

(2) The Superintendent shall include a candidate's HSE exam result on the candidate's official transcript.

#### R277-702-7. Adult High School Outcomes.

~~[A:]~~(1) A local board of education may adopt standards and procedures for awarding up to five ~~[(5)]~~ units of credit on the basis of test results which may be applied toward an ~~[A]adult [E]education [S]secondary [D]diploma~~ only if the student was enrolled in an ~~[A]adult [E]education [P]program~~ prior to July 1, 2009 and ~~[the GED was transcribed]~~ an approved HSE exam was transcribed prior to July 1, 2009.

~~[B:]~~(2) An ~~[F]individual[s] who [have taken]took and passed [the GED Tests]an approved HSE exam~~ prior to January 1, 2002 may enroll in an adult education program now and in the future to obtain an ~~[A]adult [E]education [S]secondary [D]diploma~~ upon completion of graduation requirements as defined in Rule 277-733~~[-Adult Education Programs]~~, but may not apply for a previously issued ~~[GED Test Certificate]~~ HSE exam certificate to be converted to a Utah ~~[H]high [S]school [C]completion [D]diploma.~~

~~[C:]~~(3) An ~~[F]individual[s] who [have taken]took and passed [the GED Test]an approved HSE exam~~ in the state of Utah between the dates of January 1, 2002 and June 30, 2009 may apply ~~[after July 1, 2009]~~ for a Utah ~~[H]high [S]school [C]completion [D]diploma~~ to replace the originally issued ~~[GED Test Certificate]~~ HSE exam certificate issued by ~~[from]~~ the Board or they

may enroll in an adult education program to complete the necessary requirements for an ~~[A]adult [E]education [S]secondary [D]diploma.~~

#### R277-702-8. ~~[GED Testing]~~ HSE Exam Security.

~~[A:]~~(1) The following individuals may have access to the HSE exam: ~~[Access to the GED Test shall be limited to the USOE Administrator of GED Testing]~~

~~(a) Board staff approved by the Superintendent;~~

~~(b) [state a] Authorized test [GED-E]examiners; [or]~~

~~(c) [Pearson VUE test facilitators] A contractor selected pursuant to Subsection R277-702-3(1)(a) and the contractor's agents; [and]~~

~~(d) Approved exam candidates during exam administration; or~~

~~(e) [during actual testing, those test candidates without high school diplomas or a GED credential. Any other access to the GED Test shall be cleared in writing through the USOE GED Testing Administrator.] An individual granted access in writing by the Superintendent.~~

~~[B:]~~(2) A ~~[H] test facilitator[s] shall [conduct GED Test administration]administer an HSE exam~~ in strict accordance with ~~[the]procedures and guidelines specified by the [GED Testing Service and Pearson VUE, in the GED Test administration manual and Board rules.]Superintendent and the contractor approved in accordance with Subsection R277-702-3(1)(a).~~

~~[C:]~~(3) ~~[Teachers, administrators, and school personnel shall]School staff members may not:~~

~~(1)a) provide a student[s] directly or indirectly with specific questions or answers from any official [GED Test]HSE exam;~~

~~(2)b) allow a student[s] access to any testing material, in any form, prior to test administration; or~~

~~(3)c) knowingly and intentionally do anything that would inappropriately affect the security, validity, or reliability of [GED Test scores]an exam score of any individual student or group taking [the GED Test]an HSE exam.~~

~~[D:]~~(4) ~~[Intentional violation of any of these rules by licensed educators may subject them.] A licensed educator who intentionally violates this Section R277-702-8 may be subject to disciplinary action under Section 53A-6-501 [or]and R277-515[-Utah Educator Standards, or both].~~

**KEY: adult education, educational testing, student competency**  
**Date of Enactment or Last Substantive Amendment: [May 16, 2013]2017**

**Notice of Continuation: March 12, 2013**

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

## Education, Administration R277-717 High School Course Grading Requirements

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 41191

FILED: 01/17/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this new rule is to establish requirements and procedures for awarding credit when a student repeats a course or takes a comparable course and earns a higher grade.

**SUMMARY OF THE RULE OR CHANGE:** This new rule provides definitions and procedures for course grade forgiveness.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This new rule provides procedures for course grade forgiveness, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** This new rule provides procedures for course grade forgiveness, which may result in additional staff time for an LEA or school to adjust a student's course grade and grade point average and to exclude a lower grade on the student's permanent record. It is anticipated that the additional tasks will be performed by existing staff and within existing budgets. There may also be increased costs to a school or parent to pay the cost of the student to repeat the course. Costs are speculative at this time and cannot be estimated.

◆ **SMALL BUSINESSES:** This new rule provides procedures for course grade forgiveness, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule provides procedures for course grade forgiveness, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This new rule provides procedures for course grade forgiveness, which likely will not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** To the best of my knowledge, there should be no fiscal impact on businesses resulting from this new rule.

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

EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272

or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017**

**AUTHORIZED BY:** Angela Stallings, Deputy Superintendent, Policy and Communication

**R277. Education, Administration.**

**R277-717. High School Course Grading Requirements.**

**R277-717-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to establish requirements for awarding credit when a student repeats a course or takes a comparable course and earns a higher grade.

**R277-717-2. Definitions.**

(1) "Comparable course" means a course that fulfills the same graduation credit requirements as a course for which a student seeks to improve a grade.

(2) "Course" means a course that a student:

(a) is enrolled in; and

(b)(i) completes; or

(ii) withdraws from but still receives a grade.

(3) "Highest grade" means a grade that reflects the higher grade of:

(a) a course and a repeat of the course; or

(b) a course and a comparable course.

(4) "LEA" includes the Utah Schools for the Deaf and the Blind for purposes of this rule.

(5) "Recurring course" means a course that a student takes more than once to:

(a) further the student's understanding and skills in the course subject, such as journalism or band; or

(b) satisfy a different credit requirement that the course may fulfill, such as an art class that fulfills an elective requirement and an art requirement.

(6) "Student" means an individual enrolled in an LEA in grade 9, 10, 11, or 12.

**R277-717-3. Course Grade Forgiveness.**

(1)(a) A student may, to improve a course grade received by the student:

(i) repeat the course one or more times; or

(ii) enroll in and complete a comparable course.  
(b) A grade for an additional unit of a recurring course does not change a student's original course grade for purposes of this section.  
(2) If a student repeats a course, the student's LEA:  
(a) shall adjust, if necessary, the student's course grade and grade point average to reflect the student's highest grade and exclude a lower grade;  
(b) shall exclude from the student's permanent record the course grade that is not the highest grade; and  
(c) may not otherwise indicate on the student's record that the student repeated the course.  
(3)(a) If a student enrolls in a comparable course the student shall, at the time of enrolling in the comparable course, inform the student's LEA of the student's intent to enroll in the course for the purpose of improving a course grade.  
(b) If a student enrolls in a comparable course, the student's LEA:  
(i) shall confirm, at the time the student enrolls in the comparable course, that the comparable course fulfills the same credit requirements as the course that the student intends to replace with the comparable course grade;  
(ii) shall, if necessary, on the student's record and in the grade point average reflect the highest grade between the course and the comparable course and exclude the lower grade;  
(iii) shall exclude from the student's permanent record the course or comparable course that is not the highest grade upon the request of the student; and  
(iv) may not otherwise indicate the course or comparable course for which the student did not receive the highest grade on the student's record.

**KEY: students, grades, credits**

**Date of Enactment of Last Substantive Amendment: 2017**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401**

Education, Administration  
**R277-801**  
 Services for Students with Sensory  
 Impairments

**NOTICE OF PROPOSED RULE**

(New Rule)  
 DAR FILE NO.: 41192  
 FILED: 01/17/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is established to replace an Interagency Agreement between the Utah State Board of Education (Board), the Special Education Section of the Board, local education agencies (LEAs), and the Utah Schools for the Deaf and the Blind (USDB) to provide services to students with sensory impairments.

SUMMARY OF THE RULE OR CHANGE: This new rule provides definitions; responsibilities of LEAs; designation of USDB as an LEA; correlation of responsibilities; and services for qualifying students.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-25b-103

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This new rule replaces an Interagency Agreement, which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: This new rule replaces an Interagency Agreement, which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: This new rule replaces an Interagency Agreement, which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This new rule replaces an Interagency Agreement, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This new rule replaces an Interagency Agreement, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from this new rule.

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

EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

**R277. Education, Administration.****R277-801. Services for Students with Sensory Impairments.****R277-801-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-25b-103, which creates USDB, and authorizes USDB to provide services to qualifying students.

(2) The purpose of this rule is to establish rules for LEAs and USDB to provide services to students with sensory impairments.

**R277-801-2. Definitions.**

(1) "504 plan" means a plan required by Section 504, which is designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(2)(a) "Intensive services" means services requiring vision, deaf-blind, or hearing services:

(i) in excess of 180 minutes per day for k-12 or post-high school students; or

(ii) in excess of 90 minutes per day for pre-school students.

(b) "Intensive services does not include services that are not vision, deaf-blind, or hearing specific.

(3) "Intervener" means a specially trained paraprofessional who provides access to information and communication and facilitates the development of social and emotional well-being for children who are deaf-blind.

(4) "Medicaid time study" means the primary mechanism for identifying and categorizing Medicaid administrative activities performed by an LEA's staff, which serves as the basis for developing claims for the costs of administrative activities that may be properly reimbursed under Medicaid.

(5) "Minimum school program" or "MSP" means the same as that term is defined in Section 53A-17a-103.

(6) "Qualifying student" means a student with sensory impairment who qualifies for services in accordance with Subsection 53A-25b-301(1).

(7) "Section 504" means Section 504 of the Rehabilitation Act of 1973.

(8) "Sensory impairment" means deafness, blindness, or deafblindness, as identified through:

(a) the special education eligibility determination process; or

(b) the Section 504 eligibility determination process.

(9) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically among LEAs and the Board, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

(10) "Weighted pupil unit" or "WPU" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

**R277-801-3. Responsibilities of LEAs.**

(1)(a) An LEA is the single point of entry for USDB services for qualifying students.

(b) A qualifying student may not enroll in a USDB program without a referral from an LEA.

(c) When evaluating services for a qualifying student, an LEA and the USDB shall consider:

(i) primary disabilities;

(ii) secondary disabilities; and

(iii) other factors, including:

(A) transportation needs; and

(B) length of time the student would spend in transport daily.

(2) A qualifying student may receive services under:

(a) IDEA;

(b) Section 504; or

(c) a USDB Preschool Services Plan.

(3) An LEA shall annually provide to the Superintendent the name and contact information for any student with vision loss or hearing loss, even if it isn't the student's primary disability.

(4)(a) An LEA has the responsibility for the design and implementation of and IEP or Section 504 plan for qualifying students.

(b) Specific details of required intensive services for a student shall be defined within the student's IEP.

(c) A qualifying student who enrolls in a Utah school district or charter school may be eligible to receive intensive services from sensory specialists employed by USDB, if appropriately designated as specialized instruction or a related services as part of an IEP or Section 504 plan.

(5)(a) An LEA with greater than 3 percent of the student population statewide may elect to contract with USDB to provide outreach services.

(b) An LEA may employ their own sensory specialists to meet the IEP or 504 plan needs of qualifying students.

(6)(a) An LEA is responsible for the development of a qualifying student's IEP, including any assessments necessary for initial placement.

(b) Notwithstanding Subsection (6)(a), an LEA may not commit USDB to provide services to qualifying students unless USDB has participated in the IEP.

(c)(i) An LEA and USDB shall consider least restrictive environment, as well as intensive services needs of a qualifying student in determining an appropriate placement.

(ii) In the case of deaf or hard of hearing students, an IEP team should consider the opportunity for a student to have direct communication with teachers and peers.

(7) If an LEA is working with USDB staff:

(a) the LEA shall provide internet access and technical support to permit USDB staff to access the internet through technology and hardware;

(b) the LEA and USDB technology staff will jointly determine procedures to ensure access to LEA technology systems; and

(c) USDB shall provide and maintain all needed hardware and software provided to USDB staff.

(8) An LEA shall provide an assistive technology device a student if the assistive technology device is required for the implementation of the student's IEP.

**R277-801-4. Designation of USDB as an LEA.**

(1)(a) In order to meet the educational needs of qualifying students, an IEP team may enroll a qualifying student in a USDB program and may designate USDB as the LEA for the qualifying student.

(b) If USDB is designated as the LEA under Subsection (1)(a), the USDB program shall be treated as a placement option within the LEA continuum, and the referring LEA staff shall continue to attend IEP meetings.

(2)(a) If USDB is designated as a qualifying student's LEA, USDB is responsible from that point on for the design and implementation of the student's IEP, 504 Plan, or USDB Preschool Service Plan.

(b) USDB shall provide all special education and related services and costs documented in an IEP for a qualifying student described in Subsection (2)(a).

(c) USDB may request consultation from the referring LEA for the design of services that are required by the student beyond the student's sensory needs.

**R277-801-5. Correlation of Responsibilities.**

(1) For qualifying students currently enrolled with an LEA and receiving services through USDB outreach programs, an LEA will provide a list of students and their IEP due dates for the upcoming school year to the USDB Assistant Superintendent no later than June 30.

(2) An LEA shall invite USDB staff to attend IEP or 504 plan meetings for qualifying students, including meetings for:

(a) students transitioning from Part C to Part B;

(b) students moving from out of state; and

(c) students transferring between LEAs.

(3) An LEA shall consider the need to invite USDB to any meetings discussing evaluation and eligibility.

(4)(a) For qualifying students enrolled in an LEA and receiving no services from USDB, an LEA shall invite USDB to attend any meeting where USDB services may be considered for that student.

(b) If a change of placement is considered:

(i) both the referring LEA and USDB will participate and establish a timeline to ensure a successful transition for the student.

(ii) both the referring LEA and USDB will participate in the IEP or 504 meeting.

(5) IEP or 504 plan meetings shall be held at a mutually agreed upon time and location, with appropriate notification to all parties.

(6)(a) The Board and USDB shall provide ongoing interpreter training toward certification and mentoring for all interpreters, as requested by individual LEAs.

(b) Training provided under Subsection (7)(a) shall provide certified interpreters with the opportunity to improve skills and move up to a higher level of certification.

(c) An LEA may contract with USDB to provide interpreter services for students attending the LEA or an LEA school where a USDB extension classroom is located.

(7)(a) Each LEA, including USDB as the designated LEA, is responsible for ensuring the timely provision of textbooks and material as required by the IDEA.

(b) The Board shall:

(i) annually provide information to LEAs regarding the costs of accessible materials in the state; and

(ii) determine an equitable cost-sharing plan.

**R277-801-6. Services for Qualifying Students.**

(1) If a qualifying student is enrolled with USDB as the designated LEA:

(a) USDB shall include the qualifying student in all Board-required enrollment reports including:

(i) fall enrollment counts;

(ii) the child count of students with disabilities; and

(iii) the end-of-year enrollment report;

(b) Any agreements between the referring LEA and USDB shall be documented as part of a written agreement, which shall be reviewed at least annually;

(c)(i) A qualifying student's IEP team shall determine the student's transportation needs;

(ii) USDB shall provide transportation as a related service in an IEP or if required to implement a 504 plan; and

(iii) A referring LEA shall combine resources with USDB, whenever possible, to provide within-LEA transportation;

(d)(i) USDB shall annually administer all Board-required assessments.

(ii) USDB may provide alternate tests in accordance with a student's IEP and state law; and

(e) USDB shall develop and implement all programs, policies, and procedures required of an LEA by the Board and state law.

(2) If a qualifying student attends USDB extension classrooms located within an LEA:

(a) the student shall be enrolled in the general education program of the LEA school the student is attending;

(b) the LEA school shall be designated as the "school of record" for the student;

(c) the student shall be included by the LEA school or district in all required reports and uploads to UTREx;

(d) the student shall be counted in the LEA school or district total enrollment, and will be included in the calculation of all funding formulas, including Weighted Pupil Units and Minimum School Program;

(e) the student shall receive access to LEA programs and services consistent with their IEP or 504 plan, consistent with services available to other students enrolled in the student's school;

(f) the student may not be enrolled in the special education program of the LEA school the student is attending;

(g) USDB shall ensure the student receives a free appropriate public education;

(h) USDB shall ensure the student receives all special education and related services, including interpreting services, as required on the student's IEP or 504 plan;

(i) the LEA school shall generate general education funding or WPU for the student;

(j) USDB shall receive federal IDEA funding in accordance with USDB's legislative line item funding;

(k) the LEA school shall receive no state or federal special education funding for the student;

(l)(i) USDB shall provide transportation for the student as a related service when it is included in an IEP.

(ii) an LEA school shall combine resources with USDB, whenever possible, to provide within-LEA transportation; and

(m) an LEA school and USDB shall jointly ensure that any portable classrooms have access to intercom and phone service.

(3) If a qualifying student receives USDB outreach or consulting services:

(a) the student shall be enrolled in the general and special education programs of the LEA school the student attends;

(b) the LEA shall included the student in the calculation of state special education and IDEA funds for the school district or charter school;

(c) USDB may not submit the students to UTREx and may not receive state or federal special education funding;

(d) USDB will provide services at no cost for students within an LEA with less than three percent of the student population statewide; and

(e) An LEA may contract with USDB to provide services for students if an LEA has greater than three percent of the student population statewide;

(i) The Superintendent shall provide a list of LEAs that exceed the three percent threshold by December 15 for the upcoming school year;

(ii) An LEA and USDB shall sign contracts prior to initiation of services;

(iii) An LEA shall make payments in two installments, in January and June; and

(iv) The Board may assist USDB in collection of outstanding balances upon request.

(4) USDB may provide orientation and mobility or "O&M" services subject to the following:

(a) USDB shall provide eligible O&M services at no cost to an LEA if the LEA requests the services by September 1 for the next school year;

(b) USDB shall provide O&M services within normal contract hours;

(c) An LEA requesting O&M services outside of the a student's school day may contract with USDB to provide the additional services;

(d) Notwithstanding Subsection (4)(b), an LEA may choose to provide its own O&M services; and

(e) An LEA and USDB shall approve O&M services in a qualifying student's IEP or 504 plan.

(5) USDB shall provide deaf-blind services to all eligible Utah students at no cost to the student's LEA in accordance with the student's IEP or 504 plan.

(6) USDB shall provide interveners to all eligible Utah students subject to the following:

(a) USDB shall provide interveners to an LEA at no cost to the LEA;

(b)(i) Notwithstanding Subsection (6)(a), an LEA may provide their own interveners or substitute interveners and may receive financial support from USDB at the LEA's rate of pay for comparable paraprofessionals;

(ii) Financial support from USDB to an LEA for interveners or substitute interveners may not exceed the amount paid for comparable paraprofessionals in the USDB salary schedule;

(c) All interveners or substitute interveners must complete the USDB intervener training or a national certification;

(d) An LEA will provide documentation for reimbursement of an intervener or substitute intervener it hires according to USDB's reimbursement schedule;

(e) USDB shall provide a plan for training of all interveners and substitute interveners to an LEA annually; and

(f) An LEA and USDB shall develop a plan for the provision of a substitute intervener to meet an eligible student's needs, which may include:

(i) a USDB-hired substitute intervener;

(ii) an LEA-hired substitute intervener; or

(iii) other mutually agreeable arrangements.

(7) USDB may provide the following diagnostic assessment services to an LEA without charge to support the appropriate evaluation of students with sensory impairments:

(a) the USDB Assistive Technology Team;

(b) the Deaf-Blind Assessment and Coaching Team; and

(c) low vision support.

(8) USDB may provide audiological services to an eligible student through a referral from an LEA or early intervention provider.

(a) Audiological services shall be provided at no cost to an LEA with less than three percent of the state's student population.

(b) An LEA with greater than three percent of the state's student population may contract for audiological services with USDB.

(9) An LEA and USDB may contract for services beyond those specified in this R277-801.

(10)(a) USDB may participate in Medicaid time studies for services provided directly by USDB.

(b) An LEA shall not include services provided directly by USDB in the LEA's Medicaid time studies.

(c) If an LEA contract with USDB for payable services, an LEA shall include those services in the LEA's Medicaid time study.

**KEY: students, services, sensory impairments**

**Date of Enactment of Last Substantive Amendment: 2017**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-25b-103**

## Governor, Criminal and Juvenile Justice (State Commission on)

### R356-3

### Electronic Meetings

#### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41182

FILED: 01/17/2017

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish procedures for the public bodies created in Title 63M, Chapter 7, and Title 77, Chapter 32, to hold open meetings by electronic means.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes procedures for public bodies that hold open meetings by electronic meetings.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 52-4-207

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no known anticipated costs or savings to the state budget because the State Commission on Criminal and Juvenile Justice (CCJJ) already has all necessary equipment and venues to conduct electronic meetings.

◆ **LOCAL GOVERNMENTS:** There are no known anticipated costs or savings to local government because this rule only applies to electronic meetings held by the public bodies staffed by CCJJ, which already has all necessary equipment and venues to conduct electronic meetings.

◆ **SMALL BUSINESSES:** There are no known anticipated costs or savings to small businesses because this rule only applies to electronic meetings held by the public bodies staffed by CCJJ, which already has all necessary equipment and venues to conduct electronic meetings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no known anticipated costs or savings to persons, small businesses, businesses, or local government entities because this rule only applies to public bodies staffed by CCJJ. Additionally, CCJJ already has all necessary equipment and venues to conduct electronic meetings. Therefore, impact on other persons is unlikely.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated compliance costs to affected persons because CCJJ already has all necessary equipment and venues to conduct electronic meetings.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule allows members of a public body to participate in meetings by electronic means while still allowing the public to attend, monitor and participate in the open portions of the meeting. CCJJ will facilitate these meetings with no additional costs and participation by the public will not change from current practices.

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

GOVERNOR  
CRIMINAL AND JUVENILE JUSTICE (STATE  
COMMISSION ON)  
SUITE 330 SENATE BUILDING  
STATE CAPITOL COMPLEX  
420 N STATE STREET  
SALT LAKE CITY, UT 84114  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Ronald Gordon by phone at 801-538-1432, by FAX at 801-538-1024, or by Internet E-mail at [rbgordon@utah.gov](mailto:rbgordon@utah.gov)  
◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at [srudas@utah.gov](mailto:srudas@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017**

**AUTHORIZED BY: Ronald Gordon, Executive Director**

**R356. Governor, Criminal and Juvenile Justice (State Commission on).**

**R356-3. Electronic Meetings.**

**R356-3-1. Authority and Purpose.**

(1) This rule is authorized by Section 52-4-207(2)(a) which requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings.

(2) The purpose of this rule is to establish procedures for the public bodies created in Title 63M, Chapter 7 and Title 77, Chapter 32 to hold open meetings by electronic means.

**R356-3-2. Definitions.**

(1) Terms used in this rule are found in Section 52-4-103.

(2) In addition:

(a) "CCJJ" means the Utah Commission on Criminal and Juvenile Justice; and

(b) "presiding officer" means the member of the public body designated by statute, rule, or vote of the public body to preside at a meeting of the public body.

**R356-3-3. Procedures.**

(1) If a member of the public body wishes to participate in a meeting through electronic means, the member shall contact the staff at CCJJ which assists the public body. The staff at CCJJ shall determine whether an electronic meeting is practical given the facility requirements needed to conduct the meeting electronically in a manner that allows for attendance, participation and monitoring as required by the Open and Public Meetings Act.

(2) If an electronic meeting is to be held, notice of the meeting shall indicate the anchor location and how members of the public body may participate in the meeting electronically. The anchor location shall have sufficient space and facilities so the public may attend, monitor and participate in the open portions of the meeting.

(3) Any member of a public body may participate electronically at an electronic meeting. On the record, the presiding officer shall identify all those who are participating electronically. A member of the public body who participates in the meeting electronically shall be counted as present at the meeting for purposes of establishing a quorum, participating in the meeting, and voting.

**KEY: electronic meetings, procedures**

**Date of Enactment or Last Substantive Amendment: 2017**

**Authorizing, and Implemented or Interpreted Law: 52-4-207**

## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-60** Medicaid Policy for Pharmacy Program

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41174

FILED: 01/17/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to implement coverage and reimbursement policies for covered outpatient drugs, effective 04/01/2017, in accordance with federal law.

**SUMMARY OF THE RULE OR CHANGE:** This amendment implements coverage and reimbursement policies for covered outpatient drugs in accordance with federal law.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 42 CFR 447.502 through 447.520 and Section 26-1-5 and Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Department anticipates this change to be budget neutral because savings created by the Federal Upper Limit and the National Average Drug Acquisition Cost are offset by variable increases in drug dispensing fees.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund the Pharmacy program nor reimburse Medicaid providers for drug purchases.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because potential revenue is offset by the Federal Upper Limit, the National Average Drug Acquisition Cost, and increases in drug dispensing fees.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers because potential revenue is offset by the Federal Upper Limit, the National Average Drug Acquisition Cost, and increases in drug dispensing fees. Additionally, there is no impact to Medicaid clients because this change neither affects prescribed drug services nor creates out-of-pocket expenses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs to a single Medicaid provider because higher dispensing fees are offset by potential revenue. Additionally, there is no impact to a single Medicaid

client because this change neither affects prescribed drug services nor creates out-of-pocket expenses.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no fiscal impact on business because any increase in dispensing fees will be offset by other revenue.

**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 Office 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) or by mail at PO Box 143102, Salt Lake City, Utah 84114-3102

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2017**

**AUTHORIZED BY: Joseph Miner, MD, Executive Director**

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

**R414-60. Medicaid Policy for Pharmacy Program.**

**R414-60-5. Limitations.**

(1) Limitations may be placed on drugs in accordance with 42 U.S.C. 1396r-8 or in consultation with the Drug Utilization Review (DUR) Board. Limitations are included in the Pharmacy Services Provider Manual and attachments, incorporated by reference in Section R414-1-5, and may include:

(a) Quantity limits or cumulative limits for a drug or drug class for a specified period of time;

(b) Therapeutic duplication limits may be placed on drugs within the same or similar therapeutic categories;

(c) Step therapy, including documentation of therapeutic failure with one drug before another drug may be used; or

(d) Prior authorization.

(2) A covered outpatient drug that requires prior authorization may be dispensed for up to a 72-hour supply without obtaining prior authorization during a medical emergency.

(3) Drugs listed as non-preferred on the Preferred Drug List may require prior authorization as authorized by Section 26-18-2.4.

(4) Drugs may be restricted and are reimbursable only when dispensed by an individual pharmacy or pharmacies.

(5) Medicaid does not cover drugs not eligible for Federal Medical Assistance Percentages funds.

(6) Medicaid does not cover outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries.

(7) Drugs provided to clients during inpatient hospital stays are not covered as an outpatient pharmacy benefit nor separately payable from the Medicaid payment for the inpatient hospital services.

(8) Medicaid covers only the following prescription cough and cold preparations meeting the definition of a covered outpatient drug:

(a) Guaifenesin with Dextromethorphan (DM) 600mg/30mg tablets;

(b) Guaifenesin with Hydrocodone 100mg/5mL liquid;

(c) Promethazine with Codeine liquid;

(d) Guaifenesin with Codeine 100mg/10mg/5mL liquid;

(e) Carbinoxamine with Pseudoephedrine 1mg/15mg/5mL liquid; and

(f) Carbinoxamine/Pseudoephedrine/DM 15mg/1mg/4mg/5mL liquid.

(9) Medicaid will pay for no more than a one-month supply of a covered outpatient drug per dispensing, except for the following:

(a) Medications included on the Utah Medicaid Generic Medication Three-Month Supply Medication List attachment to the Pharmacy Services Provider Manual may be covered for up to a three-month supply per dispensing. Medicaid clients eligible for Primary Care Network services under Rule R414-100 are not eligible to receive more than a one-month supply per dispensing.

(b) Prenatal vitamins for pregnant women, multiple vitamins with or without fluoride for children through five years of age, and fluoride supplements may be covered for up to a ~~one-hundred days~~ 90-day supply per dispensing.

(c) Medicaid may cover contraceptives for up to a three-month supply per dispensing.

(10) Medicaid will pay for a prescription refill only when 80% of the previous prescription has been exhausted, with the exception of narcotic analgesics. Medicaid will pay for a prescription refill for narcotic analgesics after 100% of the previous prescription has been exhausted.

(11) Medicaid does not cover the following drugs:

(a) Drugs not eligible for Federal Medical Assistance Percentages funds;

(b) Drugs for anorexia, weight loss or weight gain;

(c) Drugs to promote fertility;

(d) Drugs for the treatment of sexual or erectile dysfunction;

(e) Drugs for cosmetic purposes or hair growth;

(f) Vitamins; except for prenatal vitamins for pregnant women, vitamin drops for children through five years of age, and fluoride supplements;

(g) Over-the-counter drugs not included in the Utah Medicaid Over-the-Counter Drug List attachment to the Pharmacy Services Provider Manual;

(h) Drugs for which the manufacturer requires, as a condition of sale, that associated tests and monitoring services are purchased exclusively from the manufacturer or its designee;

(i) Drugs given by a hospital to a patient at discharge;

(j) Breast milk, breast milk substitutes, baby food, or medical foods, except for prescription metabolic products for congenital errors of metabolism;

(k) Drugs available only through single-source distribution programs, unless the distributor is enrolled with Medicaid as a pharmacy provider.

(12) Medicaid may only cover hemophilia clotting factor when it is dispensed by a single-contracted provider in accordance with the Utah Medicaid State Plan.

#### **R414-60-7. Reimbursement.**

(1) A pharmacy may not submit a charge to Medicaid that exceeds the pharmacy's usual and customary charge.

(2) Covered[-]outpatient drugs are reimbursed at the lesser of the following:

(a) The ~~[Average Wholesale Price less 17.4%]~~ Wholesale Acquisition Cost;

(b) The Federal Upper Limit assigned by the Centers for Medicare and Medicaid Services;

(c) The Utah Maximum Allowable Cost; and

(d) The submitted ingredient cost.

(e) If a prescriber obtains prior authorization for a brand-name version of a multi-source drug in accordance with 42 CFR 447.512 or if a brand-name drug is covered because a financial benefit will accrue to the State in accordance with Section 58-17b-606, then Medicaid will not apply the Utah Maximum Allowable Cost or Federal Upper Limit to the claim.

(f) Pharmacies participating in the 340B program and using medications obtained through the 340B program to bill Medicaid must submit the actual acquisition cost of the medication on the claim.

(g) Pharmacies that participate in the Federal Supply Schedule and use medications obtained through the schedule to bill Utah Medicaid, must submit the actual acquisition cost of the medication on the claim unless the claim is reimbursed as a bundled charge or All Inclusive Rate.

(h) Pharmacies that obtain and use medications at a nominal price must submit the actual acquisition cost of the medication on the claim.

(i) The Utah Maximum Allowable Cost (UMAC) for drugs for which the Centers for Medicare and Medicaid Services (CMS) publishes a National Average Drug Acquisition Cost (NADAC), is the NADAC itself. The UMAC for which CMS does not publish a NADAC is calculated by the Department.

(3) Dispensing fees are as follows:

(a) ~~[\$3.90]~~ 9.99 for urban pharmacies in Utah;

(b) ~~[\$4.40]~~ 10.15 for rural pharmacies in Utah;

(c) \$7.66 for pharmacies located in a state other than Utah;

(d) \$716.54 for hemophilia clotting factor dispensed by the contracted provider.

~~[(e) \$1 for covered over-the-counter drugs excluding liquid antacids, insulin, and oral contraceptives for all pharmacies;~~

~~(d) \$0.50 multiplied by the quantity dispensed divided by the package size for liquid antacids for all pharmacies;~~

~~(e) \$12.39 for pharmacies participating in the 340B program and using medications obtained through the 340B program to bill Medicaid;~~

~~(f) \$8.90 for Category J drugs identified in Attachment 4.19-B, Page 19a(2) of the Utah Medicaid State Plan;~~  
~~(g) \$18.90 for Category K drugs identified in Attachment 4.19-B, Page 19a(2) of the Utah Medicaid State Plan;~~  
~~(h) \$22.90 for Category L drugs identified in Attachment 4.19-B, Page 19a(2) of the Utah Medicaid State Plan;~~  
~~(i) \$33.90 for Category M drugs identified in Attachment 4.19-B, Page 19a(2) of the Utah Medicaid State Plan;~~

(j) Medicaid will pay the lesser of the assigned dispensing fee or the submitted dispensing fee;

(k) Medicaid will only pay one dispensing fee per [month]24 days per covered outpatient drug per pharmacy [for prescriptions for clients in nursing homes].

(4) Medicaid will pay the lesser of the sum of the allowed amount for the covered outpatient drug and dispensing fee or the billed charges.

(5) Immunizations provided to Medicaid clients who are at least 19 years of age will be paid for the cost of the immunization plus a dispensing fee [of \$8.90]. Medicaid will pay the lesser of the allowed or submitted charges.

(6) Immunizations provided to Medicaid clients who are 18 years old or younger will only be eligible for a dispensing fee [of \$14.52] with no reimbursement for the immunization. Immunizations for Medicaid clients who are 18 years old or younger must be obtained through the Vaccines for Children program.

(7) Blood glucose test strips listed as preferred on the Utah Medicaid Preferred Drug List will be reimbursed at the lesser of the [Average Wholesale Price] Wholesale Acquisition Cost [plus the] with no dispensing fee or the billed charges.

(8) In accordance with the Utah Medicaid State Plan, the Department may only reimburse a single-contracted provider for the purchase of hemophilia clotting factor.

#### **R414-60-11. Compounds.**

(1) Compounded non-sterile prescriptions are a covered benefit if at least one ingredient is a covered-outpatient drug that would otherwise qualify for coverage.

(2) Compounded sterile prescriptions are a covered benefit if at least one ingredient is a covered-outpatient drug that would otherwise qualify for coverage, and is prepared by a pharmacy that has certified to Utah Medicaid that it adheres to the United States Pharmacopeia/National Formulary chapter <797> standard, and tests the final product for sterility, potency and purity.

~~(3) Claims for compounded drugs may be eligible for a dispensing fee for each covered ingredient, but limited to no more than three dispensing fees per claim regardless of the number of covered ingredients.~~

#### **KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:**  
~~[December 1, 2016]~~2017

**Notice of Continuation:** April 30, 2012

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

## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-60A-2** DUR Board Composition and Membership Requirements

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41175

FILED: 01/17/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to update Drug Utilization Review (DUR) Board membership to include a pharmacist who will represent Accountable Care Organizations (ACOs).

**SUMMARY OF THE RULE OR CHANGE:** This amendment updates DUR Board membership to include a pharmacist who will represent ACOs. It also makes other technical changes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-5 and Section 26-18-3 and Title 26, Chapter 18, Part 2

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no impact to the state budget because this amendment only updates DUR Board composition and implements new membership requirements. It neither affects services to Medicaid clients nor reimbursement to Medicaid providers.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund the DUR Board nor make administrative decisions regarding its composition.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment only updates DUR Board composition and implements new membership requirements. It neither affects services to Medicaid clients nor reimbursement to Medicaid providers.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid clients because this amendment only updates DUR Board composition and implements new membership requirements. It neither affects Medicaid services nor provider reimbursement.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no impact to a single Medicaid provider or to a Medicaid client because this amendment only updates DUR Board composition and implements new membership requirements.

It neither affects Medicaid services nor provider reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to business because membership changes to the DUR Board do not affect the operation of any businesses.

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 Office 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 or by mail at PO Box 143102, Salt Lake City, Utah 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2017

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

**R414-60A. Drug Utilization Review Board.**

**R414-60A-2. DUR Board Composition and Membership Requirements.**

(1) The Director of the Division of ~~Health Care~~ Medicaid and Health Financing (~~DMHF~~) shall act on behalf of the Executive Director of the Utah Department of Health regarding all DUR Board issues, and shall appoint the following groups of individuals to four-year terms on the DUR Board:

- (a) Four physicians from recommendations received from the Utah Medical Association.
  - (b) One physician engaged in Academic Medicine.
  - (c) Three pharmacists from recommendations received from the Utah Pharmacy Association.
  - (d) One pharmacist engaged in Academic Pharmacy.
  - (e) One dentist from recommendations received from the Utah Dental Association.
  - (f) One individual from recommendations received from the Pharmaceutical Manufacturers Association (PhRMA).
  - (g) One consumer representative.
  - (h) One pharmacist from recommendations received from the Accountable Care Organizations (ACOs).
- (2) Membership Requirements.

(a) An appointee may not serve more than two consecutive terms in one of the 12 board positions listed in Subsection R414-60A-2(1). Terms separated by more than an interruption of two months are not consecutive.

(b) If ~~the Division~~ DMHF does not receive recommendations to fill a vacant position within 30 days of a request, ~~the Division~~ DMHF may ~~submit for consideration a list of potential candidates to an organization listed in Subsection R414-60A-2(1)]~~ appoint a qualified individual to fill the vacancy.

(c) If there are no willing nominees for appointment when an appointed term has expired, the ~~DMHF~~ DMHF Director may reappoint[:

~~(i) physician] members on the board to additional non-consecutive terms as needed[;~~

~~(ii) pharmacist members on the board to additional non-consecutive terms as needed; and~~

~~(iii) a dentist, PhRMA member, or consumer member to additional non-consecutive one-year terms as needed].~~

(3) Notwithstanding the requirements in Subsection R414-60A-2(1), the Director shall adjust the length of terms upon appointment so that one-half of the DUR Board is appointed every two years.

(4) The DUR Board shall elect a chairperson to a one-year term from among its members. The chairperson may serve consecutive terms if reelected by the board.

(5) When a vacancy occurs on the board, the Director shall appoint a replacement for the unexpired term of the vacating member.

(6) The DUR Board shall be managed by a non-voting board manager appointed from the pharmacy group within ~~DMHF~~ DMHF.

(7) Other individuals of the ~~DMHF~~ DMHF pharmacy group are non-voting ex-officio advisory members of the DUR Board.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~September 7, 2007~~ 2017

**Notice of Continuation:** June 25, 2012

**Authorizing, and Implemented or Interpreted Law:** 26-18-3; 26-1-5; 26-18 Part 2

Human Services, Administration,  
Administrative Services, Licensing  
**R501-14**  
Human Service Program Background  
Screening

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 41173  
FILED: 01/17/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Due to changes at the Department of Public Safety regarding the cost and types of background screenings, this rule needs to be updated to reflect how those changes changed office procedures related to the application and screening process.

**SUMMARY OF THE RULE OR CHANGE:** This rule change reflects changes in processes due to a consolidation of rap-back screenings done by the Department of Public Safety. In addition, this amendment includes increased flexibility on length of a valid background screening approval, and clarifies the types of misdemeanors that do not need to go to a committee for approval.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-1-118 and Section 62A-2-120

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no change to state budget due to this rule update. The Office of Licensing simply collects and processes information and fees a bit differently due to the changes. Volume is unaffected. There may be a slight savings in that fewer background screenings need to be reviewed by the Department of Human Services committee.

◆ **LOCAL GOVERNMENTS:** Local governments are not affected by these changes financially. Volume and who gets the background screenings remain unchanged.

◆ **SMALL BUSINESSES:** Small businesses are not affected by these changes financially. Volume and who gets the background screenings remain unchanged.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other persons are not affected by these changes financially. Volume and who gets the background screenings remain unchanged if anyone in this category is affected by background screening in the first place.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no increased costs for licensees, their staff, or anyone else related to this. Volume and who gets the background screenings remain unchanged if anyone in this category is affected by background screening in the first place.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change has no measurable fiscal impact on any business. Nothing has changed for the providers licensed.

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

HUMAN SERVICES  
 ADMINISTRATION, ADMINISTRATIVE SERVICES,  
 LICENSING  
 195 N 1950 W  
 FIRST FLOOR  
 SALT LAKE CITY, UT 84116  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Diane Moore by phone at 801-538-4235, by FAX at 801-538-4553, or by Internet E-mail at dmoore@utah.gov
- ◆ Janice Weinman by phone at 385-321-5586, by FAX at 801-538-4553, or by Internet E-mail at jweinman@utah.gov
- ◆ Jennifer Stahle by phone at 801-538-9897, by FAX at 801-538-4553, or by Internet E-mail at jenstahle@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017**

**AUTHORIZED BY:** Diane Moore, Director

**R501. Human Services, Administration, Administrative Services, Licensing.**

**R501-14. Human Service Program Background Screening.**

**R501-14-1. Authority and Purpose.**

(1) This Rule is authorized by Sections 62A-2-106, 62A-2-120, 62A-2-121, and 62A-2-122.

(2) This Rule clarifies the standards for approving, denying, or revoking an applicant's background screening.

**R501-14-2. Definitions.**

(1) "Abuse" is defined in Sections 78A-6-105 and 62A-3-301, and may include "severe abuse", "severe neglect", and "sexual abuse", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(2) "Applicant" means a person whose identifying information is submitted to the Office under Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-128, and 78B-6-113. Applicant includes the legal guardian of an individual described in Section 62A-2-120-1.a.

(3) "Background Screening Agent" means the applicable licensing specialist, human services program, Area Agency on Aging (for Personal Care Attendant applicants only), or DHS Division or Office.

(4) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(5) "Child" is defined in Section 62A-2-101.

(6) "Child Placing" is defined in Section 62A-2-101.

(7) "Comprehensive Review Committee" means the Committee appointed to conduct reviews in accordance with Section 62A-2-120.

(8) "DAAS Statewide Database" is the Division of Aging and Adult Services database created by Section 62A-3-311.1 to maintain reports of vulnerable adult abuse, neglect, or exploitation.

(9) "Direct Access" is defined in Section 62A-2-101.

(10) "Direct Service Worker" is defined in Section 62A-5-101.

(11) "Directly Supervised" is defined in 62A-2-101.

(12) "Expiration date" is ~~[395 days from the approval date of the current screening application, or one year from the current license start date, whichever is longer. In the event that a human services program or department contractor has more than one license, the current license start date means the earliest current license start date]~~ 14 months from the approval date of the current screening application. A background screening approval that has expired is void.

(13) "FBI Rap Back System" is defined in Section 53-10-108.

(14) "Fingerprints" means an individual's fingerprints as copied electronically through a fingerprint scanning device or on two ten-print fingerprint cards by a law enforcement agency, an agency approved by the BCI, or Background Screening Agent.

(15) "Foster Home" is defined in Section 62A-2-101.

(16) "Human Services Program" is defined in Section 62A-2-101.

(17) "Licensee" is defined in Section 62A-2-101.

(18) "Licensing Information System" is created by Section 62A-4a-1006, as a sub-part of the Division of Child and Family Services' Management Information System created by Section 62A-4a-1003.

(19) "Neglect" may include "severe neglect", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(20) "Office" means the Office of Licensing within the Utah Department of Human Services.

(21) "Personal Care Attendant" is defined in Section 62A-3-101.

(22) "Personal Identifying Information" is defined in Section 62A-2-120, and shall include:

(a) a current, valid state driver's license or state identification card bearing the applicant's photo, current name, and address;

(b) any current, valid government-issued identification card bearing the applicant's name and photo, including passports, military identification and foreign government identification cards; or

(c) other records specifically requested in writing by the Office.

(23) "Substance Abuse Treatment Program" is defined in Section 62A-2-101.

(24) "Substantiated" is defined in Section 62A-4a-101.

(25) "Supported" is defined in Sections 62A-3-301 and 62A-4a-101.

(26) "Vulnerable Adult" is defined in Section 62A-2-101.

~~[(27) "WIN Database" is defined in Section 53-10-108, and includes information from Alaska, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.]~~

#### **R501-14-3. Initial Background Screening Procedure.**

(1) An applicant for initial background screening shall legibly complete, date and sign a background screening application and consent on a form provided by the Office.

(2) An applicant shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application. The applicant may provide disclosure statements and related documents as direct attachments to the application or directly attached in a sealed envelope. If the applicant

submits a sealed envelope, the Background Screening Agent shall forward it unopened.

~~(3) An applicant must present valid government-issued identification, including but not limited to a state issued driver license, state ID or passport.~~

~~(4[3]) An applicant who presents only a foreign country identification card shall[-] submit an original or certified copy of a government issued criminal history report from that country.~~

~~[(a) enroll in the FBI Rap Back System; and~~

~~(b) submit an original or certified copy of a government-issued criminal history report from that country.~~

~~(4) An applicant who presents only a US passport or state issued identification card from any state other than Utah, Alaska, Idaho, Montana, Nevada, Oregon, Washington, and Wyoming shall:~~

~~(a) enroll in the FBI Rap Back System.]~~

(5) The background screening application, personal identifying information, including fingerprints, and applicable fee shall be submitted to the Background Screening Agent. The Background Screening Agent shall:

(a) inspect the applicant's government-issued identification card and determine that it does not appear to have been forged or altered;

(b) review and sign the application; and

(c) forward the background screening application, and applicable fee to the Office background screening unit.

#### **R501-14-4. Renewal Background Screening Procedure.**

(1) An applicant for background screening renewal shall legibly complete, date and sign a background screening application and consent on a form provided by the Office.

(2) An applicant shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application. The applicant may provide disclosure statements and related documents as direct attachments to the application or directly attached in a sealed envelope. If the applicant submits a sealed envelope, the Background Screening Agent shall forward it unopened.

(3) The background screening application[-] and personal identifying information[-, and applicable fee] shall be submitted to the Background Screening Agent.

(a) Notwithstanding R501-14-4(3), an applicant for a background screening renewal who is not currently enrolled in the FBI Rap Back System is not required to submit fingerprints for a FBI Rap Back System search and applicable FBI Rap Back System fees unless:

(i) the applicant's most current background screening has expired;

(ii) the human services program or Background Screening Agent with which the applicant is associated requires a FBI Rap Back System search;

(iii) the applicant wishes to provide services with another licensee and has not submitted fingerprints for a FBI Rap Back System search and applicable FBI Rap Back System fees;

(iv) the applicant does not present a current, valid identification card issued by the State of Utah; or

(v) the renewal application is submitted on or after July 1, 2017 and the applicant is not already enrolled in the FBI Rap Back System.

(4) A licensed human services program or department contractor wishing to submit background screening renewal applications for multiple applicants may submit a summary log of the renewing applicants in lieu of individuals' applications.

(a) A summary log may only be used for applicants:

(i) who are enrolled in the FBI Rap Back System with the Office;

(ii) with a current, non-expired approval;

(iii) whose name and address have not changed since their last background screening approval;

(iv) who have not had any of the following since their last background screening approval:

(A) criminal arrests or charges;

(B) supported or substantiated findings of abuse, neglect or exploitation; or

(C) any pending or unresolved criminal issues.

(b) Summary logs shall contain:

(i) applicant full legal name,

(ii) applicant date of birth,

(iii) the last four numbers of each applicant's social security number;

(iv) program name; and

(v) name of program representative completing summary form.

(c) A Background Screening Agent program choosing to submit a summary log of the renewing applicants in lieu of individuals' applications shall maintain documentation signed by each applicant, in which they attest to the accuracy of the information described in R501-14-4(4)(a) and (b).

(5) An application shall be submitted each time an applicant may have direct access to a child or vulnerable adult at any human services program other than the program identified on the initial application.

(6) The Background Screening Agent shall:

(a) inspect the applicant's government-issued identification card and make a determination as to whether or not it appears to have been forged or altered;

(b) review and sign the application; and

(c) forward the background screening application~~[-and applicable fee]~~ to the Office background screening unit within 30 calendar days after the applicant completes and signs the application and no later than 15 calendar days preceding the background screening expiration date.

#### **R501-14-5. General Background Screening Procedure.**

(1) An application that is illegible, incomplete, unsigned, undated, or lacks a signed consent or required identifying information, may be returned to the individual who submitted it without further action.

(a) Personal identifying information submitted pursuant to Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-113, and 78B-6-128 shall be used to perform a search in accordance with Sections 62A-2-120(3) and (13).

(2) Except as permitted by Section 62A-2-120(9), an applicant for an initial background screening shall have no direct access to a child or vulnerable adult prior to receiving written confirmation of background screening approval from the Office.

(a) Except as permitted by Section 62A-2-120(9), an applicant seeking background screening renewal shall have no

direct access to a child or vulnerable adult after the background screening expiration date and prior to receiving written confirmation of background screening approval from the Office.

(3) The Office may defer action on an application for up to 30 calendar days until the applicant submits all additional information required by the Office.

(a) The Office may deny an application in the event that an applicant fails to provide all additional information required by the Office.

(b) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access to clients unless the Office approves a subsequent application.

(4) The Office may provide written communication notifying the program that the applicant must:

(a) submit fingerprints for a FBI Rap Back System check within 15 calendar days of a letter of notification; and/or

(b) obtain and submit a certified copy of the applicant's criminal history or records from local, state, federal, or foreign officials within 30 calendar days of a letter of notification.

(5) Upon notification from the Office as described in R501-14-5(4), the Background Screening Agent shall provide the applicant with a copy of all written communication from the Office within five calendar days after the date it is received.

(6) If the Office sends an applicant a sealed letter in care of or via the Background Screening Agent, the letter shall be provided to the applicant unopened.

(7) The applicant shall promptly notify the Office of any change of address while the application remains pending.

(8) A Background Screening Agent may roll fingerprints of applicants for submission to the Office only after it has received and applied training in the proper methods of taking fingerprints.

(a) The Background Screening Agent shall verify the identity of the applicant via government-issued identification card at the time that fingerprints are taken.

(b) In the event that 10% or more of the fingerprints submitted by a Background Screening Agent are rejected for quality purposes, the Office may thereafter require that a program utilize law enforcement or BCI to roll prints.

(c) An applicant or Background Screening Agent is not required, but may opt to, submit fingerprints for minors.

#### **R501-14-6. Background Screening Fees.**

(1) The applicant and Background Screening Agent are responsible for ensuring the accuracy of information submitted with fee payments.

(2) Fees shall only be made by cashiers' check, corporate check, money order, or internal DHS transfer. Personal checks and credit or debit card payments shall not be accepted.

(3) A Background Screening Agent may choose to submit one payment for any number of applicants.

(4) Fees are not refundable or transferable for any reason.

#### **R501-14-7. Results of Screening.**

(1) The Office shall approve an application for background screening in accordance with Section 62A-2-120(7).

(a) The Office shall notify the applicant or the Background Screening Agent or contractor when an applicant's background screening application is approved.

(i) Upon receiving notice from the Office, the Background Screening Agent shall provide notice of approval to the applicant as required under Section 62A-2-120 (12)(a)(i).

(b) The approval granted by the Office shall be valid for a period not to exceed ~~[395 days]~~ 14 months from the date of approval.

(c) An approval granted by the Office shall not be transferable, except as provided in R501-14-11.

(2) The Office may conditionally approve an application for background screening in accordance with Section 62A-2-120(8).

(a) Conditional approvals are prohibited for initial applicants who are residents of child placing foster or adoption homes.

(b) A program seeking the conditional approval of an applicant shall not request conditional approval unless 10 business days have passed after the applicant's background screening application is received by the Office without receiving notification of the approval or denial of the application.

(c) A written request for conditional approval shall include the applicant's full name, the last four digits of the applicant's social security number, and the date the application was submitted to the Office.

(d) Upon receipt of a written request for conditional approval that complies with R501-14-7(2)(b), the Office shall make a conditional determination within three business days.

(e) If the Office does not provide a standard approval before the expiration date of the conditional approval, the applicant shall have no unsupervised direct access.

(f) The Office may revoke the conditional approval prior to the expiration date.

(3) The Office shall deny an application for background screening in accordance with Section 62A-2-120.

(4) An applicant whose background screening has been denied shall have no further direct access.

(5) The Office shall refer an application to the Comprehensive Review Committee in accordance with Section 62A-2-120(6).

(a) Per Section 62A-2-120 (6)(a)(ii), all misdemeanor convictions except those listed in R501-14-7(5)(b), within the five years prior to submission of the application to the Office shall be reviewed by the Comprehensive Review Committee.

(b) The following misdemeanors will not be reviewed ~~[only if there have been three or more convictions for any of the following misdemeanors within the five years prior to the application with the Office]~~ except as described in (xiv) as listed below:

(i) violation of local ordinances related to animal licenses, dogs at large, noise, yard sales, land uses, storm water, utilities, business licenses, zoning, building, construction and park/access hours;

(ii) all misdemeanors listed in 41-6a except:

(A) part 4 accident responsibility;

(B) part 5 driving under the influence;

(C) part 17 miscellaneous rules;

(D) part 18 motor vehicle safety belt usage act;

(iii) all misdemeanors listed in 76-10-2, 76-10-21 and 76-10-27;

(iv) Failure to Appear: A misdemeanor charge under 77-7-22;

(v) Unauthorized Hunting of Protected Wildlife: A misdemeanor resulting from unauthorized hunting under 23-20-3;

(vi) Fishing Licenses: A misdemeanor resulting from a failure to have the appropriate fishing license under 23-19-1;

(vii) Boating Safety: A misdemeanor resulting from a failure to comply with the boating safety requirements outlined in 73-18-8;

(viii) Business License: A misdemeanor resulting from failure to have a business license as required under 76-8-410;

(xiv) all juvenile misdemeanors except those listed in 62A-2-120(5)(a) unless there is a pattern of at least three or more similar offenses within the five years prior to the submission of the application.

(c) The Office shall refer an applicant to the Comprehensive Review Committee upon learning of a potentially disqualifying offense or finding described in Section 62A-2-120(6) (a) not previously considered by the Comprehensive Review Committee.

(d) If an offense requires committee review, the Comprehensive Review Committee may review all convictions related to the applicant's criminal history.

#### **R501-14-8. Comprehensive Review Committee.**

(1) The Director of the following Department of Human Services divisions and offices shall appoint one member and one alternate to serve on the Comprehensive Review Committee:

(a) the Executive Director's Office;

(b) the Division of Aging and Adult Services;

(c) the Division of Child and Family Services;

(d) the Division of Juvenile Justice Services;

(e) the Division of Services for People with Disabilities;

(f) the Division of Substance Abuse and Mental Health;

and

(g) the Office of Licensing.

(2) Comprehensive Review Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office member shall chair the Comprehensive Review Committee as a non-voting member.

(4) ~~[Five]~~ Four voting members shall constitute a quorum~~[-]~~, ~~not including representatives from the Office of Licensing.~~

(5) The Comprehensive Review Committee shall conduct a comprehensive review of an applicant's background screening application, criminal history records, abuse, neglect or exploitation records, and related circumstances, in accordance with Section 62A-2-120(6).

#### **R501-14-9. Comprehensive Review Investigation.**

(1) The Comprehensive Review Committee shall not deny a background screening application without the Office first sending the applicant a written notice that:

(a) the Office is investigating the applicant's criminal history or findings of abuse, neglect or exploitation;

(b) the applicant is encouraged to submit any written statements or records that the applicant wants the Comprehensive Review Committee to consider;

(c) the Comprehensive Review Committee evaluates information using the criteria established by Section 62A-2-120(6)(b), and the applicant may specifically address these issues; and

(d) submissions must be received within 15 calendar days of the written notice.

(2)(a) The Office shall gather information described in Section 62A-2-120(6)(b) and provide available information to the Comprehensive Review Committee.

(b) The Office may request additional information from any available source, including the applicant, victims, witnesses, investigators, the criminal justice system, law enforcement agencies, the courts and any others it deems necessary for the comprehensive evaluation of an application.

(i) The Office may defer action on an application for up to 30 calendar days until the applicant submits all additional information required by the Office.

(ii) The Office may deny an application in the event that an applicant fails to provide all additional information required by the Office.

(iii) An applicant whose background screening has been denied shall have no supervised or unsupervised direct access unless the Office approves a subsequent application by the ~~individual~~ individual.

#### **R501-14-10. Comprehensive Review Determination.**

(1) The Comprehensive Review Committee shall only consider applications and information presented by the Office. The Comprehensive Review Committee shall evaluate the information provided by the Office and any information provided by the applicant.

(a) A background screening approval may be transferred to other human service programs, therefore the Comprehensive Review Committee shall evaluate whether direct access should be authorized for all types of programs.

(2) Each application that goes to the Comprehensive Review Committee requires individual review by the Comprehensive Review Committee.

(3) The Comprehensive Review Committee shall recommend approval of the background screening of an applicant only after a simple majority of the voting members of the Comprehensive Review Committee determines that approval will not likely create a risk of harm to a child or vulnerable adult.

(4) The Comprehensive Review Committee shall recommend denial of the background screening of an applicant when it finds that approval will likely create a risk of harm to a child or vulnerable adult.

(5) The Office shall approve or deny the applicant's background screening application in accordance with the recommendation of the Comprehensive Review Committee, except as described below:

(a) Within 10 days, a Comprehensive Review Committee member or the Office may request an additional Committee review based on the need for additional information, legal review or clarification of statutes, rules or procedures.

(b) Following a subsequent Committee review, the Office shall:

(i) approve or deny the applicant's background screening application in accordance with the recommendation of the Comprehensive Review Committee, and

(ii) send written notification to the applicant or Background Screening Agent.

(6) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access.

#### **R501-14-11 Background Screening Approval Transfer or Concurrent Use.**

(1) An applicant is eligible to have their current background screening approval shared with or transferred to another program only if the applicant is currently enrolled in the FBI Rap Back System.

(2) An applicant who wishes to have their current background screening shared with or transferred to another program shall complete a background screening application and identify the name of the original program.

(3) An applicant shall not have unsupervised direct access until the program receives written confirmation from the Office that the background screening is current and valid.

(4) A background screening approval that has been transferred or shared shall have the same expiration date as the original approval.

#### **R501-14-12. Post-Approval Responsibilities.**

(1) An applicant and Background Screening Agent shall immediately notify the Office if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records, or the DAAS Statewide Database after a background screening application is approved.

(a) An applicant who is associated with a licensee or department contractor shall immediately notify the licensee or department contractor if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records, or the DAAS Statewide Database.

(2) An applicant who has received an approved background screening shall resubmit an application and personal identifying information to the Office within ten calendar days after being charged with any felony, misdemeanor, or infraction, or being listed in the Licensing Information System, the DAAS Statewide Database, or juvenile court records.

(3) An applicant who has been charged with any felony, misdemeanor, or infraction or listed in the Licensing Information System or the DAAS Statewide Database, or juvenile court records, after a background screening application is approved shall have no unsupervised direct access to a child or vulnerable adult until after an application and personal identifying information have been resubmitted to the Office and a current background screening approval is received from the Office.

(4) An applicant charged with an offense for which there is no final disposition and no Comprehensive Review Committee denial, shall inform the Office of the current status of each case.

(a) The Office shall determine whether the charge could require a denial or committee review, and if so, notify the applicant to submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.

(b) An applicant shall submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.

(5) The Office may revoke the background screening approval of an applicant who:

(a) has been charged with any felony, misdemeanor, or infraction or is listed in the Licensing Information System, the DAAS Statewide Database, or juvenile court records; and fails to provide required current status information as described in (4) of this Rule or;

(b) [fails to provide required current status information as described in (4) of this Rule.]has been convicted of any felony, misdemeanor or infraction listed in 62A-2-120(5) after a background screening approval had already been granted by the Office while charges were pending.

(6) The Office shall process identifying information received pursuant to R501-14-12(2) in accordance with R501-14.

(7) A Background Screening Agent shall notify the Office when an applicant is no longer associated with the program no later than five months from the date of termination.

(a) The Office shall verify that the applicant is not associated with another program, and notify BCI within two years of the date that the applicant is no longer associated with any licensee.

#### **R501-14-13. Confidentiality.**

(1) The Office may disclose criminal background screening information, including information acknowledging the existence or non-existence of a criminal history, only to the Applicant and the Background Screening Agent, and in accordance with the Government Records Access and Management Act, Section 63G-2-101, et seq.

(2) Except as described in R501-14-11 and below, background screening information may not be transferred or shared between human service programs.

(a) A licensed child-placing agency may provide the approval granted by the Office to the person who is the subject of the approval, another licensed child-placing agency, or the attorney for the adoptive parents, in accordance with Section 53-10-108(4).

#### **R501-14-14. Retention of Background Screening Information.**

(1) A human services program or department contractor shall retain the background screening information of all associated individuals for a minimum of eight years after the termination of the individual's association with the program.

#### **R501-14-15. Expungement.**

(1) An applicant whose background screening application has been denied due to the applicant's criminal record may submit a new application with a certified copy of an Order of Expungement.

#### **R501-14-16. Administrative Hearing.**

(1) A Notice of Agency Action that denies the applicant's background screening application or revokes the applicant's background screening approval shall inform the applicant of the right to appeal in accordance with Administrative Rule R497-100 and Section 63G-4-101, et seq.

#### **R501-14-17. Exemption.**

(1) Section 62A-2-120(13) provides an exemption for substance abuse programs providing services to adults only. In order to claim this exemption, an applicant, human services program, or department contractor may request this exemption on a form provided by the Office, and demonstrate that they meet exemption criteria. Final determination shall be made by the Office.

#### **R501-14-18. Compliance.**

(1) A licensee that is in operation on the effective date of this Rule shall ~~[be given 90 days to achieve compliance]~~ immediately comply with this Rule.

**KEY: licensing, background screening, fingerprinting, human services**

**Date of Enactment or Last Substantive Amendment: [2016]2017**

**Notice of Continuation: September 29, 2015**

**Authorizing, and Implemented or Interpreted Law: 62A-2-108 et seq.**

## Human Services, Recovery Services **R527-250** Emancipation

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41170

FILED: 01/12/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In recent years, there has been a marked increase in Utah high school students graduating earlier than the anticipated graduation month of May with their high school graduating class. With many high schools offering and incentivizing early graduation, the Office of Recovery Services/Child Support Services (ORS/CSS) needs to provide additional direction on how the office will proceed when a child is 18 years old and graduates early from high school. The proposed changes to this rule will help clarify when ORS/CSS will cease collection of child support in these types of situations. A new citation was added to the citation block at the end of the rule text, Section 62A-11-107.

**SUMMARY OF THE RULE OR CHANGE:** Subsection R527-250-2(1) and (4) were updated to help clarify what other type of information may be provided to the office as proof of graduation, as well as to delete unnecessary words to help the sentence flow better. Section R527-250-3 has been deleted and rewritten to include early emancipation situations and the documentation that the parents must provide to the office verifying the child's early completion of high school course requirements. Section R527-250-4 was updated to help provide clarification for that section. In Subsection R527-250-5(3), the last part of the sentence was deleted as it is not needed, and in Subsection R527-250-5(4), other minor changes were made to better help the flow of the sentence. A new citation was added to the citation block at the end of the rule text, Section 62A-11-107.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-11-107 and Section 62A-11-303 and Section 62A-11-401 and Section 78B-12-102 and Section 78B-12-219

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These amendments provide clarification about which month ORS will process the emancipation of the children in its caseload; it does not change the number of children who will need to be emancipated from its caseload. Therefore, there is no anticipated cost or savings to the state budget due to the amendments to this rule.

◆ **LOCAL GOVERNMENTS:** Administrative rules of ORS/CSS do not apply to local government. This rule only pertains to graduating high school students and their parents. Therefore, there are no anticipated costs or savings to local government.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because the changes to the rule only affect graduating high school students and their parents.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is possible that there may be some costs for parents with an 18-year-old child that chooses to graduate early from high school; the non-custodial parent may have costs associated with providing ORS with documentation of the child's early graduation from high school. For example, there may be costs associated with making copies of the child's high school transcript or a letter from the high school as proof of completion and early graduation when a copy of a high school diploma is not yet released or granted. There may be costs associated with mailing or faxing documentation to the office, etc. If the child support ends earlier, the custodial parent may have added costs during the months that he or she would have anticipated receiving child support had the child not graduated early. However, it is not possible to determine what those costs will be because there is no way of knowing how many 18-year-old students in the state of Utah will take advantage of early graduation, causing their emancipation.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** It is possible that there may be some costs for parents with an 18-year-old child that chooses to graduate early from high school; the non-custodial parent may have costs associated with providing ORS with documentation of the child's early graduation from high school. For example, there may be costs associated with making copies of the child's high school transcript or a letter from the high school as proof of completion and early graduation when a copy of a high school diploma is not yet released or granted. There may be costs associated with mailing or faxing documentation to the office, etc. If the child support ends earlier, the custodial parent may have added costs during the months that he or she would have anticipated receiving child support had the child not graduated early. However, it is not possible to determine what those costs will be because there is no way of knowing how many 18-year-old students in the state of Utah will take advantage of early graduation, causing their emancipation.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no anticipated fiscal impacts to businesses because the changes to this rule do not affect businesses.

**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 Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Andrew Clement by phone at 801-741-7434, by FAX at 801-536-8509, or by Internet E-mail at [aclement@utah.gov](mailto:aclement@utah.gov)  
◆ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at [cacole@utah.gov](mailto:cacole@utah.gov)  
◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at [jhjonesrobbins@utah.gov](mailto:jhjonesrobbins@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017**

**AUTHORIZED BY: Liesa Stockdale, Director**

**R527. Human Services, Recovery Services.**

**R527-250. Emancipation.**

**R527-250-1. Purpose and Authority.**

1. Section 62A-11-107 authorizes the Office of Recovery Services/Child Support Services (ORS/CSS) to adopt, amend and enforce rules.

2. The purpose of this rule is to outline how ORS/CSS will apply Utah statute when determining the appropriate emancipation date for IV-D child support cases, particularly when determining the "child's normal and expected year of graduation" referenced in U.C.A. 78B-12-219 for Utah child support orders issued on or after July 1, 1994.

**R527-250-2. Normal and Expected Year of Graduation.**

1. For a child attending school in Utah, the normal and expected year of graduation is based on kindergarten plus twelve years of school, unless an exception [is] as listed below applies.

2. For a child attending school in Utah, ORS/CSS will presume that the normal and expected month of graduation is May of the expected graduating year, unless the parents provide documentation of a specific graduation date for their child.

3. If a deviation to the "kindergarten plus twelve years" standard is known at the time of entry of the child support order, the expected year of graduation is altered accordingly. If a child has been held back a grade or experienced another delay in education before the child support order is entered, the "expected" year of graduation will be changed to extend the support obligation based on the known facts about the delay in education. If the child has been advanced a grade or experienced some other acceleration in education before the child support order is entered, the "expected" year of graduation will be changed to potentially shorten the support obligation based on the facts about the acceleration in education.

4. If a deviation to the "kindergarten plus twelve years" standard is not known until after the entry of the child support order, the "expected" year of graduation is not altered based on the new facts unless the child receives an early high school diploma, ~~[or other]~~ a high school equivalency diploma, or documentation is provided of early completion of high school course requirements.

**R527-250-3. Early Graduation, High School Equivalency Diploma, and General Educational Development (GED).**

~~[A child who receives a high school diploma or another documented form of high school equivalency is no longer enrolled in school or expected to graduate with the normal graduating class. The emancipation date will be determined based on when the child becomes 18 years of age or that child's high school diploma or high school equivalency date.]~~ ORS may cease collection of child support the month following in which the child is no longer enrolled in school, is 18 years old, and:

1. the child receives a high school diploma at the time of early graduation;
2. documentation is provided of the child's early completion of high school course requirements; or
3. the child receives a high school equivalency diploma.

**R527-250-4. Dropping Out of School.**

A child who no longer attends school is not considered emancipated until becoming 18 years old or the graduation of ~~[the]~~ his/her normal and expected graduating class has occurred, whichever occurs later.

**R527-250-5. Burden of Proof.**

1. ORS/CSS will enforce child support based on the "kindergarten plus twelve years" standard until a parent or guardian

has provided appropriate documentation to support an emancipation date other than that standard.

2. A parent or guardian requesting the deviation from the standard is responsible for gathering the appropriate documentation and providing the information to ORS/CSS.

3. Changes to the child support amount due will not be effective until the month following the emancipation date ~~[based on the 18th birthday, normal and expected graduating class, or other appropriate date as described above].~~

4. Changes to the child support amount which are based on a date other than the 18th birthday or the "kindergarten plus twelve year" standard will not be effective until the month following the determined date of emancipation or the month following ~~[when]~~ in which the parent or guardian provides sufficient documentation to support the new emancipation date, whichever occurs later. If an over collection occurs due to the parent not providing documentation, the parent will be responsible for recovering any overpaid amounts without involving ORS/CSS.

**KEY: child support, emancipation**

**Date of Enactment or Last Substantive Amendment:** ~~[July 1, 2011]~~ **2017**

**Authorizing, and Implemented or Interpreted Law:** 62A-11-107; 62A-11-303; 62A-11-401; 78B-12-102; 78B-12-219

Insurance, Administration  
**R590-262**  
Health Data Authority Health Insurance  
Claims Reporting

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41172

FILED: 01/13/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule has two separate areas for providing two different exemptions. The change makes it so the exemptions are in the same section and have the same standard.

**SUMMARY OF THE RULE OR CHANGE:** The original proposed rule has two separate areas that provided for two different standards of exemption. The rule change moves both exemptions to the same section and makes the exemption standards the same.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 26-1-37(2)(b) and Subsection 31A-22-614.5(3)(a)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The change is merely for clarification purposes and will have no effect on budgeting.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments. The change is merely for clarification purposes and will have no effect on budgeting.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. The change is merely for clarification purposes and will have no effect on budgeting.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to any other persons. The change is merely for clarification purposes and will have no effect on budgeting.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The change is merely for clarification purposes and has no costs associated with it.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be no fiscal impact on businesses due to this rule change. The change is merely being done to create a more logical flow and to align the standards laid out in the rule, which will make the rule clearer.

**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 Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [sgooch@utah.gov](mailto:sgooch@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017**

**AUTHORIZED BY: Steve Gooch, Information Specialist**

**R590. Insurance, Administration.****R590-262. Health Data Authority Health Insurance Claims Reporting.****R590-262-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-22-614.5(3)(a) to coordinate with the provision of Subsection 26-1-37(2)(b) and Utah Department of Health rules R428-1 and R428-15.

**R590-262-2. Purpose and Scope.**

(1) This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.

(2) This rule allows the data to be shared with the state's designated secure health information master index person index, Clinical Health Information Exchange (cHIE), to be used:

(a) in compliance with data security standards established by:

(i) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936; and

(ii) the electronic commerce agreements established in a business associate agreement;

(b) for the purpose of coordination of health benefit plans; and

(c) for the enrollment data elements identified in Utah Administrative Rule R428-15, Health Data Authority Health Insurance Claims Reporting.

(3)(a) This rule applies to an insurer offering:

(i) a health benefit plan; or

(ii) a dental plan.

(b) This rule does not apply to:

(i) an insurer that as of the first day of the reporting period:

(A) covers fewer than 2,500 individual Utah residents[?];  
or

(B) provides administrative services for fewer than 2,500 individual Utah residents covered under self-funded employee plans; and

(ii) a fully insured employer group or self-funded employee plan whose primary place of business is outside the state of Utah and no more than 25% of the employees are residents of Utah;

(iii) a long-term care insurance policy; or

(iv) an income replacement policy.

(c) Except as provided in Subsection (4), this rule does not require a person to provide information concerning a self-funded employee plan.

(4)(a) The submission of health care claims data by an insurer on behalf of a self-funded employee plan is considered mandatory if and only if the self-funded employee plan opts-in under R590-262-7.

(b) An insurer is not obligated to submit data on behalf of a self-funded employee plan that fails to respond to opt-in requests required in R590-262-7.

**R590-262-15. Exemptions and Extensions.**

(1) The Office may grant exemptions or extensions from reporting requirements in this rule under certain circumstances.

(2) The Office may grant an exemption to an insurer when the insurer demonstrates that compliance imposes an unreasonable cost.

(a) An insurer may request an exemption from any particular requirement or set of requirements of this rule. The insurer must submit a request for exemption no less than 30 calendar days before the date the insurer would have to comply with the requirement.

(b) The Office may grant an exemption for a maximum of one calendar year. An insurer wishing an additional exemption must submit an additional, separate request.

(3) The Office may grant an extension to an insurer when the insurer demonstrates that technical or unforeseen difficulties prevent compliance.

(a) An insurer may request an extension for any deadline required in this rule. For each deadline for which the insurer requests an extension, the insurer must submit its request no less than seven calendar days before the deadline in question.

(b) The Office may grant an extension for a maximum of 30 calendar days. An insurer wishing an additional extension must submit an additional, separate request.

(4) The insurer requesting an extension or exemption shall include:

(a) The insurer's name, mailing address, telephone number, and contact person;

(b) the dates the exemption or extension is to start and end;

(c) a description of the relief sought, including reference to specific sections or language of the requirement;

(d) a statement of facts, reasons, or legal authority in support of the request; and

(e) a proposed alternative to the requirement or deadline.

~~[(5) An insurer may exclude from the requirements of this rule an employer who maintains a self-funded employee plan:~~

~~(a) with less than 100 individual Utah residents as of the first day of the reporting period that services are provided; or~~

~~(b) whose primary place of business is outside the state of Utah and no more than 25% of the employees are residents.]~~

**KEY: health insurance claims reporting**

**Date of Enactment or Last Substantive Amendment:**  
~~[December 12, 2016]~~2017

**Authorizing, and Implemented or Interpreted Law:** 31A-22-614.5(3)(a)

**Natural Resources, Parks and  
Recreation  
R651-215-8  
River Throw Bag in Lieu of Type IV  
PFD**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41154

FILED: 01/12/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The current rule allows a throw bag to be carried in place of a throwable personal flotation device on rivers where life jackets are required to be worn. This rule was intended to mirror acceptable swift water rescue techniques.

In May of 2016, the boating law administrator from the state of Arizona inquired about Section R651-215-8 due to a boating constituent requesting the state of Arizona adopt the same rule as Utah. Upon research from the request of the state of Arizona, and the United States Coast Guard, the Division found that Section R651-215-8 is in conflict with 33 CFR 175.15, requiring carriage of boating safety equipment.

**SUMMARY OF THE RULE OR CHANGE:** Although the intent of the rule is solid with swift water rescue techniques, the state of Utah cannot exclude safety items required by the Code of Federal Regulations (CFR). It was recommended that this section be removed so that the rule is in compliance with 33 CFR 175.15.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 73-18-8

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated revenue or cost incurred because the Division already has the equipment.

◆ **LOCAL GOVERNMENTS:** There is no effect to minimal effect to local government of \$15 per boat that is over 16 feet in length if they do not have the device. Most government boats carried this device already.

◆ **SMALL BUSINESSES:** There is a minimal anticipated cost on small businesses of \$15 per boat that is over 16 feet in length. Most commercial boats are 15 feet average.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is a minimal anticipated cost on small businesses of \$15 per boat that is over 16 feet in length. Most private boats are 15 feet average.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is an anticipated additional cost of \$15 per boat for those boats that are not carrying the flotation device.

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

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

NATURAL RESOURCES  
PARKS AND RECREATION  
ROOM 116  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at [tammywright@utah.gov](mailto:tammywright@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2017**

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017

AUTHORIZED BY: Fred Hayes, Director

**R651. Natural Resources, Parks and Recreation.**

**R651-215. Personal Flotation Devices.**

~~**[R651-215-8. River Throw Bag in Lieu of Type IV PFD.**~~

~~On a river section where PFDs are required to be worn, or on any river section where all vessel occupants are wearing PFDs, in lieu of the Type IV PFD requirement, a throw bag with a minimum of 40 feet of line may be carried.]~~

**KEY:** boating, parks

**Date of Enactment or Last Substantive Amendment:** ~~[May 9, 2011]~~ **2017**

**Notice of Continuation:** January 7, 2016

**Authorizing, and Implemented or Interpreted Law:** 73-18-8

**Natural Resources, Wildlife Resources**  
**R657-9**  
**Taking Waterfowl, Wilson's Snipe and Coot**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41153

FILED: 01/11/2017

**RULE ANALYSIS**

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

**SUMMARY OF THE RULE OR CHANGE:** The proposed revisions add the portion of Ogden Bay Waterfowl Management Area, known as North Bachman, to the list of rest areas.

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

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This amendment only adds a rest area designation to a waterfowl management area. Therefore, the Division of Wildlife Resources (DWR) determines that this amendment does not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** Since this amendment has a minimal impact on individual hunters and no impact on the local governments, DWR finds that this filing does not create

any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** This amendment only adds a rest area designation to a waterfowl management area and therefore, does not have the potential to generate a cost or savings impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment only adds a rest area designation to a waterfowl management area and therefore, does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** DWR determines that this amendment will not create additional costs for those who participate in wildlife-related activities in Utah because this amendment only adds a rest area designation to a waterfowl management area.

**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 Office 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 03/03/2017**

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017

AUTHORIZED BY: Gregory Sheehan, Director

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

**R657-9. Taking Waterfowl, Wilson's Snipe and Coot.**

**R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Wilson's snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

**R657-9-30. Rest Areas and No Shooting Areas.**

(1) A person may only access and use state waterfowl management areas in accordance with state and federal law, state administrative code, and proclamations of the Wildlife Board.

(2)(a) The division may establish portions of state waterfowl management areas as "rest areas" for wildlife that are closed to the public and trespass of any kind is prohibited.

(b) In addition to any areas identified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot, the following areas are designated as rest areas:

(i) That portion of Clear Lake Waterfowl Management Area known as Spring Lake;

(ii) That portion of Desert Lake Waterfowl Management Area known as Desert Lake;

(iii) That portion of Public Shooting Grounds Waterfowl Management Area that lies above and adjacent to the Hull Lake Diversion Dike known as ~~["]Duck Lake["]~~;

(iv) That portion of Salt Creek Waterfowl Management Area known as ~~["]Rest Lake["];~~~~and~~

(v) That portion of Farmington Bay Waterfowl Management Area that lies in the northwest quarter of unit one; ~~and~~

~~(iv) That portion of Ogden Bay Waterfowl Management Area known as North Bachman.~~

~~([d]c)~~ Maps of all rest areas will be available at division offices, on the division's website, and to the extent necessary, marked with signage at each rest area.

(3)(a) The division may establish portions of state waterfowl management areas as "No Shooting Areas" where the discharge of weapons for the purposes of hunting is prohibited.

(b) No Shooting Areas remain open to the public for other lawful activities.

(c) In addition to any areas identified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot, the following areas are No Shooting Areas:

(i) Within 600 feet of the north and south side of the center line of Antelope Island causeway;

(ii) Within 600 feet of all structures found at Brown's Park Waterfowl Management Area;

(iii) The following portions of Farmington Bay Waterfowl Management Area:

(A) within 600 feet of the Headquarters~~[-and Learning Center area; and];~~

(B) within 600 feet of dikes and roads accessible by motorized vehicles; ~~and~~

~~(C) within the area designated as the Learning Center.~~

~~(iv) Within 600 feet of the headquarters area of Ogden Bay Waterfowl Management Area;~~

~~(v) Within the boundaries of all State Parks except those designated open by appropriate signage as provided in Rule R651-614-4;~~

~~(vi) Within 1/3 of a mile of the Great Salt Lake Marina;~~

~~(xi) Below the high water mark of Gunnison Bend Reservoir and its inflow upstream to the Southerland Bridge, Millard County;~~

~~(xii) All property within the boundary of the Salt Lake International Airport; and~~

~~(xii) All property within the boundaries of federal migratory bird refuges, unless hunting waterfowl specifically authorized by the federal government.~~

(4) The division reserves the right to manage division lands and regulate their use consistent with Utah Code Section 23-21-7 and Utah Administrative Code R657-28.

**KEY: wildlife, birds, migratory birds, waterfowl**

**Date of Enactment or Last Substantive Amendment: [February 8, 2016]2017**

**Notice of Continuation: August 1, 2016**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 50 CFR part 20**

## Natural Resources, Wildlife Resources R657-16 Aquaculture and Fish Stocking

### NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 41149

FILED: 01/11/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted for taking public input and reviewing the division's program by which live aquatic wildlife may be possessed or transported.

**SUMMARY OF THE RULE OR CHANGE:** Rule R657-16 provides the standards and procedures for institutional aquaculture, short-term fishing events, private fish stocking, and displaying aquaculture products or aquatic wildlife in aquaria. This rule has been incorporated into Rule R657-59 and is no longer needed as a separate rule. Consequently, the rule is repealed in its entirety. (Editor's Note: A proposed amendment to Rule R657-59 is under Filing No. 41150 in this issue, February 1, 2017, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-15-10 and Section 23-15-9

### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment repeals this rule. The Division of Wildlife (DWR) has determined that this amendment does not create a cost or savings impact to DWR's budget or the state budget.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment repeals the rule and the content has been incorporated into another rule (Rule R657-59). DWR determines the amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment repeals the rule and the content has been incorporated into another rule (Rule R657-59). DWR determines the amendment does not impose any additional requirements on other persons nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This repeal does not create compliance costs for affected persons, because the requirements from this rule have been incorporated into Rule R657-59 and are therefore redundant.

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 Office 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 03/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017

AUTHORIZED BY: Gregory Sheehan, Director

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

~~**R657-16. Aquaculture and Fish Stocking.**~~

~~**R657-16-1. Purpose and Authority.**~~

~~(1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for:~~

- ~~(a) institutional aquaculture;~~
- ~~(b) short-term fishing events;~~
- ~~(c) private fish stocking; and~~
- ~~(d) displaying aquaculture products or aquatic wildlife in aquaria.~~

~~(2) This rule does not cover private fish ponds as provided in R657-59, or fee fishing and commercial aquaculture as provided in Title 4, Chapter 37, Parts 2 and 3; and the Department of Agriculture Rule R58-17.~~

~~(3) A person engaging in any activity provided in Subsection (1) must also comply with the provisions set forth in Rule R657-3 and the Department of Agriculture Rule R58-17.~~

~~(4) Any violation of, or failure to comply with, any provision of this rule or any specific requirement contained in a~~

~~certificate of registration issued pursuant to this rule may be grounds for revocation or suspension of the certificate of registration or denial of future certificates of registration, as determined by a division hearing officer.~~

~~**R657-16-2. Definitions.**~~

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

~~(2) In addition:~~

~~(a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions:~~

~~(b) "Aquaculture facility" means any facility used for propagating, rearing, or producing aquatic wildlife or aquaculture products. Facilities that are separated by more than 1/2 mile, or facilities that drain to, or are modified to drain to, different drainages are considered to be separate aquaculture facilities, regardless of ownership.~~

~~(c)(i) "Aquaculture product" means privately purchased aquatic wildlife or their gametes:~~

~~(ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.~~

~~(d) "Aquarium" means any container located in an indoor facility that is used to hold fish from which no water is discharged, except during periodic cleaning, and which discharged water is passed through a filtering system capable of removing all fish and fish eggs and is disposed of only in a septic tank approved by the county or in a municipal wastewater treatment system approved by either the state or local health department.~~

~~(e) "Display" means to hold live aquaculture products or aquatic wildlife in an aquarium for the purpose of viewing for commercial or noncommercial purposes.~~

~~(f) "FEMA" means Federal Emergency Management Administration.~~

~~(g) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program, or public agency.~~

~~(h)(a) "Ornamental aquatic animal species" means any species of fish, mollusk, or crustacean that is commonly cultured and sold in the United States' aquarium industry for display.~~

~~(b) "Ornamental aquatic animal species" does not include:~~

- ~~(i) fresh water;~~
- ~~(A) sport fish - aquatic animal species commonly angled or harvested for recreation or sport;~~
- ~~(B) baitfish - aquatic animal species authorized for use as bait in R657-13-12, and any other species commonly used by anglers as bait in sport fishing;~~
- ~~(C) food fish - aquatic animal species commonly cultured or harvested from the wild for human consumption; or~~
- ~~(D) native species; or~~
- ~~(ii) aquatic animal species prohibited for importation or possession by any state, federal, or local law; or~~
- ~~(iii) aquatic animal species listed as prohibited or controlled in Sections R657-3-22 and R657-3-23.~~

~~(i) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.~~

~~(j) "Private stocking" means noncommercial stocking of live aquaculture products in waters of the state not eligible as a private fish pond under R657-59 or other private fish facility.~~

~~(k) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.~~

~~(l) "Short-term fishing event" means any event where privately acquired fish are held or confined for a period not to exceed seven days for the purpose of providing fishing or recreational opportunity and where no fee is charged as a requirement to fish.~~

**~~R657-16-3. Certificate of Registration Required.~~**

~~(1) A certificate of registration is required before any person may engage in any of the following activities:~~

~~(a) produce, propagate, rear, or culture any aquatic wildlife or aquaculture product;~~

~~(b) privately stock fish;~~

~~(c) acquire aquaculture products for a short-term fishing event; or~~

~~(d) display aquaculture products in an aquarium, except a certificate of registration is not required for ornamental fish held in an aquarium.~~

~~(2) Only species approved by the division and listed on the certificate of registration may be possessed and used in conjunction with the activities covered by this rule.~~

~~(3) No aquaculture facility shall be developed on natural lakes or natural flowing streams, or reservoirs constructed on natural stream channels as provided in Section 23-15-10. Other waters, including canals, off-stream reservoirs or ponds, and excavated ponds or raceways, may be considered for an aquacultural use.~~

**~~R657-16-4. Application for Certificates of Registration.~~**

~~(1) An application for a certificate of registration must be submitted to the Wildlife Registration Office, Utah Division of Wildlife Resources, 1594 West North Temple, Salt Lake City, Utah 84114.~~

~~(2) The application may require up to 45 days for processing, except for a short-term fishing event, which may require up to 10 days for processing.~~

~~(3) Application forms are available at all division offices and at the division's Internet address.~~

~~(4) Applications that are incomplete, filled out incorrectly, or submitted without the appropriate fee may be returned to the applicant.~~

**~~R657-16-5. Renewal of Certificates of Registration.~~**

~~(1) Certificates of registration are valid for the dates identified on the certificate of registration.~~

~~(2) Certificates of registration are renewable on or before the expiration date as identified on the certificate of registration.~~

**~~R657-16-6. Failure to Renew Certificates of Registration Annually.~~**

~~(1) If an operator of an aquaculture facility, fails to renew the certificate of registration annually, or the hearing officer suspends the certificate of registration, all live aquatic wildlife or~~

~~aquaculture products permitted under the certificate of registration shall be disposed of as follows:~~

~~(a) Unless the Wildlife Board orders otherwise, all aquatic wildlife or aquaculture products must be removed within 30 days of revocation or the expiration date of the certificate of registration, or within 30 days after ice-free conditions on the water; or~~

~~(b) At the discretion of the division, aquatic wildlife or aquaculture products may remain in the waters at the facility, but shall only be taken as prescribed within Rule R657-13 for Taking Fish and Crayfish.~~

~~(2) Aquatic wildlife or aquaculture products from a facility not health approved under Section 4-37-501 may not be moved alive.~~

~~(3) Aquatic wildlife or aquaculture products from an aquatic facility infected with any of the pathogens specified in the Department of Agriculture Rule R58-17 must be disposed of as directed by the division to prevent further spread of such diseases.~~

**~~R657-16-7. Importation.~~**

~~(1)(a) To import live aquatic wildlife or aquaculture products into Utah, a certificate of registration is required.~~

~~(b) Species of aquatic wildlife or aquaculture products that may be imported are provided in Rule R657-3-34.~~

~~(2)(a) To import live grass carp (*Ctenopharyngodon idella*), each fish must be verified as being triploid by the U.S. Fish and Wildlife Service.~~

~~(b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City prior to importation.~~

~~(c) A copy of this form must also accompany the fish during transport.~~

~~(3) Applications to import aquatic wildlife or aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City. Applications may require up to 45 days for action.~~

**~~R657-16-8. Acquiring and Transferring Aquaculture Products.~~**

~~(1) Live aquatic wildlife or aquaculture products, other than ornamental fish, may be:~~

~~(a) purchased or acquired only from sources that have a valid certificate of registration from the Utah Department of Agriculture and Food to sell such products or from a person located outside Utah if both the species and the source are approved on a certificate of registration for importation or by the Utah Department of Agriculture and Food; and~~

~~(b) acquired, purchased or transferred only from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a fish health approval number as provided in Section 4-37-501. This also applies to separate facilities owned by the same individual, because each facility is treated separately, regardless of ownership.~~

~~(2)(a) Any person who has been issued a valid certificate of registration may transport live aquatic wildlife or aquaculture products as specified on the certificate of registration to the facility or approved stocking site.~~

~~(b) Except as provided in Subsection (3), all transfers or shipments of live aquatic wildlife or aquaculture products must be~~

accompanied by documentation of the source and destination of the fish, including:

- ~~(i) name, address, certificate of registration number, and fish health approval number of the source;~~
- ~~(ii) number and weight being shipped, by species; and~~
- ~~(iii) name, address, and certificate of registration number of the destination, if the destination is a fish hatchery or private water; or~~
- ~~(iv) name, address, county, and division water identification number if the destination is a public water.~~

~~(3)(a) Live aquatic wildlife or aquaculture products may be shipped through Utah without a certificate of registration provided that:~~

- ~~(i) the aquatic wildlife or aquaculture products are not sold or transferred;~~
- ~~(ii) the aquatic wildlife or aquaculture products remain in the original container;~~
- ~~(iii) the water is not exchanged or discharged; and~~
- ~~(iv) the shipment is in Utah no longer than 72 hours.~~
- ~~(b) Proof of legal ownership and destination must accompany the shipment.~~

#### **R657-16-9. Inspection of Records and Facilities.**

~~(1) The following records and information must be maintained for a period of two years and must be available for inspection by a division representative during reasonable hours:~~

- ~~(a) records of purchase, acquisition, distribution, and production histories of aquatic wildlife or aquaculture products;~~
- ~~(b) certificates of registration; and~~
- ~~(c) valid identification of stocks.~~

~~(2) Division representatives may conduct pathological, fish culture, or physical investigations at any facility, pond, or holding facility during reasonable hours.~~

#### **R657-16-10. Private Fish Ponds.**

~~Private fish ponds are regulated under the provisions in R657-59.~~

#### **R657-16-11. Short-Term Fishing Events.**

~~(1) A person sponsoring a short-term fishing event must obtain a certificate of registration prior to holding the event, except the division may conduct short-term fishing events for educational purposes without a certificate of registration.~~

~~(2)(a) A certificate of registration for a short-term fishing event may be obtained by applying to the Wildlife Registration Office at the division's Salt Lake City office a minimum of 10 days prior to the event.~~

- ~~(b) Application forms are available at all division offices.~~
- ~~(c) After review and confirmation by the division that the event poses no identifiable adverse threats to other fish or wildlife species, a certificate of registration may be issued.~~
- ~~(d) The certificate of registration may cover multiple events, which must be requested on the application form.~~

~~(3) A fishing license and bag limit is not required of participants in a short-term fishing event unless stated otherwise on the certificate of registration.~~

~~(4) For short-term fishing events where fishing licenses and bag limits under Rule R657-13 do not apply, a receipt must be given to participants transporting dead aquaculture products or~~

~~aquatic wildlife away from the event. Such receipt must include the following information:~~

- ~~(a) name of event sponsor;~~
- ~~(b) date caught;~~
- ~~(c) certificate of registration number; and~~
- ~~(d) species and number of dead aquaculture products or aquatic wildlife being transported.~~
- ~~(5) Live fish remaining at the end of the event may not be transported alive, released, or stocked.~~
- ~~(6) A certificate of registration for a short-term fishing event may be obtained by submitting an application and paying a fee in the amount established by the Wildlife Board.~~

#### **R657-16-12. Private Stocking.**

~~(1) An individual wishing to stock fish for private, noncommercial purposes in a body of water not eligible as a private fish pond under R657-59 must first obtain a certificate of registration for private stocking.~~

~~(2) Fish released in a state water not eligible as a private fish pond under R657-59 are considered wild aquatic wildlife and may be taken only as provided in Rule R657-13 and the fishing proclamation.~~

~~(3) A water that does not qualify as a private fish pond may not be screened to contain fish stocked (pursuant to a certificate of registration for private stocking), except that a water stocked with grass carp to control aquatic weeds must be adequately screened to prevent the grass carp from escaping.~~

~~(4)(a) Private stocking is limited only to those species approved on the certificate of registration.~~

~~(b) Species approval will be based on the biological suitability of the requested species compared to the needs of the fish and other wildlife in the drainage.~~

~~(c) An amendment to the certificate of registration is required each time fish are stocked, except the division may allow a person to stock fish more than once if the request is made on the application, and is approved by the division.~~

~~(d) Fish may be acquired only from a source that has a valid fish health approval number assigned by the Department of Agriculture.~~

~~(5)(a) An application for a certificate of registration for private stocking to stock fish other than grass carp may be approved only if:~~

- ~~(i) on privately owned land;~~
- ~~(ii) the body of water is a reservoir, the reservoir is wholly contained on the land owned by the applicant; and~~
- ~~(iii) the body of water is not stocked or otherwise actively managed by the division.~~

~~(b) An application for a certificate of registration for private stocking of fish other than grass carp shall not be approved if:~~

- ~~(i) the fish to be stocked are for a commercial purpose; or~~
- ~~(ii) in the opinion of the division, stocking would cause harm to other species of fish or wildlife.~~

~~(6) An application for a certificate of registration for private stocking of triploid grass carp for control of aquatic weeds will be evaluated based upon:~~

- ~~(a) the severity of the weed problem;~~
- ~~(b) availability of other suitable means of weed control;~~
- ~~(c) adequacy of screening to contain the grass carp; and~~

~~\_\_\_\_\_ (d) potential for conflict or detrimental interactions with other species of fish or wildlife.~~

~~\_\_\_\_\_ (7) A certificate of registration for private stocking may be issued after review of the appropriateness of the requested species and inspection of the water to be stocked by a division representative to ensure compliance with the stipulations of this rule and the absence of any threat to other fish or wildlife species.~~

~~\_\_\_\_\_ (8) A certificate of registration for private stocking may be obtained by submitting an application and paying a fee in the amount established by the Wildlife Board.~~

**R657-16-13. Institutional Aquaculture.**

~~\_\_\_\_\_ (1) A certificate of registration is required for any public agency, institution of higher learning, school, or educational program to engage in aquaculture.~~

~~\_\_\_\_\_ (2) Aquatic wildlife or aquaculture products produced by institutional aquaculture may not be:~~

~~\_\_\_\_\_ (a) sold;~~

~~\_\_\_\_\_ (b) stocked; or~~

~~\_\_\_\_\_ (c) transferred into waters of the state unless specifically authorized by the certificate of registration.~~

~~\_\_\_\_\_ (3) The fish health approval requirements of Section 4-37-501 apply.~~

~~\_\_\_\_\_ (4)(a) A certificate of registration for institutional aquaculture may be obtained by submitting an application to the division.~~

~~\_\_\_\_\_ (b) A certificate of registration may be renewed on or before July 31 each year by submitting an application and the records described in Subsection (5).~~

~~\_\_\_\_\_ (5)(a) A person possessing a valid certificate of registration for institutional aquaculture must submit to the division a report of each acquisition, distribution, transfer, or stocking of live aquatic wildlife or aquaculture products.~~

~~\_\_\_\_\_ (b) This report must be sent to the division no later than June 30, and must be received before the certificate of registration may be renewed.~~

~~\_\_\_\_\_ (c) Documentation of source, quantity, species, health approval status, and destination of all live aquatic wildlife or aquaculture products must accompany all shipments or transfers.~~

**R657-16-14. Display.**

~~\_\_\_\_\_ (1)(a) A certificate of registration is required to hold live aquatic wildlife or aquaculture products in an aquarium for the purpose of viewing or displaying for commercial or noncommercial purposes, except the division may hold live aquatic wildlife or aquaculture products in an aquarium for educational viewing or display without a certificate of registration. A certificate of registration is not required to display ornamental fish.~~

~~\_\_\_\_\_ (b) Live aquatic wildlife or aquaculture products that are displayed must meet the health approval standards described in Section 4-37-501.~~

~~\_\_\_\_\_ (2)(a) Aquatic wildlife taken from the wild may not be displayed or held in an aquarium.~~

~~\_\_\_\_\_ (b) The division may take aquatic wildlife from the wild for placement in an aquarium for purposes of display or education.~~

~~\_\_\_\_\_ (3) Live aquaculture products held in an aquarium for display may not be transferred, sold alive, released, or stocked. They may be sold as long as they are first killed and prepared for consumption.~~

~~\_\_\_\_\_ (4)(a) A certificate of registration for display of live aquaculture products in an aquarium may be obtained by submitting an application and paying a fee in the amount established by the Wildlife Board.~~

~~\_\_\_\_\_ (b) The certificate of registration is renewable every five years on or before the renewal date as specified on the certificate of registration by submitting an application, paying a fee in the amount established by the Wildlife Board, and submitting the records described in Subsection (5).~~

~~\_\_\_\_\_ (5)(a) A person possessing a certificate of registration for display must submit to the division an annual report of each purchase or acquisition of live aquaculture products. This report must include the following information:~~

~~\_\_\_\_\_ (i) name, address, certificate of registration number, and health approval number of the source; and~~

~~\_\_\_\_\_ (ii) number and weight acquired, by species.~~

~~\_\_\_\_\_ (b) This record must be submitted to the division no later than January 30 each year, and must be received before the certificate of registration can be renewed.~~

**KEY: ~~wildlife, aquaculture, fish~~**

**Date of Enactment or Last Substantive Amendment: ~~August 21, 2012~~**

**Notice of Continuation: ~~October 1, 2012~~**

**Authorizing, and Implemented or Interpreted Law: ~~23-15-9; 23-15-10~~**

## Natural Resources, Wildlife Resources R657-38 Dedicated Hunter Program

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41148

FILED: 01/11/2017

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's Dedicated Hunter Program.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to this rule: 1) consolidate related sections for simplification; 2) eliminate redundancy and add clarity to rule intent throughout; 3) clarify the use of appropriate equipment respective to each season; 4) clarify timeframes in which the Wildlife Conservation and Ethics course must be completed; 5) allow residents the option of purchasing service hours; 6) simplify program extension options for military mobilization/deployment; 7) manage special circumstances for educational and religious relocations through implementing a more universal withdraw/surrender option for all participants; 8) allow participants who draw limited-entry deer permits in the big game drawing the option of extending

the Dedicated Hunter Certificate of Registration one year; 9) allow participants who accept a Poaching Reported Rewards permit the option of extending enrollment one year; and 10) restructure the qualifying minimum requirements for withdrawing from the program.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This rule amendment makes technical and clarifying changes, and thus the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ LOCAL GOVERNMENTS: Since the amendments are only clarifying or simplifying processes already in place only, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ SMALL BUSINESSES: This amendment simply makes technical and clarifying changes. Therefore, DWR determines that the amendments do not have the potential to generate a cost or savings impact to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment simply makes technical and clarifying changes. Therefore, DWR determines that the amendments do not have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment will not create additional savings or costs for those who wish to participate in the program.

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

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office 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 03/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017

AUTHORIZED BY: Gregory Sheehan, Director

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

**R657-38. Dedicated Hunter Program.**

**R657-38-1. Purpose and Authority.**

(1) Under the authority of Section 23-14-18, this rule provides the standards and requirements for qualified deer hunters to participate in the Dedicated Hunter Program by obtaining a certificate of registration.

(2) The Dedicated Hunter Program is a program that provides:

- (a) expanded hunting opportunities;
- (b) opportunities to participate in wildlife conservation projects[~~that are beneficial to wildlife~~]; and
- (c) education in hunter ethics and wildlife management principles.

**R657-38-2. Definitions.**

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
  - (a) "Dedicated Hunter Permit" means a general buck deer permit issued to a participant in the Dedicated Hunter Program, which authorizes the participant to hunt deer during the general archery, general muzzleloader and general any weapon open seasons in the hunt area specified on the permit.
  - (b) "Hunt area" means an area prescribed by the Wildlife Board where general archery, general muzzleloader and general any weapon buck deer hunting is open to permit holders for taking deer.
  - (c) "Participant" means a person who has remitted the appropriate fee and has been issued a Dedicated Hunter certificate of registration.
  - (d) "Program" means the Dedicated Hunter Program
  - (e) "Program harvest" means using a Dedicated Hunter permit to tag a harvested deer or failing to return a Dedicated Hunter permit with [~~attached~~]the kill tag attached, while enrolled in the program.
  - (f) "Wildlife conservation project" means any project that provides wildlife habitat protection or enhancement, improves hunting or fishing access, or directly benefits wildlife or the Division's current needs and is pre-authorized by the Division.

**R657-38-3. Dedicated Hunter Certificates of Registration.**

(1)(a) To [~~become a participant~~]participate in the program, a person must apply for, obtain, and sign a Dedicated Hunter certificate of registration as prescribed by the Division. A participant is not required to have the Dedicated Hunter certificate of registration on their person while hunting.

(b) Certificates of registration are issued by the Division through a drawing as prescribed in the guidebook of the Wildlife Board for taking big game and R657-62.

(c) Certificates of registration are valid for 3 consecutive years, except as provided by R657-38-~~(f)~~[10], and R657-38-13, beginning on the date the big game drawing results are released and ending on the last day of the general season hunt for the 3<sup>rd</sup> year of enrollment.

(d) The number of Dedicated Hunter certificates of registration is limited to 15% of the total annual general season buck deer quota for each ~~[perspective]~~respective hunt area.

(i) Certificates of registration remaining unissued from the Dedicated Hunter portion of the big game drawing shall be redistributed as general single-season permits for their respective hunt areas in the general buck deer drawing.

(2) The Division may deny~~[-suspend, or revoke]~~ a Dedicated Hunter certificate of registration for any of the ~~[following reasons:]~~reasons identified as a basis for suspension in Section 23-19-9(7) and R657-38-15.

~~\_\_\_\_\_ (a) The drawing application contains false information;  
\_\_\_\_\_ (b) The person, at the time of application, or during the program enrollment, is under a judicial or administrative order suspending any wildlife hunting or fishing privilege within Utah or elsewhere;  
\_\_\_\_\_ (c) The person has violated the terms of any certificate of registration issued by the Division or an associated agreement.~~

~~\_\_\_\_\_ (3) A person under any wildlife suspension may not apply for a certificate of registration until their suspension period has ended.]~~

~~[(4)]~~3 A certificate of registration conditionally authorizes the participant to obtain and use a Dedicated Hunter permit to hunt deer within the area listed on the permit, during the general archery, general muzzleloader and general any legal weapon buck deer ~~[hunts]~~seasons according to the dates and boundaries established by the Wildlife Board. When available, the certificate of registration may also authorize hunting within the general deer archery extended area during the extended season dates.

~~\_\_\_\_\_ (a) The person must use the appropriate weapons and equipment otherwise applicable to each season and boundary.~~

~~[(5)]~~4 The participant's selected hunt area, as issued through the drawing, shall remain the same for the entire duration of that program enrollment period.

~~[(6)]~~5 Participants ~~[of]~~in the program shall be subject to any changes subsequently made ~~[in]~~to this ~~[rule during]~~or other rules during the term of enrollment, unless a variance is authorized by the Division.

#### **R657-38-4. Applications for Certificates of Registration.**

(1) ~~[Application]~~Applications to obtain a Dedicated Hunter certificate of registration ~~[is]~~are made pursuant to R657-62-16.

~~[(a) Applicants must meet all age requirements and proof of]~~2) To apply for a Dedicated Hunter certificate of registration, applicants must:

~~\_\_\_\_\_ (a) have a valid Utah hunting or combination license;  
\_\_\_\_\_ (b) meet all age, hunter education, and license requirements [pursuant to]in Sections 23-19-11, 23-19-22, 23-19-24, and 23-19-[26-]26 and in applicable rules;~~

~~\_\_\_\_\_ (i) [Any person who is 12 years of age or older may apply for a Dedicated Hunter certificate of registration.~~

~~\_\_\_\_\_ (ii) [A person 11 years of age may apply for [of]and obtain a Dedicated Hunter certificate of registration if that person's 12<sup>th</sup> birthday falls in the calendar year the certificate is issued. A person may not hunt big game prior to their 12th birthday; and~~

~~\_\_\_\_\_ (c) be compliant with the restrictions in Subsection (2).~~

~~\_\_\_\_\_ (3) A person under any wildlife suspension may not apply for a certificate of registration until their suspension period has ended.~~

#### **R657-38-5. Dedicated Hunter Preference Point System.**

(1) Dedicated Hunter Preference points are issued pursuant to R657-62-10.

#### **R657-38-6. Fees.**

(1) Any person who is 17 years of age or younger on July 31<sup>st</sup> of the application year shall pay the youth participant fees.

(2) Any person who is 18 years of age or older on July 31<sup>st</sup> of the application year shall pay the adult participant fees.

(3) Lifetime License holders shall pay a reduced fee as authorized by the annual fee schedule.

(4) A participant who enters the program as a Utah resident and thereafter becomes a nonresident, shall be changed to a nonresident status and may be issued ~~[a-]~~nonresident [permit]permits at no additional charge for the remainder of the three-year enrollment period.

(5) A participant who enters the program as a nonresident and thereafter becomes a Utah resident, shall be changed to a resident status and may be issued ~~[a-]~~resident [permit]permits with no reimbursement of the higher nonresident fee for the remainder of the three-year enrollment period.

#### **R657-38-7. Refunds.**

(1) A refund for the Dedicated Hunter certificate of registration may not be issued, except as provided in Section 23-19-38.2 and R657-42.

(2) Any eligible refund ~~[will]~~of a certificate of registration fee, may be issued pro rata, based on the number of years in which any portion of a hunt ~~[was participated in-]~~may have occurred during the enrollment period.

(3) Drawing application fees are nonrefundable.

~~\_\_\_\_\_ (4) A refund shall not be issued under any circumstance if a participant's harvest record indicates two harvests.~~

#### **R657-38-8. Wildlife Conservation and Ethics Course Requirement.**

(1) ~~[Prior]~~After successfully obtaining a Dedicated Hunter certificate of registration and prior to obtaining the first Dedicated Hunter permit of the program, a participant must complete ~~[the]~~a wildlife conservation and ethics course prescribed by the Division.

(2) The wildlife conservation and ethics course is available through the Division's Internet site.

(3) The Division shall keep a record of all participants who complete the wildlife conservation and ethics course.

#### **R657-38-9. Service Hour Requirement.**

(1)(a) Except as provided in R657-38-14, each participant in the program shall provide a minimum of 32 hours ~~[of-]~~service as a volunteer on Division approved wildlife conservation projects.

(i) A participant may obtain a permit in the 1st year of the program without having provided service hours.

(ii) A participant must have completed a minimum of 16 service hours prior to receiving a Dedicated Hunter permit in the 2<sup>nd</sup> year of the program.

(iii) A participant must have completed a minimum of ~~[16 additional]~~32 total service hours prior to receiving a Dedicated Hunter permit in the 3rd year of the program.

(b) If the participant fails to ~~[have]~~complete the minimum ~~[of]~~32 hours [completed at]of service by the expiration of the certificate of registration in the 3rd year, the participant will be ineligible to apply for or obtain any Utah hunting licenses or permits until the remaining service hours have been~~[paid for or]~~ completed.

(i) After a certificate of registration has expired, incomplete service hours may be completed through Division approved ~~[wildlife conservation]~~projects or by payment at the ~~[hour buyout]~~established purchase rate.

(ii) A participant who has not been issued any Dedicated Hunter permits during the enrollment shall not be required to complete the service hour requirement.

(c) Residents ~~[may not purchase more than 24 of the 32 total required service hours. Nonresidents may purchase all]~~and nonresidents may complete service hour requirements through service purchase, or a combination of the [32 total required service hours:]two options.

(d) If a participant fails to fulfill the wildlife conservation ~~[project]~~and ethics course or the minimum service requirements in any year of participation, the participant shall not be issued a Dedicated Hunter permit for that year.

(2) Wildlife conservation projects may be designed by the Division, or any other individual or entity, but must be pre-approved by the Division.

(a) Goods or services provided to the Division for wildlife conservation projects by a participant may be, at the discretion of the Division, substituted for service hours based upon current market values or comparative state contract rates for the goods or services, and ~~[using]~~the approved ~~[hourly]~~service ~~[buyout]~~hour purchase rate ~~[when applying the credit]~~.

~~[(i) Goods or material donations that are specifically requested and accepted by the Division may be considered as service project hours.]~~

(b) The Division shall publicize the dates, times, locations and description of approved wildlife conservation projects and activities on the Division's Internet site.

(3) Service hours must be completed within the enrollment period.

(a) Service hours exceeding the 32 hour minimum shall not be applicable beyond the enrollment period and shall not be ~~[applied]~~credited to subsequent certificate of registrations.

(4) ~~[Participants]~~Except as provided in R657-38-14 for participants surrendering due to injury or illness, all participants are required to perform their own service hours.

(a) Service hours are not transferrable to other participants or certificates of registration.

#### **R657-38-10. Service Hour Exceptions and Program Extension.**

~~[(1) The program service hour requirements may be waived on an annual basis if;~~

~~[(a) The participant provides evidence of leaving the state for a minimum period of one year during the enrollment period for religious or educational purposes.]~~

~~[(i) If the participant requests that the program service hour requirements be waived, and the request is granted, the participant shall not receive a Dedicated Hunter permit for the year in which the program requirements were waived~~

~~[(b) The participant]~~1) A participant who is a member of the United States Armed Forces or public [health or public]safety organization [and]that is mobilized or deployed on [order]orders in the interest of national defense or declared state of emergency may request a one-year program extension if;

~~[(2) A person who is a member of the United States Armed Forces or public safety organization that is mobilized or deployed may request;~~

~~[(a) That the remainder of their program enrollment period be postponed until return from their period of mobilization or deployment;]~~

(a) the person is mobilized or deployed for a minimum period of 3 consecutive months, or;

(b) the participant is mobilized or deployed during the general buck deer season.

(i) The extension may not be granted for a year where the participant was issued a Dedicated Hunter permit and the division determines the participant hunted with the permit.

(2) If an extension is granted;

[(b)a] [That]the minimum annual program requirements shall be postponed into [a]the subsequent year of the enrollment; and

~~[(e) That the program service hour requirements be waived if the participant is prevented from completing the requirements due to the]b) a permit will not be issued in the year the qualifying mobilization or deployment occurs.~~

~~[(A)3] The participant must provide evidence of the mobilization or deployment period.~~

~~[(B) The Division shall determine a pro rata schedule in which the service hour requirements waived correlate with the term length of the deployment or mobilization.]~~

#### **R657-38-11. Allowable Harvest and Permit Return Requirements.**

~~[(1)(a) [Except as provided in section R657-38-12, a]A program participant may take [up to 2]a maximum of two general season deer within the enrollment period[and only 1]. Only one deer may be harvested in a single year.~~

(b) The harvest of an antlerless deer using a Dedicated Hunter permit, when permissible in the extended archery areas and seasons established in the big game guidebook, shall be considered a program harvest.

(2) Upon issue of a Dedicated Hunter permit, the participant is credited with a program harvest.

(a) ~~[2]~~Two program harvests are allowed within ~~[the]an~~ enrollment period.

(b) If program harvests are accrued during the 1st year and 2nd year of the enrollment, a permit shall not be issued for the 3rd year.

(c) In order to remove a program harvest credit, the participant~~;~~ must:

(i) ~~[must]~~not have harvested a deer with the Dedicated Hunter permit~~;~~; and

(ii) ~~[must]~~ return the permit and attached tag, or a qualifying affidavit ~~[for duplication]~~ as proof of non-harvest to a Division office. A handling fee may be assessed for processing an affidavit.

#### **R657-38-12. Dedicated Hunter Permits.**

(1) Pursuant to Sections 23-19-24 and 23-19-26 person must have a valid Utah hunting or combination license to ~~[be issued]~~ apply for or obtain a big game permit.

(a) Except as provided in subsection (b), a permit may not be issued if the participant does not possess a valid hunting or combination license at the time of permit issuance.

(b) A valid hunting or combination license is not required to obtain a permit in the first year of the enrollment period, provided the participant possessed a valid license when applying for the Dedicated Hunter certificate of registration.

(2) The participant must have a valid Dedicated Hunter permit in possession while hunting.

(3) Upon completion of the minimum annual requirements, a Dedicated Hunter permit may be issued. The method and dates in which the Division issues and distributes Dedicated Hunter permits shall be published on the Division's website or in the guidebook of the Wildlife Board for taking big game.

(4) The Division may exclude multiple season opportunities on specific management units due to extenuating circumstances on a portion or all of a hunt area.

(5)(a) The Division may issue a duplicate Dedicated Hunter permit pursuant to Section 23-19-10.

(b) If a participant's unused Dedicated Hunter permit and tag is destroyed, lost, or stolen prior to, or during the hunting season in which the permit is valid, a participant may obtain a duplicate. A handling fee may be assessed for the duplication.

(c) A duplicate Dedicated Hunter permit shall not be issued after the closing date of the general buck deer season.

(6)(a) A participant may surrender a Dedicated Hunter permit in accordance with Rule R657-42.

(b) A participant may not surrender a Dedicated Hunter permit once the general archery deer hunt has begun, unless the Division can verify that the permit was never in the participant's possession.

(7)(a) Lifetime license holders may participate in the program.

(b) The Lifetime license holder shall apply for a certificate of registration in the same manner as all other prospective participants.

(c) Upon joining and for the duration of enrollment in the program, the lifetime license holder agrees to temporarily forego any rights to receive a lifetime license buck deer permit as provided in Section 23-19-17.5.

(d) A refund or credit is not issued for a forgone lifetime license permit.

#### **R657-38-13. Obtaining Other Permits.**

(1) Participants may not apply for or obtain any Utah general season buck deer permit, including general landowner buck deer permits, or respective preference points issued by the Division through the big game drawing, license agents, over-the-counter sales, or the internet during an enrollment period in the program.

(a) Any other Utah general season deer permit obtained is invalid and must be surrendered prior to the beginning season date ~~[of]~~ for that permit. ~~[A refund may not be issued pursuant to]~~ Refunds are governed by Section 23-19-3-38.

(2)(a) Participants may apply for or obtain a limited entry ~~[season]~~ buck deer permit, including CWMU, limited entry landowner, conservation, expo, and poaching reported rewards permits.

(i) ~~[The]~~ A limited entry buck deer permit may be obtained without ~~[the]~~ completion of the annual program requirements, but does not exempt the participant from fulfilling the minimum requirements of the entire enrollment.

(ii) ~~[Obtaining]~~ A person who is enrolled in the program and obtains a limited entry buck deer permit ~~[during the enrollment]~~ through the Utah Big Game drawing or accepts a poaching reported reward limited entry deer permit, may request the Dedicated Hunter program enrollment period be extended one additional year. Any other method of obtaining a limited entry buck deer permit shall not extend the enrollment period, but shall take the place of one of the 3 ~~[possible permit]~~ enrollment years.

(iii) Harvest with a limited entry buck deer permit shall not be counted as a program harvest.

(b) If the participant obtains a limited entry buck deer permit and has been issued a Dedicated Hunter permit, that permit or the Dedicated Hunter permit must be surrendered as permissible by R657-38-11 and R657-42. ~~[A refund may not be issued pursuant to Section 23-19-38.]~~

(i) A participant who obtains a limited entry buck deer permit may only use that permit in the prescribed area and season listed on the permit. Dedicated Hunter privileges are not ~~[transferred]~~ extended to that permit.

(ii) ~~[The]~~ A limited entry buck deer permit may not be obtained if the Dedicated Hunter permit has been in possession of the participant during any open portion of the general buck deer season.

(3)(a) Participants may apply for or obtain antlerless deer permits as provided in Rule R657-5 and the guidebook of the Wildlife Board for taking big game.

(b) Except as provided in R657-38-~~[40]~~ 11(1), harvest of an antlerless deer with an antlerless deer permit shall not be considered a program harvest.

#### **R657-38-14. Certificate of Registration Surrender.**

(1) A participant may ~~[surrender a]~~ formally request withdrawal from the Dedicated Hunter program by surrendering the Dedicated Hunter certificate of registration pursuant to R657-~~[42-4]42~~ provided the participant ~~[has not been issued 2 Dedicated Hunter permits in which hunting may have occurred.~~

~~\_\_\_\_\_ (a) if a participant has been issued the 1st permit, the participant must have completed a minimum of 10 service hours prior to an allowable surrender.]~~ meets the surrender requirements and does not have a program record indicating two harvests within the enrollment period.

~~\_\_\_\_\_ (a) A participant who has not possessed any permits in the program during any portion of the hunting seasons applicable to those permits, may surrender and have all requirements waived.~~

~~\_\_\_\_\_ (i) if the participant surrendering is physically unable to complete the minimum of 10 service hours due to injury or illness,~~

~~the Division may authorize another person to fulfill the requirement in the participant's behalf.]~~

~~(b) [a participant may not surrender a certificate of registration if the participant has met the program harvest limit.] A participant who has possessed only one permit in the program during any portion of the hunting seasons applicable to that permit and not credited with a program harvest on that permit, may surrender upon completing a minimum of 11 service hours;~~

~~(c) A participant who has possessed two permits in the program during any portion of the hunting seasons applicable to those permits and credited with no more than program harvest between the permits, may surrender upon completion of a minimum of 22 service hours.~~

~~(2) [The Division may not issue a refund, except as provided in Section 23-19-38 and R657-42 and R657-38-7.~~

~~(3) If a Dedicated Hunter permit has been issued in which hunting may have occurred, the participant shall not be eligible for preference points to be reinstated upon surrender of the certificate of registration. The Division may reinstate preference point(s) for a participant surrendering in the first year of the enrollment period, provided the person did not possess a dedicated hunter permit during any portion of the hunting seasons applicable to the permit.~~

~~(3) "Possessed" means, for purposes of this section, that division records show a Dedicated Hunter permit was printed, mailed to or picked up by the participant, and not surrendered prior to the beginning of the general archery buck deer season.~~

~~(4)(a) Pursuant to 23-19-38, a participant who becomes ill or suffers an injury that precludes that person from using the permits or completing program requirements, may request withdrawal from the Dedicated Hunter program pursuant to R657-42 and upon furnishing verification of illness or injury from a physician.~~

~~(b) If the participant requesting withdrawal due to illness or injury has a program record indicating two harvests, the Division may waive the remaining service hours or authorize another person to fulfill the requirement in the participant's behalf.~~

#### **R657-38-15. Certificate of Registration Suspension.**

(1) The Division may suspend a Dedicated Hunter certificate of registration pursuant to Section 23-19-9 and R657-26.

(2) A certificate of registration may also be suspended if the participant:

(a) fraudulently submits a time sheet for service hours; or

(b) fraudulently completes any of the program requirements[-]; or

~~(c) is under [suspension of any hunting or fishing privileges in any jurisdiction during the participant's enrollment in the program.] a judicial or administrative order suspending any wildlife hunting or fishing privilege within Utah or elsewhere; or~~

~~(d) provides false information on the drawing application; or~~

~~(e) has violated the terms of any certificate of registration issued by the Division or an associated agreement.~~

(3) A Dedicated Hunter permit is invalid if a participant's certificate of registration is suspended.

(4) The program enrollment period shall not be extended in correlation with any suspension.

**KEY: wildlife, hunting, recreation, wildlife conservation**

**Date of Enactment or Last Substantive Amendment: [March 16, 2015]2017**

**Notice of Continuation: October 5, 2015**

**Authorizing, and Implemented or Interpreted Law: 23-14-18**

## Natural Resources, Wildlife Resources **R657-59** Private Fish Ponds

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41150

FILED: 01/11/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted for taking public input and reviewing the division's program by which live aquatic wildlife may be possessed or transported.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to this rule: 1) expand stocking opportunities for the private aquaculture industry; 2) clarify industry reporting requirements for short-term fishing events; 3) eliminate exemptions and convert all existing exemptions into Certificates of Registration; and 4) incorporate language from Rule R657-16 which eliminates the need for Rule R657-16. (Editor's Note: A proposed repeal of Rule R657-16 is under Filing No. 41149 in this issue, February 1, 2017, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-15-10 and Section 23-15-19

### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment removes requirements that were time consuming and difficult for the private pond owner and private aquaculture industry. The Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because only private pond owners and the private aquaculture industry are affected by this filing.

◆ **SMALL BUSINESSES:** This amendment removes a requirement that was time consuming and difficult for the private pond owner and private aquaculture industry. DWR determines the amendment does not impose any additional requirements on other persons nor generate a cost or savings impact to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment removes a requirement that was time consuming and difficult for the private pond owner and private aquaculture industry. DWR determines the amendment does not impose any additional requirements on other persons nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment removes requirements that were time consuming and difficult for the private pond owners and private aquaculture industry. There are not any additional compliance costs associated with this amendment.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 NATURAL RESOURCES  
 WILDLIFE RESOURCES  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Office 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 03/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017

AUTHORIZED BY: Gregory Sheehan, Director

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

**R657-59. Private Fish Ponds, Short Term Fishing Events, Private Fish Stocking, and Institutional Aquaculture.**

**R657-59-1. Purpose and Authority.**

(1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for:

- (a) private fish ponds;
- (b) short term fishing events;
- (c) private fish stocking; and
- (d) institutional aquaculture.

(2)(a) This rule does not regulate fee fishing or private aquaculture as provided in Title 4, Chapter 37 of the Utah Code, and Department of Agriculture Rule R58-17.

(b) The display of aquatic wildlife in aquaria for personal, commercial, or educational purposes is regulated by R657-3.

(3) A person engaging in any activity provided in Subsection (1) must also comply with all requirements established

by Title 4 of Utah Code and all rules promulgated by the Utah Department of Agriculture, including, but not limited to:

- (a) requirements for the importation of aquaculture products into Utah; and
- (b) requirements for fish health approval for aquaculture products.

~~([3]4)~~ Any violation of, or failure to comply with, any provision of Title 23 of the Utah Code, this rule, or any specific requirement contained in a certificate of registration [~~or exemption certificate~~] issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

**R657-59-2. Definitions.**

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

(2) In addition:

(a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(b) "Aquaculture facility" means any facility used for ~~[propagating, rearing, or producing aquatic wildlife or aquaculture products. Facilities that are separated by more than 1/2 mile, or facilities that drain to, or are modified to drain to, different drainages are considered to be separate aquaculture facilities, regardless of ownership]~~ the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions that holds a valid Certificate of Registration from the Utah Department of Agriculture.

(c)(i) "Aquaculture product" means privately purchased, domestically produced aquatic ~~[wildlife]~~ organisms, or their ~~[eggs or]~~ gametes.

(ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.

(d) "Aquatic wildlife" for the purposes of this chapter are aquatic organisms that are conceived and born in public waters.

~~(e) "Certified sterile salmonid" means any salmonid fish or gamete that originates from a health certified source and is incapable of reproduction due to triploidy or hybridization[-], and is confirmed as sterile using the protocol described in R657-59-13.~~

~~(f) "FEMA" means Federal Emergency Management Administration.~~

~~(i) Triploid salmonids accepted as sterile under this subsection shall originate from a source that is certified as incapable of reproduction using the following protocols:~~

~~(A) fish samples shall be collected, prepared, and submitted to a certified laboratory by an independent veterinarian, certified fish health professional, or other professional approved by the division;~~

~~(B) certified laboratories shall be limited to independent, professional laboratories capable of reliably testing fish sterility and approved by the division; and~~

~~(C) sterility shall be determined by sampling and testing 60 fish from each egg lot with procedures generally accepted in the scientific community as reliable for verifying triploidy with a 95% or greater success rate.~~

~~(ii) An aquaculture facility that receives certified sterile salmonid aquaculture product is not required to conduct additional sterility testing prior to stocking the aquaculture product in a private~~

fish pond, provided the sterile salmonids are kept segregated from other fertile salmonids:

(iii) Hybrid salmonid fish species accepted as sterile under this subsection are limited to splake trout (lake trout/brook trout cross) and tiger trout (brown trout/brook trout cross);

(e) "Exemption certificate" means a document issued by the division pursuant to R657-59-7 that exempts a designated private fish pond from the requirement of obtaining a certificate of registration to stock aquaculture product in the pond;

(f)(i) "HUC" or "Hydrologic Unit Code" means a cataloging system developed by the US Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States.

(ii) HUCs are typically reported at the large river basin (6-digit HUC) or smaller watershed (11-digit and 14-digit HUC) scale.

(iii) HUC maps and other associated information are available at <http://water.usgs.gov/wsc/sub/1602.html>.

(h) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program, or public agency.

(i) "Ornamental aquatic animal species" means any species of fish, mollusk, or crustacean that is commonly cultured and sold in the United States' aquarium industry for display as defined in R657-3-4.

(b) "Ornamental aquatic animal species" does not include:

(i) fresh water;

(A) sport fish - aquatic animal species commonly angled or harvested for recreation or sport;

(B) baitfish - aquatic animal species authorized for use as bait in R657-13-12, and any other species commonly used by anglers as bait in sport fishing;

(C) food fish - aquatic animal species commonly cultured or harvested from the wild for human consumption; or

(D) native species; or

(ii) aquatic animal species prohibited for importation or possession by any state, federal, or local law; or

(iii) aquatic animal species listed as prohibited or controlled in Sections R657-3-22 and R657-3-23;

(h)(j) "Private fish pond" means a pond, reservoir, or other body of water; or any fish culture system which:

(A) is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural stream channel;

(B) is contained entirely on privately owned land; and

(C) is used for holding or rearing fish for a private, noncommercial purpose.

(i)(k) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.

(j)(l) "Salmonid" means any fish belonging to the trout/salmon family.

(m) "Short-term fishing event" means any event where:

(i) privately acquired fish are held or confined for a period not to exceed ten days in a temporary structure or container;

(ii) for the purposes of providing fishing or recreational opportunity; and

(iii) no fee is charged as a requirement to fish.

(n) "Sterile" means the inability to reproduce.

### **R657-59-3. Certificate of Registration Not Required -- Private Fish Ponds and Short Term Fishing Events.**

(1) A certificate of registration is not required to receive and stock an aquaculture product in a private fish pond, provided the following conditions are satisfied:

(a) the pond is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural stream channel; private fish pond satisfies the screening requirements established in R657-59-10;

(b) the pond is properly screened consistent with the requirements in R657-59-15 to prevent the movement of aquatic wildlife into the pond or the movement of any aquaculture product out of the pond; if a screen is required, the aquaculture product received must be of sufficient size to be incapable of escaping the pond through or around the screen;

(c) the species, sub-species, and sterility of the aquaculture product received is authorized for stocking in the area where the private fish pond is located consistent with the requirements in R657-59-11;

(d) the aquaculture product is:

(i) delivered to the pond by a licensed aquaculture facility as defined in Section 4-37-103 Title 4 Chapter 37 of Utah Code; or

(ii) the owner, lessee, or operator of the private pond:

(A) receives less than 50 pounds of sterile rainbow trout from a licensed facility in a single delivery;

(B) possesses documentation from the aquaculture facility verifying the information itemized in R657-59-14(2)(b) and R58-17-14(2) during transport; and

(C) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the private fish pond;

(d)(e) the owner, lessee, or operator of the pond obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Section 4-37-501;

(e) the species, strain, and reproductive capability of the aquaculture product received is authorized for stocking in the area where the pond is located consistent with the requirements in R657-59-16; Chapter 4 Title 37 of Utah Code; and

(f) the aquaculture product received is of sufficient size to be incapable of escaping the pond through or around the screen;

(g) the owner or operator of the private fish pond provides the aquaculture facility a signed written statement that the pond and aquaculture product received are in compliance with this section; and

(h) the owner, lessee, or operator of a private fish pond or an invitee has not previously been found in violation of any provision of Title 4, Chapter 37 or Title 23 of the Utah Code, or this rule;

2) A certificate of registration is not required to receive and stock an aquaculture product in a short-term fishing event, provided:

~~\_\_\_\_\_ (a) the temporary container or structure to be stocked is entirely separated from any public waterway or waterbody;~~

~~\_\_\_\_\_ (b) the species, sub-species, and sterility of the aquaculture product received is authorized for stocking in the area where the short-term fishing event is located consistent with the requirements in R657-59-11;~~

~~\_\_\_\_\_ (c) the aquaculture product is:~~

~~\_\_\_\_\_ (i) delivered to the pond by a licensed aquaculture facility as defined in Chapter 4 Title 37 of Utah Code; or~~

~~\_\_\_\_\_ (ii) the owner, lessee, or operator of the short-term fishing event:~~

~~\_\_\_\_\_ (A) possesses documentation from the aquaculture facility verifying the information itemized in R657-59-6 and R58-17-14 during transport; and~~

~~\_\_\_\_\_ (B) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the short-term fishing event;~~

~~\_\_\_\_\_ (d) the owner, lessee, or operator of the pond obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 of Utah Code; and~~

~~\_\_\_\_\_ (e) the operator of the short-term fishing event provides the aquaculture facility a signed written statement that the short-term fishing event and aquaculture product received are in compliance with this section.~~

**R657-59-4. ~~[Aquaculture Facility Reporting Requirements.]Certificate of Registration Required -- Other Fish Stocking Activities.~~**

~~\_\_\_\_\_ (1) A person who owns or operates an aquaculture facility shall file an annual report with the division documenting each sale or transfer of live aquaculture product made pursuant to R657-59-3 and R657-59-7 to a private fish pond owner, lessee, or operator.~~

~~\_\_\_\_\_ (2) The report shall contain]~~

~~\_\_\_\_\_ (1)(a) A certificate of registration must be obtained from the division to receive, possess, stock, or release an aquaculture product or aquatic wildlife in a manner that does not satisfy the certificate of registration waiver requirements identified in R657-59-3.~~

~~\_\_\_\_\_ (b) If a certificate of registration is required, a separate application for each fish stocking request must be submitted, except:~~

~~\_\_\_\_\_ [(a) the name, address, and Utah health approval number of the person;~~

~~\_\_\_\_\_ (b) the name, address, and phone number of the private fish pond's owner, lessee, or operator;~~

~~\_\_\_\_\_ (c) the number and weight of aquaculture product by]l) stocking locations are separated by less than 1/2 mile may be placed on a single application; and~~

~~\_\_\_\_\_ (ii) water bodies that drain to, or are modified to drain to, the same drainage may be listed on a single application.~~

~~\_\_\_\_\_ (2) Fish stocked or released in a water body not eligible as a private fish pond or short-term fishing event under R657-59-3 are considered wild aquatic wildlife and may be taken only as provided in Rule R657-13 and the fishing proclamation.~~

~~\_\_\_\_\_ (3) A permanent water body stocked pursuant to a certificate of registration for private stocking may not be screened to contain fish, except:~~

~~\_\_\_\_\_ (a) a water stocked with grass carp to control aquatic weeds must be adequately screened to prevent the grass carp from escaping; and~~

~~\_\_\_\_\_ (b) the division may require screening of the water body to protect wildlife resources found in the water body and any connected waterways.~~

~~\_\_\_\_\_ (4)(a) An application for a certificate of registration for private stocking to stock fish other than grass carp may be approved only if:~~

~~\_\_\_\_\_ (i) [~~species;~~] the stocking will only occur on privately owned land;~~

~~\_\_\_\_\_ (ii) [~~strain; and-~~] the body of water to be stocked is a reservoir that is wholly contained on the land owned by the applicant;~~

~~\_\_\_\_\_ (iii) [~~reproductive capability;~~] the body of water is not stocked or otherwise actively managed by the division;~~

~~\_\_\_\_\_ (iv) the fish to be stocked are for a non-commercial purpose; and~~

~~\_\_\_\_\_ (v) in the opinion of the division, stocking will not interfere with division management objectives or cause detrimental interactions with other species of fish or wildlife.~~

~~\_\_\_\_\_ (5) An application for a certificate of registration for private stocking of triploid grass carp for control of aquatic weeds will be evaluated based upon:~~

~~\_\_\_\_\_ (a) the severity of the weed problem;~~

~~\_\_\_\_\_ (b) availability of other suitable means of weed control;~~

~~\_\_\_\_\_ (c) adequacy of screening to contain the grass carp; and~~

~~\_\_\_\_\_ (d) [~~date of sale or transfer;~~] potential for conflict with division management objectives or detrimental interactions with other species of fish or wildlife.~~

~~\_\_\_\_\_ (e) description of the private fish pond location, including UTM coordinates; and~~

~~\_\_\_\_\_ (f) written verification for each live sale or transfer that the private fish pond was inspected and is in compliance with the requirements of Sections 23-15-10(2) and (3) (c) and this rule.~~

~~\_\_\_\_\_ (3) The report required in this Subsection shall be submitted to and received by the division no later than December 31.]~~

**R657-59-5. ~~Application for a Fish Stocking Certificate of Registration[Required]; Application Criteria; Amendment of Certificate of Registration.~~**

~~\_\_\_\_\_ (1) A certificate of registration must be obtained from the division to receive, stock, or possess an aquaculture product in a private fish pond where:~~

~~\_\_\_\_\_ (a) the aquaculture product is classified under R657-59-16 as an unauthorized species, strain, or reproductive capability for the area where the pond is located;~~

~~\_\_\_\_\_ (b) the aquaculture facility does not deliver the aquaculture product directly to the private fish pond, unless the transport of fish by the owner, lessee, or operator of the private pond is allowed without a certificate of registration pursuant to R657-59-3(1)(c)(ii); or~~

~~\_\_\_\_\_ (c) the owner, lessee, or operator of a private fish pond or an invitee is found in violation of any provision of Title 4, Chapter 37 or Title 23 of the Utah Code, or this rule.~~

~~\_\_\_\_\_ (2) A separate certificate of registration is required for each private fish pond as defined under "aquaculture facility" in R657-59-2.~~

**R657-59-6. Application for a Certificate of Registration.**

(1)(a) A person may apply to receive a certificate of registration for a ~~private~~ fish ~~pond~~ stocking activity by submitting an application with the required handling and inspection fee to the Wildlife Registration Office, Utah Division of Wildlife Resources, 1594 West North Temple, Salt Lake City, Utah 84114.

(a)(b) Application forms are available at all division offices and at the division's internet address.

~~(2) A certificate of registration may be issued after a division representative inspects the private fish pond and confirms that the pond and the aquaculture products requested for stocking in the pond meet all requirements in this rule and Title 23 of the Utah Code.~~ (c) The application may require up to 30 days for processing.

(d) The division may require a site inspection of the stocking location be performed to confirm compliance with the provisions found in this rule.

(4)(e) The division may deny ~~a private fish pond~~ an application where:

(a)(i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

(b) ~~the pond is located on a natural lake, natural flowing stream, or a reservoir constructed on a natural stream channel;~~ (ii) receiving or stocking the aquaculture product or aquatic wildlife may:

~~(c) the pond is not screened consistent with the requirements in R657-59-15;~~

~~(d) the source of the aquaculture product is not an authorized aquaculture facility with a health approval number issued pursuant to Section 4-37-501;~~

~~(e) the applicant or its agents or invitees have previously violated of any provision of Title 4, Chapter 37 of the Utah Code; Title 23 of the Utah Code, or this rule;~~

~~(f) receiving or stocking the aquaculture product in the pond may:~~

(i)(A) violate any federal, state or local law or any agreement between the state and another party;

(ii)(B) negatively impact native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;

(iii)(C) pose an identifiable adverse threat to other wildlife species or their habitat;~~or~~

(iv)(D) pose an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives; or

~~(g) the aquaculture product received is sufficiently small to be capable of escaping the pond through or around the screen; or~~

~~(h)(E) non-salmonid aquaculture product will be stocked in a pond within the 100 year flood plain (below 6500 feet in elevation) in the Green River and Colorado River drainages and the pond does not meet FEMA standards on construction and screening[-]; or~~

(iii) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law that bears a reasonable relationship to the applicant's ability to responsibly carry out the stocking activity.

(5)(2) An application for ~~private fish pond~~ a certificate of registration may not be denied without the review and consent of the division director or a designee.

(6)(3) A ~~private fish pond~~ certificate of registration ~~shall~~ for a fish stocking activity may remain effective for up to 5 years from the date of issuance as identified on the certificate of registration, unless:

(a) amended by the division at the request of ~~private fish pond owner, lessee, or operator~~ the certificate of registration holder;

(b) terminated or modified by the division pursuant to R657-59-[47]13; or

(c) suspended by the division or a court pursuant to Section 23-19-9.

~~(7) Certificates of registration are renewable on or before the expiration date identified]~~

(4) An amendment to the certificate of registration is required each time fish are stocked, except a person may request to stock fish more than once if the request is made on the application and the request is approved by the division on the certificate of registration [and upon payment of the prescribed handling, and inspection fees].

**R657-59-[7. Exemption Certificate.]6. Acquiring, Importing, and Transferring Aquaculture Products.**

(1)~~Upon application for a private fish pond certificate of registration and a risk assessment of the pond by the division under R657-59-6, the Division may issue an exemption certificate in lieu of a certificate of registration where the following conditions exist:~~

~~(a) Species of aquaculture products that may be imported into the state are provided in Rule R657-3-23.~~

~~(a) The pond is eligible to receive a certificate of registration under the requirements of this chapter;~~

~~(b) The pond and species, strain and reproductive capability of aquaculture product requested present no risk to native aquatic wildlife species because:~~

~~(i) the location and configuration of the pond physically eliminate the possibility of aquaculture product escaping into the surface waters of the state;~~

~~(ii) the pond has no inflow or outflow connection with the surface waters of the state;~~

~~(iii) the pond is located in an area where escapement of aquaculture product will cause no ecological damage to native aquatic wildlife species; or~~

~~(iv) the pond is located in an area where no Tier I or II aquatic wildlife species on the division's sensitive species list or threatened or endangered species listed under the Endangered Species Act will be threatened by the risk of escapement; and~~

~~(c) the aquaculture product is delivered directly to the pond by the aquaculture facility.~~

~~(2) The exemption certificate shall have the legal effect of a certificate of registration for purposes of stocking the pond with the species, strain and reproductive capability of aquaculture product authorized in the exemption certificate.~~

~~(3) Aquaculture facilities supplying aquaculture product to private fish ponds operating under an exemption certificate shall comply with:~~

~~(a) the written terms of the exemption certificate; and~~

~~(b) the inspection and reporting requirements in R657-59-4.~~

~~(4) The exemption certificate will:~~

~~(a) designate the species, strain and reproductive capability of aquaculture product that may be stocked in the pond;~~

~~(b) identify any restrictions or conditions relative to stocking and maintaining aquaculture product in the pond;~~

~~(c) identify the owner, lessee, or operator of the private fish pond; and~~

~~(d) describe the private fish pond's location, including UTM coordinates.~~

~~(5) The private fish pond exemption certificate shall remain effective, without the requirement of renewal, for the useful life of the pond, provided:~~

~~(a) the ownership of the pond does not change;~~

~~(b) the pond, screen, and inflow and outflow structures remain in the same state that existed when inspected;~~

~~(c) the species, strain, and reproductive capability of aquaculture product stocked and maintained in the pond remains consistent with the that authorized in the exemption certificate; and~~

~~(d) the exemption certificate is not modified, terminated, or suspended by the division pursuant to Section 23-19-9, R657-59-1(3), or R657-59-17 or a court of competent jurisdiction.~~

~~(6) Any private fish pond operating under authority of an exemption certificate which is modified, terminated, or suspended pursuant to Section 23-19-9, R657-59-1(3), or R657-59-17 shall be subject to the aquaculture product depopulation requirements in R657-59-8.~~

**R657-59-8. Failure to Renew Certificates of Registration.**

~~(1) If an owner, lessee, or operator of a private fish pond fails to renew the certificate of registration upon expiration, or the division suspends or terminates the certificate of registration, all live aquaculture products permitted under the certificate of registration shall be disposed of as follows:~~

~~(a) Unless the Wildlife Board orders otherwise, all aquaculture products must be removed within 30 days of suspension or the expiration date of the certificate of registration, or within 30 days after ice-free conditions on the water; or~~

~~(b) At the discretion of the division, aquaculture products may remain in the waters at the facility, but shall only be taken as prescribed within Rule R657-13 for Taking Fish and Crayfish.~~

~~(2) Aquaculture products in a private fish pond may not be moved alive unless the pond has received disease testing and is issued a health approval number from the Department of Agriculture and Food pursuant to Section 4-37-501.~~

~~(3) Aquaculture products from a private fish pond infected with any pathogen specified in the Department of Agriculture Rule R58-17 must be disposed of as directed by the division to prevent further spread of such pathogen.~~

**R657-59-9. Reporting Requirements for Private Fish Ponds Authorized by Certificate of Registration.**

~~(1) Any person that possesses a certificate of registration for a private fish pond must submit to the division an annual report of all live aquaculture products purchased or acquired during the year. This report must contain the following information:~~

~~(a) the name, address, and phone number of the private fish pond's owner, lessee, or operator;~~

~~(b) name, address, and certificate of registration number of the seller or supplier;~~

~~(c) the number and weight of aquaculture product by:~~

~~(i) species;~~

~~(ii) strain; and~~

~~(iii) reproductive capability;~~

~~(d) date of sale or transfer;~~

~~(2) A form for this information is provided by the division.~~

~~(3) The annual report must be received by the division no later than January 30.~~

**R657-59-10. Importation.**

~~(1)(a) The species, strains, and reproductive capabilities of live aquaculture products that may be imported and stocked in a private fish pond without a certificate of registration are provided in R657-59-16.;~~

~~(b) [A certificate of registration or exemption certificate is required to import and stock all species, strains and reproductive capabilities of live aquaculture products not specifically exempted from licensure in R657-59-16.~~

~~(2) Applications to import aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City. [Applications]~~

~~(c) Complete applications may require up to 30 days for [action.]processing.~~

**[R657-59-11. Acquiring and Transferring Aquaculture Products.]**

~~[(1)]2) Live aquaculture products, other than ornamental fish, may only be:~~

~~(a) purchased or acquired [~~only~~]from sources [~~that have a valid certificate of registration from~~]approved by the Utah Department of Agriculture and Food to sell such products[~~or from a person located outside Utah if that person is approved by the Utah Department of Agriculture and Food to import the particular aquaculture product~~]; and~~

~~(b) acquired, purchased or transferred[~~only~~] from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a [~~fish health approval~~] number as provided in [~~Section 4-37-501. This also applies to separate facilities owned by the same entity since each facility is treated separately, regardless of ownership~~]Title 4 Chapter 37 of Utah Code.~~

~~[(2)]3)(a) Any person who has been issued a valid aquaculture certificate of registration may transport live aquaculture products as specified on the certificate of registration to [~~the private fish pond~~]a stocking location.~~

~~(b) All transfers or shipments of live aquaculture products must be accompanied by documentation of the source and destination of the product, including:~~

~~(i) name, address, certificate of registration number, and fish health approval number of the source;~~

~~(ii) number and weight being shipped, by species; [~~and~~]~~

~~(iii) name, address, and certificate of registration number, if applicable, of the destination[~~-~~]; and~~

~~(iv) a copy of the importation permit provided by the Utah Department of Agriculture.~~

~~(c)(i) Once stocked in a water body, aquaculture products may not be transferred or relocated live.~~

~~(4)(a) To import, transport, or stock live grass carp (*Ctenopharyngodon idella*), each fish must be verified as being sterile triploid by the U.S. Fish and Wildlife Service.~~

~~(b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City prior to importation.~~

~~(c) A copy of the triploidy verification form must also accompany the fish during transport.~~

~~(5)(a) Live aquaculture products may be shipped through Utah without a certificate of registration provided that:~~

~~(i) the aquatic wildlife or aquaculture products are not sold or transferred;~~

~~(ii) the aquatic wildlife or aquaculture products remain in the original container;~~

~~(iii) the water is not exchanged or discharged; and~~

~~(iv) the shipment is in Utah no longer than 72 hours.~~

~~(b) Proof of legal ownership and destination must accompany the shipment.~~

#### **R657-59-[12]-7. Inspection of Records and [Facilities]Fish Stocking Locations.**

~~(1) [The following records and information must be maintained for a period of two years]Records of purchase, distribution, and acquisition of aquaculture products and copies of certificates of registration must be kept for the duration of the certificate of registration and must be available for inspection by a division representative during reasonable hours[.]~~

~~[(a) records of purchase and acquisition of aquaculture products, including records maintained in connection with the reporting requirements in R657-59-9;~~

~~(b) certificates of registration; and ][(c) valid identification of stocks].~~

~~(2) The division and its authorized representatives may inspect a private fish pond [at any time]or other stocking location during reasonable hours to verify compliance with the requirements of Title 23 of the Utah Code and this rule[, and to conduct pathological testing].~~

~~(3) Consistent with the provisions of Utah Administrative Code R58-17, the division and its authorized representatives may inspect aquaculture products stocked pursuant to this rule to conduct sterility, pathological, fish culture, or physical investigations during reasonable hours to verify compliance with the requirements of Title 23 of the Utah Code and this rule.~~

#### **R657-59-[13]-8. Prohibited Activities.**

~~(1) A private fish pond may not be developed on a natural lake, natural flowing stream, or reservoir constructed on a natural stream channel.~~

~~(2) Live aquatic wildlife may not be collected from the wild and [placed in a private fish pond.]used in stocking activities unless authorized by the Wildlife Board consistent with the requirements in R657-3.~~

~~(3) Any]2) A person may not release or transport any live aquaculture product received or held [in a private fish pond may not be released from the pond or transported live to another~~

~~location]under the provisions of this rule without prior written authorization of the division and the Fish Health Policy Board.~~

~~[(4) A private fish pond owner, lessee, or operator may not sell, donate, or transfer from the pond live aquaculture product, including gametes and eggs.]~~

#### **R657-59-[14]-9. Fishing License and Transportation of Dead Aquaculture Product.**

~~(1) A fishing license is not required to:~~

~~(a) take fish from a legally recognized private fish pond[.] or short-term fishing event; or~~

~~[(2) A fishing license is not required to transport dead aquaculture product from a private fish pond, provided the person possesses a receipt with the following information:~~

~~(a) species and number of fish;]~~

~~(b) [date caught;]~~

~~[(c) certificate of registration number or exemption certificate number of the private fish pond, where applicable; and~~

~~(d) name, address, and telephone number of the owner, lessee, or operator of the private fish pond.~~

~~(3) Any person that has a valid fishing license may]to transport [up to a legal limit of]dead aquaculture product from a private fish pond [without further documentation]or short-term fishing event.~~

#### **R657-59-[15]-10. Screen Requirements.**

~~(1)[-A] (a) Except as provided in Subsection (b), all permanent and intermittent inlets and outlets of a private fish pond [must]shall be screened [as follows-]to prevent the movement of aquatic wildlife into the pond or the escapement of any aquaculture product from the private fish pond into public waters.~~

~~(b) Upon request of the private pond owner or lessee, the division may conduct a site analysis and waive screen requirements if it is determined that the waiver of screen requirements will not be detrimental to the wildlife resource.~~

~~(c) Any aquaculture product that escapes a private fish pond are considered aquatic wildlife for the purposes of licensing requirements, bag limits, and allowable methods of take.~~

~~(2) If a screen is required, the screen must meet the following provisions:~~

~~(a) the screen [shall]should be constructed of durable materials that are capable of maintaining integrity in a water and air environment for an extended period of time;~~

~~(b) the screen shall have no openings, seams or mesh width greater than the width of the fish being stocked;~~

~~(c) screen construction and placement shall eliminate any movement of aquaculture product into or out of the pond;~~

~~(d) screen dimensions shall be based on precluding escapement of the size of the fish being stocked;~~

~~(e) all water entering or leaving the pond, including run off and other high water events, shall flow through a screen consistent with the requirements of this subsection; and~~

~~(f)d) the screen shall be maintained and in place at all times while any aquaculture product remains in the pond.~~

~~(2) Ponds with no inlet or outlet to the surface waters of the state are not required to have a screen or device to restrict movement of aquaculture product.]~~

**R657-59-[16;11. Species;— Strains;] and Reproductive Capabilities of Aquaculture Product Authorized by Area for Stocking in Private Fish Ponds [Without a Certificate of Registration or Exemption Certificate]and Short-Term Fishing Events.**

(1) A certificate of registration[~~or exemption certificate~~] must be obtained from the division pursuant to R657-59-[6]4 and R657-59-[7]5 prior to stocking in any private fish pond of:

- (a) a non-salmonid aquaculture product; or
- (b) any other species or [~~reproductive capability~~]sterility of aquaculture product not specifically authorized in this Section.

(2)(a) [~~The following subsections designate areas closed to stocking aquaculture product in private fish ponds using a general area identifier such as canyon, creek, spring, or location and then followed by a specific area identifier in the form of hydrologic unit code (HUC) or township and range.~~

~~(b) The general area identifier is included for purposes of reference only and may include all or part of the associated drainage.~~

~~(c) The HUC or township and range designations constitute the legal descriptions of the actual closed areas.~~

(3) ~~Certified sterile salmonid aquaculture product may be stocked without a certificate of registration or exemption certificate in any private fish pond within the state consistent with R657-59-3, except for ponds located within the following areas: [Except as provided in Subsection 4, a certified sterile salmonid aquaculture product may be stocked in any private fish pond or short-term fishing event within the state without a certificate of registration.~~

~~(a) Washington County - stocking is prohibited in the following areas: [b) Triploid salmonids accepted as sterile pursuant to this rule shall originate from a source that is certified as incapable of reproduction using the following protocols:~~

~~(i) [Ash Creek - HUC 150100080405;]fish samples shall be collected, prepared, and submitted to a certified laboratory by an independent veterinarian, certified fish health professional, or other professional approved by the division or Utah Department of Agriculture;~~

~~(ii) [Beaver Dam Wash - HUC 15010010;]certified laboratories shall be limited to independent, professional laboratories capable of reliably testing fish sterility and approved by the division;~~

~~[(iii) Laverkin Creek - HUC 150100080302;]~~

~~(iv) [Leeds Creek - HUC 150100080906;]sterility shall be determined by sampling and testing 60 fish from each egg lot using either flow cytometry, particle analysis, or karyotyping; and~~

~~(v) [Baker Dam Reservoir/Santa Clara River - HUC 150100080704;]At least 95% of the fish test triploid.~~

~~[(vi) Tobin Wash - HUC 150100080802;]c) An aquaculture facility that receives certified sterile salmonid aquaculture product is not required to conduct additional sterility testing prior to stocking the aquaculture product, provided the sterile salmonids are kept segregated from other fertile salmonids.~~

~~[(vii) Sand Cove Wash - HUC 150100080801;~~

~~(viii) Manganese Wash/Santa Clara River - HUC 150100080804;~~

~~(ix) Wittwer Canyon/Santa Clara River - HUC 150100080808;~~

~~(x) Cove Wash/Santa Clara River - HUC 150100080809;~~

~~(xi) Moody Wash - HUC 150100080603;~~

~~(xii) Upper Moody Wash - HUC 150100080602;~~

~~(xiii) Magotsu Creek - HUC 150100080704;~~

~~(xiv) South Ash Creek - HUC 150100080405);~~

~~(xv) Water Canyon - HUC 150100080701);~~

~~(xvi) Chinatown Wash/Virgin River - HUC 150100080508;~~

~~(xvii) Lower Gould Wash - HUC 150100080508;~~

~~(xviii) Grapevine Wash/Virgin River - HUC 150100080903;~~

~~(xix) Cottonwood Wash/Virgin River - HUC 150100080909;~~

~~(xx) Middleton Wash/Virgin River - HUC 150100080910;~~

~~(xxi) Lower Fort Pierce Wash - HUC 150100080605;~~

~~(xxii) Atkinville Wash - HUC 150100080303;~~

~~(xxiii) Lizard Wash - HUC 150100080302;~~

~~(xxiv) Val Wash/Virgin River - HUC 150100080307;~~

~~(xxv) Bulldog Canyon - HUC 150100080310; and~~

~~(xxvi) Fort Pierce Wash - HUC 15010009;]~~

~~(d) Hybrid salmonid fish species accepted as sterile under this subsection are limited to splake trout (lake trout/brook trout cross) and tiger trout (brown trout/brook trout cross).~~

(3) Fertile rainbow trout may be stocked without a certificate of registration [~~or exemption certificate~~]in any private fish pond or short-term fishing event within the state consistent with R657-59-3, except for [~~ponds~~]waters located within the following [~~areas and elevations:~~] drainages designated by County and hydrologic unit code (HUC) or township and range:

Beaver County[~~- stocking is prohibited in the following~~]:

(i) North Creek drainage - HUCs 160300070203, 160300070208; and

(ii) Pine Creek drainage (near Sulphurdale) - HUC 160300070501.

(b) Box Elder County - stocking is prohibited in the following:

(i) Morison Creek drainage - HUC 16020308;

(ii) Bettridge Creek drainage - HUC 16020308;

(iii) Death Creek drainage - HUC 16020308;

(iv) Camp Creek drainage - HUC 16020308;

(v) Goose Creek drainage - HUC 17040211;

(vi) Raft River drainage - HUC 17040210;

(vii) Fat Whorled Pond Snail Springs - Township 10 North, Ranges 4 and 5 West; and

~~[(viii) Mantua Reservoir - HUC 16010204.]~~

(c) Cache County[~~- stocking is prohibited in the following~~]:

(i) Logan River drainage - HUC 16010203;

(ii) Blacksmith [~~Fork~~]ForkRiver drainage - HUC 16010203;

(iii) East Fork Little Bear River drainage- HUC 16010203; and

(iv) Little Bear River drainage - HUC 16010203.

(d) Carbon County[~~- stocking is prohibited in any private fish pond~~]:

(i) waters above 7000 feet in elevation.

(e) Daggett County[~~- stocking is prohibited in any private fish pond~~]:

(i) waters above 7000 feet in elevation.

(f) ~~[Davis County -- no areas closed to stocking fertile rainbow trout.~~

~~(g) ]Duchesne County[ -- stocking is prohibited in any private fish pond];~~

~~(i) waters above 7000 feet in elevation.~~

~~([h]g) Emery County[ -- stocking is prohibited in any private fish pond];~~

~~(i) waters above 7000 feet in elevation.~~

~~(i) Garfield County[ -- stocking is prohibited in the following areas]:~~

~~(i) Birch Creek/Main Canyon drainage - HUC 140700050102;~~

~~(ii) Center Creek drainage (tributary to East Fork Sevier R) HUC 160300020412;~~

~~(iii) Cottonwood Creek drainage - HUC 160300020406;~~

~~(iv) East Fork of Boulder Creek/ West Fork Boulder Creek drainage - HUC 140700050206; and~~

~~(v) Ranch Creek drainage (East Fork Sevier River drainage) - HUC 160300020405.~~

~~([j]h) Grand County[ -- stocking is prohibited in any private fish pond];~~

~~(i) waters above 7000 feet in elevation.~~

~~([k]i) [Iron]Juab County[ -- no areas closed to stocking fertile rainbow trout.];~~

~~[ -- (l) Juab County -- stocking is prohibited in the following areas:]~~

~~(i) Sulphur Wash drainage - HUC 160203011303;~~

~~(ii) Middle Pleasant Valley Draw drainage - HUC 160203011402;~~

~~(iii) Lower Pleasant Valley Draw drainage - HUC 160203011403;~~

~~(iv) Cookscomb Ridge drainage - HUC 160203011501;~~

~~(v) Outlet Salt Marsh Lake drainage - HUC 160203011502;~~

~~(vi) Deep Creek Range drainage - HUC 160203011503;~~

~~(vii) Snake Valley drainage - HUC 160203011504;~~

~~(viii) Little Red Cedar Wash drainage - HUC 160203011505;~~

~~(ix) Trout Creek drainage - HUC 160203060101;~~

~~(x) Smelter Knolls drainage - HUC 160203060104;~~

~~(xi) Toms Creek drainage - HUC 160203060201;~~

~~(xii) Goshute Canyon drainage - HUC 160203060202;~~

~~(xiii) Indian Farm Creek drainage - HUC 160203060204;~~

~~(xiv) Spring Creek drainage - HUC 160203060803;~~

~~(xv) Fifteenmile Creek drainage - HUC 160203060804;~~

~~(xvi) East Creek/East Deep Creek drainage - HUC 160203060805;~~

~~(xvii) East Creek/East Deep Creek drainage - HUC 160203060806;~~

~~(xviii) West Deep Creek drainage - HUC 160203060808;~~

~~(xix) Horse Valley drainage - HUC 160203060304;~~

~~(xx) Starvation Canyon drainage - HUC 160203060305;~~

~~(xxi) Cane Springs drainage - HUC 160203060307;~~

~~(xxii) Fish Springs Range drainage - HUC 160203060308;~~

~~(xxiii) Middle Fish Springs Wash drainage - HUC 160203060309;~~

~~(xxiv) Lower Fish Springs Wash drainage - HUC 160203060403;~~

(xxv) Fish Springs drainage - HUC 160203060405;

(xxvi) Wilson Health Springs drainage - HUC 160203060407;

(xxvii) Vernon Creek drainage - HUC 160203040102;

(xxviii) Outlet Chicken Creek drainage - HUC 160300050206;

(xxix) Little Valley/Sevier River drainage - HUC 160300050403;

(xxx) Pole Creek/Salt Creek drainage - HUC 160202010104; and

(xxxi) West Creek/Current Creek drainage - HUC 160202010107.

~~([m] Kane County -- no areas closed to stocking fertile rainbow trout.~~

~~([n]l) Millard County[ -- stocking is prohibited in the following areas:]~~

~~(i) Outlet Salt Marsh Lake drainage - HUC 160203011502;~~

~~(ii) Sulphur Wash drainage - HUC 160203011303;~~

~~(iii) Cockscomb Ridge drainage - HUC 160203011501;~~

~~(iv) Tungstonia Wash drainage - HUC 160203011302;~~

~~(v) Salt Marsh Lake - HUC 160203011304;~~

~~(vi) Indian George Wash drainage - HUC 160203011301~~

~~(vii) Outlet Bishop Springs drainage - HUC 160203011203;~~

~~(viii) Warm Creek drainage - HUC 160203011204;~~

~~(ix) Headwaters Bishop Springs drainage - HUC 160203011202;~~

~~(x) Indian Pass - HUC 160203011107;~~

~~(xi) Chevron Ridge drainage - HUC 160203011110;~~

~~(xii) Petes Knoll drainage - HUC 160203011109;~~

~~(xiii) Red Gulch drainage - HUC 160203011102;~~

~~(xiv) Horse Canyon drainage - HUC 160203011106;~~

~~(xv) Hampton Creek drainage - HUC 160203011105;~~

~~(xvi) Knoll Springs drainage - HUC 160203011103;~~

~~(xvii) Browns Wash drainage - HUC 160203011101;~~

~~(xviii) Outlet Baker Creek drainage - HUC 160203011004;~~

~~(xix) Outlet Old Mans Canyon drainage - HUC 160203011003;~~

~~(xx) Hendrys Creek drainage - HUC 160203011104;~~

~~(xxi) Headwaters Old Mans Canyon drainage - HUC 160203011002;~~

~~(xxii) Rock Canyon drainage - HUC 160203011001~~

~~(xxiii) Silver Creek drainage - Baker Creek drainage - HUC 160203010806;~~

~~(xxiv) Outlet Weaver Creek drainage - HUC 160203010804;~~

~~(xxv) Conger Spring drainage - HUC 160203010702; and~~

~~(xxvi) Sheepmens Little Valley drainage - HUC 160203010607.~~

~~([e]k) Morgan County[ -- stocking is prohibited in the following areas:]~~

~~(i) Weber River drainage - HUC 16020102;~~

~~(ii) East Canyon Creek drainage - HUC 16020102; and~~

~~(iii) Lost Creek drainage - HUC 16020101.~~

~~([p]l) Piute County[ -- stocking is prohibited in the following areas:]~~

~~(i) Birch Creek drainage HUC 160300010603;~~

- (ii) Clear Creek drainage HUC 1603000301;  
 (iii) Manning Creek drainage - HUC 160300030203;  
 (iv) Tenmile Creek drainage HUC 160300030204.  
 ([~~f~~m]) Rich County [~~— stocking is prohibited in the following areas~~]:  
 (i) Bear Lake [~~including all its tributaries~~]drainage - HUC 16010201;  
 (ii) Big Creek drainage - HUC 16010101;  
 (iii) Birch Creek drainage from Birch Creek Reservoir upstream [~~and tributaries~~] HUC 16010101;  
 (iv) Little Creek drainage from Little Creek Reservoir upstream [~~and tributaries~~] HUC 16010101;  
 (v) Otter Creek [~~and its tributaries~~]drainage - HUC 16010101;  
 (vi) Woodruff Creek drainage - HUC 16010101; and  
 (vii) Home Canyon and Meachum Canyon (Deseret Ranch) drainage - HUC 16010101.  
 ([~~r~~n]) Salt Lake County [~~— stocking is prohibited in the following areas~~]:  
 (i) Big Cottonwood Canyon Creek drainage - HUC 160202040201;  
 (ii) Little Cottonwood Canyon Creek drainage - HUC 160202040202;  
 (iii) Mill Creek drainage - HUC 160202040301;  
 (iv) Parleys Creek drainage - HUC 160202040302;  
 (v) Emigration Creek drainage - HUC 160202040303;  
 (vi) City Creek drainage - HUC 160202040304; and  
 (vii) Red Butte Creek/Emigration Creek drainage - HUC 160202040306.  
 ([~~s~~o]) San Juan County [~~— stocking is prohibited in any private fish pond~~]:  
 (i) waters above 7000 feet in elevation.  
 ([~~t~~p]) Sanpete County:  
 (i) [~~stocking is prohibited in the following areas~~]Areas west of the Manti Mountain Range divide:  
 (A) Dry Creek/San Pitch River drainage - HUC 160300040201;  
 (B) Oak Creek/San Pitch River drainage - HUC 160300040202;  
 (C) Cottonwood Canyon/San Pitch River drainage - HUC 160300040203;  
 (D) Birch Creek/San Pitch River drainage - HUC 160300040204;  
 (E) Pleasant Creek drainage - HUC 160300040205;  
 (F) Dublin Wash/San Pitch River drainage - HUC 160300040206;  
 (G) Cedar Creek drainage - HUC 160300040207;  
 (H) Spring Hollow/San Pitch River drainage - HUC 160300040208;  
 (I) Upper Oak Creek drainage - HUC 160300040302;  
 (J) Petes Canyon/San Pitch River drainage - HUC 160300040306;  
 (K) Uinta Gulch drainage - HUC 160202020201;  
 (L) Upper Thistle Creek drainage - HUC 160202020202;  
 (M) Nebo Creek drainage - HUC 160202020203;  
 (N) Middle Thistle Creek drainage - HUC 160202020204;  
 (O) Dry Canyon/San Pitch River drainage - HUC 160300040308;  
 (P) Maple Canyon/San Pitch River drainage - HUC 160300040309;  
 (Q) Gunnison Reservoir/San Pitch River drainage - HUC 160300040503;  
 (R) Outlet San Pitch River drainage - HUC 160300040505;  
 (S) Beaver Creek drainage - HUC 140700020201;  
 (T) Box Canyon/Muddy Creek drainage - HUC 140700020203;  
 (U) Skumpah Creek-Salina Creek drainage - HUC 160300030402; and  
 (V) Headwaters Twelvemile Creek drainage - HUC 160300040402.  
 (ii) [~~stocking is prohibited in any private fish pond~~]Waters above 7000 feet in elevation east of the Manti Mountain Range divided.  
 ([~~u~~q]) Sevier County [~~— stocking is prohibited in the following areas~~]:  
 (i) Clear Creek drainage HUC 1603000301;  
 (ii) Salina Creek drainage - HUC 160300030402; and  
 (iii) U M Creek drainage - HUC 140700030101.  
 ([~~v~~r]) Summit County [~~— stocking is prohibited in the following areas~~]:  
 (i) Bear River [~~and all tributaries~~]drainage drainage - HUC 16010101;  
 (ii) Mill Creek [~~and all tributaries~~]drainage - HUC 16010101;  
 (iii) Muddy Creek and Van Tassel Creek drainage - HUC 14040108;  
 (iv) Little West Fork/Blacks Fork drainage - HUC 14040107;  
 (v) [~~Black~~]Blacks Fork drainage - HUC 14040107;  
 (vi) Archie Creek drainage - HUC 14040107;  
 (vii) West Fork Smiths Fork drainage - HUC 14040107;  
 (viii) Gilbert Creek drainage - HUC 14040107;  
 (ix) East Fork Smiths Fork drainage - HUC 14040107;  
 (x) [~~Dahlgreen~~]Dahlgreen Creek drainage - HUC 14040106;  
 (xi) Henrys Fork drainage - HUC 14040106;  
 (xii) Spring Creek and Poison Creek drainage - HUC 14040106;  
 (xiii) West Fork Beaver Creek drainage - HUC 14040106;  
 (xiv) Middle Fork Beaver Creek drainage - HUC 14040106;  
 (xv) Echo Creek drainage - HUC 16020101;  
 (xvi) Chalk Creek drainage - HUC 16020101;  
 (xvii) Silver Creek drainage - HUC 16020101;  
 (xviii) Weber River drainage - HUC 16020101;  
 (xix) Beaver Creek drainage - HUC 16020101;  
 (xx) Provo River drainage - HUC 16020101;  
 (xxi) Kimball Creek drainage - HUC 160201020101;  
 (xxii) Big Dutch Hollow/East Canyon Creek drainage - HUC 160201020103; and  
 (xxiii) [~~Silver~~]Creek - HUC 160201010403; and  
 (xxiv) Toll Canyon/East Canyon Creek drainage - HUC 160201020102.  
 (w) Tooele County [~~— stocking is prohibited in the following areas~~]:

- (i) Toms Creek drainage - HUC 160203060201;  
(ii) Goshute Canyon drainage - HUC 160203060202;  
(iii) Eightmile Wash drainage - HUC 160203060203;  
(iv) Indian Farm Creek drainage - HUC 160203060204;  
(v) Willow Spring Wash drainage HUC 160203060205;  
(vi) Willow Canyon drainage - HUC 160203080104;  
(vii) Bettridge Creek drainage - HUC 160203080106;  
(viii) East Creek/East Deep Creek drainage - HUC 160203060806;  
(ix) East Deep Creek drainage - HUC 160203060807;  
(x) West Deep Creek drainage - HUC 160203060808;  
(xi) Gullmette Gulch/Deep Creek drainage - HUC 160203060902;  
(xii) Pony Express Canyon/Deep Creek drainage - HUC 160203060904;  
(xiii) Badlands drainage - HUC 160203060905;  
(xiv) White Sage Flat/Deep Creek drainage - HUC 160203060907;  
(xv) Lower Fish Springs Wash drainage - HUC 160203060403;  
(xvi) Fish Springs drainage - HUC 160203060405;  
(xvii) Wilson Health Springs drainage - HUC 160203060407;  
(xviii) East Government Creek drainage - HUC 160203040101;  
(xix) Vernon Creek drainage - HUC 160203040102; and  
(xx) Faust Creek drainage - HUC 160203040105.  
(~~[x]~~) Uintah County [~~—stocking is prohibited in any private fish pond~~];  
(i) waters above 7000 feet in elevation.  
(~~[y]~~) Utah County [~~—stocking is prohibited in the following areas~~]:  
(i) Starvation Creek drainage - HUC 160202020101;  
(ii) Upper Soldier Creek drainage - HUC 160202020102;  
(iii) Tie Fork drainage - HUC 160202020103;  
(iv) Middle Soldier Creek drainage - HUC 160202020105;  
(v) Lake Fork drainage - HUC 160202020106;  
(vi) Lower Soldier Creek drainage - HUC 160202020107;  
(vii) Upper Thistle Creek drainage - HUC 160202020202;  
(viii) Nebo Creek drainage - HUC 160202020203;  
(ix) Middle Thistle Creek drainage - HUC 160202020204;  
(x) Lower Thistle Creek drainage - HUC 160202020205;  
(xi) Sixth Water Creek drainage - HUC 160202020301;  
(xii) Cottonwood Canyon drainage - HUC 160202020302;  
(xiii) Fifth Water Creek drainage - HUC 160202020303;  
(xiv) Upper Diamond drainage Fork - HUC 160202020304;  
(xv) Wanrhodes Canyon drainage - HUC 160202020305;  
(xvi) Middle Diamond Fork drainage - HUC 160202020306;  
(xvii) Lower Diamond Fork drainage - HUC 160202020307;  
(xviii) Headwaters Left Fork Hobble Creek drainage - HUC 160202020401;  
(xix) Headwaters Right Fork Hobble Creek drainage - HUC 160202020402;  
(xx) Outlet Left Fork Hobble Creek drainage - HUC 160202020403;  
(xxi) Outlet Right Fork Hobble Creek drainage - HUC 160202020404;  
(xxii) Upper Spanish Fork Creek drainage - HUC 160202020501;  
(xxiii) Middle Spanish Fork Creek drainage - HUC 160202020502;  
(xxiv) Petetneet Creek drainage - HUC 160202020601;  
(xxv) Spring Creek drainage - HUC 160202020602;  
(xxvi) Beer Creek drainage - HUC 160202020603;  
(xxvii) Big Spring Hollow/South Fork Provo River drainage - HUC 160202030502;  
(xxviii) Pole Creek/Salt Creek drainage - HUC 160202010104;  
(xxix) Middle American Fork Canyon drainage - HUC 160202010802;  
(xxx) Mill Fork drainage - HUC 160202020104; and  
(xxxi) Upper American Fork Canyon drainage - HUC 160202010801.  
(~~[z]~~) Wasatch County [~~—stocking is prohibited in the following areas~~]:  
(i) Willow Creek/Strawberry River drainage - HUC 140600040101;  
(ii) Clyde Creek/Strawberry River drainage - HUC 140600040102;  
(iii) Indian Creek drainage - HUC 140600040104;  
(iv) Trout Creek/Strawberry River drainage - HUC 140600040105;  
(v) Soldier Creek/Strawberry River drainage - HUC 140600040106;  
(vi) Willow Creek drainage - HUC 140600040301;  
(vii) Current Creek Reservoir drainage - HUC 140600040401;  
(viii) Little Red Creek drainage - HUC 140600040402;  
(ix) Outlet Current Creek drainage - HUC 140600040403;  
(x) Water Hollow/Current Creek drainage - HUC 140600040404;  
(xi) Headwaters West Fork Duchesne River drainage - HUC 140600030101;  
(xii) Little South Fork Provo River drainage - HUC 160202030201;  
(xiii) Bench Creek/Provo River drainage - HUC 160202030202;  
(xiv) Lady Long Hollow/Provo River drainage - HUC 160202030203;  
(xv) Charcoal Canyon/Provo River drainage - HUC 160202030204;  
(xvi) Drain Tunnel Creek drainage - HUC 160202030301;  
(xvii) Lake Creek drainage - HUC 160202030302;  
(xviii) Center Creek drainage - HUC 160202030303;  
(xix) Cottonwood Canyon/Provo River drainage - HUC 160202030304;  
(xx) Snake Creek drainage - HUC 160202030305;

(xxi) Spring Creek/Provo River drainage - HUC 160202030306;  
 (xxii) Daniels Creek drainage - HUC 160202030401;  
 (xxiii) Upper Main Creek drainage - HUC 160202030403;  
 (xxiv) Lower Main Creek drainage - HUC 160202030404;  
 (xxv) Deer Creek Reservoir-Provo River drainage - HUC 160202030405;  
 (xxvi) Provo Deer Creek drainage - HUC 160202030501;  
 (xxvii) Little Hobble Creek drainage - HUC 160202030402;  
 (xxviii) Mill Hollow/South Fork Provo River drainage - HUC 160202030104; and  
 (xxix) Mud Creek drainage - HUC 140600040103.  
 ([aa]y) Washington County[~~—stocking is prohibited in the following areas:~~  
 (i) Ash Creek drainage - HUC 150100080405;  
 (ii) Beaver Dam Wash drainage - HUC 1501001010;  
 (iii) Laverkin Creek drainage - HUC 150100080302;  
 (iv) Leeds Creek drainage - HUC 150100080906;  
 (v) Baker Dam Reservoir/Santa Clara River drainage - HUC 150100080704;  
 (vi) Tobin Wash drainage - HUC 150100080802;  
 (vii) Sand Cove Wash drainage - HUC 150100080801;  
 (viii) Manganese Wash/Santa Clara River drainage - HUC 150100080804;  
 (ix) Wittwer Canyon/Santa Clara River drainage - HUC 150100080808;  
 (x) Cove Wash/Santa Clara River drainage - HUC 150100080809;  
 (xi) Moody Wash drainage - HUC 150100080603;  
 (xii) Upper Moody Wash drainage - HUC 150100080602;  
 (xiii) Magotsu Creek drainage - HUC 150100080704;  
 (xiv) South Ash Creek drainage - HUC 150100080405;  
 (xv) Water Canyon drainage - HUC 150100080701);  
 (xvi) Chinatown Wash/Virgin River drainage - HUC 150100080508;  
 (xvii) Lower Gould Wash drainage - HUC 150100080508;  
 (xviii) Grapevine Wash/Virgin River drainage - HUC 150100080903;  
 (xix) Cottonwood Wash/Virgin River drainage - HUC 150100080909;  
 (xx) Middleton Wash/Virgin River drainage - HUC 150100080910;  
 (xxi) Lower Fort Pierce Wash drainage - HUC 150100080605;  
 (xxii) Atkinville Wash drainage - HUC 150100080303;  
 (xxiii) Lizard Wash drainage - HUC 150100080302;  
 (xxiv) Val Wash/Virgin River drainage - HUC 150100080307;  
 (xxv) Bulldog Canyon drainage - HUC 150100080310;  
 and  
 (xxvi) Fort Pierce Wash drainage - HUC 15010009.  
 ([bb] Wayne County ~~—no areas closed to stocking fertile rainbow trout.~~  
 ([ee]w) Weber County[~~—stocking is prohibited in the following areas:~~

(i) North Fork Ogden River drainage - HUC 16020102;  
 (ii) Middle Fork Ogden River [~~and—Gertsen Creek~~]drainage - HUC 16020102; and  
 (iii) South Fork Ogden River [~~and—Gertsen Creek—~~]drainage - HUC 16020102.  
 (4) Brown trout and brown trout hybrids may not be stocked within Washington County.

**~~R657-59-17. Division Authority to Restrict Private Fish Ponds.~~ 12. Institutional Aquaculture.**

[~~—(1)(a) Stocking and maintaining aquaculture products in private fish ponds pursuant to this rule is a conditional privilege that is subject to unilateral modification or termination by the division or other competent legal authority.~~  
 (b) Those who establish and maintain private fish ponds under this rule do so with the understanding that the laws and regulations governing private fish ponds are subject to change and that such changes may require:  
 (i) discontinuation of stocking particular species, strains, or reproductive capabilities of aquaculture product in the pond;  
 (ii) partial or complete depopulation of the aquaculture product in the pond;  
 (iii) modifications in screen requirements and other structural elements associated with the pond; or  
 (iv) new restrictions and requirements in connection with operating the pond and maintaining the aquaculture product within it.  
 (2) The division may unilaterally restrict a private fish pond operating with or without a]  
 (1) A certificate of registration [~~or exemption certificate from receiving or possessing particular species, strains and reproductive capabilities of aquaculture product previously authorized when stocking or continued possession of the product in the pond;~~is required for any public agency, institution of higher learning, school, or educational program to engage in aquaculture.  
 (2) Aquatic wildlife or aquaculture products produced by institutional aquaculture may not be:  
 (a) sold;  
 (b) stocked; or  
 (c) transferred into waters of the state unless specifically authorized by the certificate of registration.  
 (3) The fish health approval requirements of Title 4, Chapter 37 apply.  
 (4)(a) A certificate of registration for institutional aquaculture may be obtained by submitting an application to the division.  
 (b) A certificate of registration may be renewed by submitting an application prior to the expiration date of the current certificate of registration.  
 (c) The application may require up to 30 days for processing.  
 (d) The division may require a site inspection of the institutional aquaculture facility be performed to confirm compliance with the provisions found in this rule.  
 (e) The division may deny an application where:  
 ([a) violates]i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

~~(ii) operating the institutional aquaculture facility may violate any federal, state or local law or any agreement between the state and another party;~~

~~(b) negatively impacts native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered; (iii) the application fails to demonstrate an ability to operate the aquaculture facility in a manner that protects Utah's wildlife, their habitats, and other aquaculture facilities from contamination; or~~

~~[(c) poses an identifiable adverse threat to other wildlife species or their habitat; or~~

~~(d) poses an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives.~~

~~(3) Any costs or losses incurred as the result of future modifications to this rule or the operational status of a private fish pond made pursuant to this section, including terminations and depopulations, shall be borne exclusively by the owner, lessee or operator of the private fish pond.]~~

~~(iv) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law that bears a reasonable relationship to the applicant's ability to responsibly operate an institutional aquaculture facility.~~

~~(5) An application for a certificate of registration may not be denied without the review and consent of the division director or a designee.~~

~~(6) A certificate of registration for a institutional aquaculture may remain effective for up to 5 years from the date of issuance as identified on the certificate of registration, unless:~~

~~(a) amended by the division at the request of the certificate of registration holder;~~

~~(b) terminated or modified by the division pursuant to R657-59-13; or~~

~~(c) suspended by the division or a court pursuant to Section 23-19-9.~~

**R657-59-13. Expiration and Termination of Certificates of Registration.**

~~(1) If a certificate of registration expires or the division suspends or terminates the certificate of registration, all live aquaculture products permitted under the certificate of registration shall be disposed of as follows:~~

~~(a) Unless the Wildlife Board orders otherwise, all aquaculture products or aquatic wildlife must be removed within 30 days of suspension or the expiration date of the certificate of registration, or within 30 days after ice-free conditions on the water; or~~

~~(b) At the discretion of the division, aquaculture products and aquatic wildlife may remain in the waters at the facility, but shall only be taken as prescribed within Rule R657-13 for Taking Fish and Crayfish.~~

**KEY: wildlife, aquaculture, fish**

**Date of Enactment or Last Substantive Amendment: [March 16, 2015]2017**

**Notice of Continuation: August 5, 2013**

**Authorizing, and Implemented or Interpreted Law: 23-15-9; 23-15-10**

**Natural Resources, Wildlife Resources  
R657-60  
Aquatic Invasive Species Interdiction**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41151

FILED: 01/11/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is purposed to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the state of Utah.

**SUMMARY OF THE RULE OR CHANGE:** The rule revisions: 1) require mandatory dry time, in addition to a professional decontamination, for all boats found to have attached mussels; 2) require all drain plugs and other devices that retain water to be removed during transport within the state of Utah from all watercraft coming from a waterbody infested with Dreissena mussels; 3) remove the state of Colorado from the list of infested waterbodies/regions; and 4) add quarantine language allowing UDWR Conservation Officers to restrict watercraft from launching without taking possession of the watercraft.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19 and Section 23-27-401

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division of Wildlife Resources (DWR) determines that these amendments do not create a cost impact to the state budget or DWR's budget. However, the 2014 Utah Legislative Session appropriated \$245,000 to aid in the implementation costs associated with this rule.

◆ **LOCAL GOVERNMENTS:** This rule does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This rule may create a cost impact to boat owners and other water enthusiasts in Utah in that if Dreissena mussels are found in Utah the cost to decontaminate boats and other conveyances will be at the expense of the owner. The exact cost to boat owners cannot be determined as the cost is only potential and will vary from circumstance to circumstance.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule may create a cost impact to boat owners and other water enthusiasts in Utah in that if Dreissena mussels are found in Utah the cost to decontaminate boats and other conveyances will be at the expense of the owner. The exact

cost to boat owners cannot be determined as the cost is only potential and will vary from circumstance to circumstance.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** DWR determines that this rule may create a cost impact to individuals who own water vessels and boat in infested waters because they would be required to decontaminate the conveyance. The exact cost to boat owners cannot be determined as the cost is only potential and will vary from circumstance to circumstance.

**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 Office 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 03/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017

AUTHORIZED BY: Gregory Sheehan, Director

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

**R657-60. Aquatic Invasive Species Interdiction.**

**R657-60-1. Purpose and Authority.**

(1) The purpose of this rule is to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the State of Utah.

(2) This rule is promulgated pursuant to authority granted to the Wildlife Board in Sections 23-27-401, 23-14-18, and 23-14-19.

**R657-60-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2 and 23-27-102.

(2) In addition:

(a) "Conveyance" means a terrestrial or aquatic vehicle, including a vessel, or a vehicle part that may carry or contain a Dreissena mussel.

(b) "Decontaminate" or "Decontaminated" means to comply with one of the following methods:

(i) If no adult mussels are attached to the conveyance after exiting the water body, an owner or operator may self-

decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) removing all plants, fish, and mud from the equipment or conveyance;

(B) draining all water from the equipment or conveyance, including water held in ballast tanks, bilges, livewells, and motors; and

(C) drying the equipment or conveyance for no less than 7 days in June, July and August; 18 days in September, October, November, March, April and May; 30 days in December, January and February; or expose the equipment or conveyance to sub-freezing temperatures for 72 consecutive hours; ~~or~~

(ii) Professionally decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) Using a professional decontamination service approved by the division to apply scalding water (140 degrees Fahrenheit) to completely wash the equipment or conveyance and flush any areas where water is held, including ballast tanks, bilges, livewells, and motors; and

(B) if the division determines that there is a significant risk that mussels remain attached to the conveyance after the scalding water wash, complete a mandatory 30 day dry time after the hot water wash is completed; or

(iii) Complying with all protocols identified in a certificate of registration.

(c) "Detected Water" or "Detected" means a water body, facility, or water supply system where the presence of a Dreissena mussel is indicated in two consecutive sampling events using visual identification or microscopy and the results of each sampling event is confirmed in two polymerase chain reaction tests, each conducted at independent laboratories.

(d) "Dreissena mussel" means a mussel of the genus Dreissena at any life stage, including a zebra mussel, a quagga mussel and a Conrad's false mussel.

(e) "Controlling entity" means the owner, operator, or manager of a water body, facility, or a water supply system.

(f) "Equipment" means an article, tool, implement, or device capable of carrying or containing water or Dreissena mussel.

(g) "Facility" means a structure that is located within or adjacent to a water body.

(h) "Infested Water" or "Infested" means a water body, facility, water supply system, or geographic region where the presence of multiple age classes of attached Dreissena mussels is indicated in two or more consecutive sampling events using visual detection or microscopy and the result of each sampling event is confirmed in two polymerase chain reaction tests, each conducted at independent laboratories.

(i) "Juvenile or adult Dreissena mussel" means a macroscopic Dreissena mussel that is not a veliger.

(j) "Quarantine" means imposing a required minimum period of time where a conveyance must stay at a predetermined location in order to minimize the risk that Dreissena mussels are spread.

(k) "Suspected Water" or "Suspected" means a water body, facility, or water supply system where the presence of a Dreissena mussel is indicated through a single sampling event using visual identification or microscopy and the result of that sampling

event is confirmed in two independent polymerase chain reaction tests, each conducted at independent laboratories.

(~~l~~) "Veliger" means a microscopic, planktonic larva of Dreissena mussel.

(~~m~~) "Vessel" means every type of watercraft used or capable of being used as a means of transportation on water.

(~~n~~) "Water body" means natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank, and fountain.

(~~o~~) "Water supply system" means a system that treats, conveys, or distributes water for irrigation, industrial, wastewater treatment, or culinary use, including a pump, canal, ditch or pipeline.

(~~p~~) "Water supply system" does not include a water body.

#### **R657-60-3. Possession of Dreissena Mussels.**

(1) Except as provided in Subsections R657-60-3(2) and R657-60-5(2), a person may not possess, import, ship, or transport any Dreissena mussel.

(2) Dreissena mussels may be imported into and possessed within the state of Utah with prior written approval of the Director of the Division of Wildlife Resources or a designee.

#### **R657-60-4. Reporting of Invasive Species Required.**

(1) A person who discovers a Dreissena mussel within this state or has reason to believe a Dreissena mussel may exist at a specific location shall immediately report the discovery to the division.

(2) The report shall include the following information:

(a) location of the Dreissena mussels;

(b) date of discovery;

(c) identification of any conveyance or equipment in which mussels may be held or attached; and

(d) identification of the reporting party with their contact information.

(3) The report shall be made in person or in writing:

(a) at any division regional or headquarters office or;

(b) to the division's toll free hotline at 1-800-662-3337; or

(c) on the division's website at

www.wildlife.utah.gov/law/hsp/pf.php.

#### **R657-60-5. Transportation of Equipment and Conveyances That Have Been in Waters Containing Dreissena Mussels.**

(1) The owner, operator, or possessor of any equipment or conveyance that has been in an infested water or in any other water subject to a closure order under R657-60-8 or control plan under R657-60-9 that requires decontamination of conveyances and equipment upon leaving the water shall:

(a) immediately remove the drain plug or similar mechanical feature and drain all water from the equipment or conveyance at the take out site, including water held in ballast tanks, bilges, livewells, motors, and other areas of containment; and

(b) immediately inspect the interior and exterior of the equipment or conveyance at the take out site for the presence of Dreissena mussels.

(2)(a) If all water in the equipment or conveyance is drained and the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment and conveyance are free from mussels or shelled organisms, fish, plants and mud, the equipment and conveyance may be transported in or through the state directly from the take out site to the location where it will be:

(a)i) decontaminated; or

(b) temporarily stored and subsequently returned to the same water body and take out site as provided in Subsection (5).

(b) To the extent feasible, any drain plug or similar mechanical feature that may retain water or conceal aquatic invasive species shall remain open during the transport and storage of a conveyance.

(3) If all the water in the equipment or conveyance is not drained or the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment or conveyance has attached mussels or shelled organisms, fish, plants, or mud, the equipment and conveyance shall not be moved from the take out site until the division ~~is contacted and~~ provides the conveyance operator written or electronic authorization ~~received~~ to move the equipment or conveyance to a designated location for professional decontamination.

(4) Except as provided in Subsection (5), a person shall not place any equipment or conveyance into a water body or water supply system in the state without first decontaminating the equipment and conveyance when the equipment or conveyance in the previous 30 days has been in:

(a) an infested water; or

(b) other water body or water supply system subject to a closure order under R657-60-8 or control plan under R657-60-9 that requires decontamination of conveyances and equipment upon leaving the water.

(5) Decontamination is not required when a conveyance or equipment is removed from an infested water or other water body subject to decontamination requirements, provided the conveyance and equipment is:

(a) inspected and drained at the take out site, and is free from attached mussels, shelled organisms, fish, plants, and mud as required in Subsections (1) and (2);

(b) returned to the same water body and launched at the same take out site; and

(c) not placed in or on any other Utah water body in the interim without first being decontaminated.

(6)(a) Division personnel may provide the operator of a vessel leaving an infested water, or any water subject to a closure order under R657-60-8 or control plan under R657-60-9, with an inspection certification indicating the date which that vessel left the water body.

(b) An individual who receives a certification of inspection from the division must retain that certification of inspection until:

(i) the operator returns to the same body of water and receives a new certification of inspection upon leaving the water body;

(ii) the operator completes a certification of decontamination; or

(iii) the operator receives a professional decontamination certificate.

**R657-60-6. Certification of Inspection; Certification of Decontamination; Certificate of Registration to Perform Decontamination.**

(1) The owner, operator or possessor of a vessel desiring to launch on a water body in Utah must:

(a) present an inspection certificate to division personnel if required; and

(b) verify the vessel and any launching device, in the previous 30 days, have not been in an infested water or in any other water subject to closure order under R657-60-8 or control plan under R657-60-9 that requires decontamination of conveyances and equipment upon leaving the water; or

(b) certify the vessel and launching device have been decontaminated.

(2) Certification of decontamination is satisfied by:

(a) previously completing self-decontamination since the vessel and launching device were last in a water described in Subsection (1)(b) and completely filling out and dating a decontamination certification form which can be obtained from the division; or

(b) providing a signed and dated certificate by a division approved professional decontamination service verifying the vessel and launching device were professionally decontaminated since the vessel and launching device were last in a water described in Subsection (1)(b); or

(c) complying with the terms identified in a certificate of registration issued for alternative decontamination measures.

(3) A certificate of registration to complete alternate forms of decontamination may be issued to an individual who:

(a) operates conveyances as a part of their business;

(b) whose conveyances cannot be decontaminated using self decontamination or professional decontamination as defined in R657-60-2(b)(i) and (ii).

(4) Both the decontamination certification form and the professional decontamination certificate, where applicable, must be signed and placed in open view in the window of the launching vehicle prior to launching or placing the vessel in a body of water.

(5)(a) It is unlawful under Section 76-8-504 to knowingly falsify a decontamination certification form.

(b) It is unlawful under Section 23-13-11(2) to alter or destroy a certificate of inspection prior to completing a decontamination certification form.

(c) The division may suspend, revoke, or terminate a certificate of registration if the business entity or an employee thereof has violated a term of this rule, the Wildlife Resources Code, or a certificate of registration.

**R657-60-7. Wildlife Board Designations of Infested Waters.**

(1) The Wildlife Board may designate a geographic area, water body, facility, or water supply system as Infested with Dreissena mussels pursuant to Section 23-27-102 and 23-27-401 without taking the proposal to or receiving recommendations from the regional advisory councils.

(2) The Wildlife Board may designate a particular water body, facility, or water supply system within the state as Infested with Dreissena mussels when sampling indicates the water body,

facility, or water supply system meets the minimum criteria for an Infested Water as defined in this rule.

(3) The Wildlife Board may designate a particular water body, facility, or water supply system outside the state as Infested with Dreissena mussels when it has credible evidence suggesting the presence of a Dreissena mussel in that water body, facility, or water supply system.

(4) Where the number of Infested Waters in a particular area is numerous or growing, or where surveillance activities or infestation containment actions are deficient, the Wildlife Board may designate geographic areas as Infested with Dreissena mussels.

(5) The following water bodies and geographic areas are classified as infested:

(a) all coastal and inland waters in:

(i) ~~Colorado;~~

~~(ii) California;~~

~~(iii) Nevada;~~

~~(iv) Arizona;~~

~~(v) all states east of Montana, Wyoming, Colorado, and New Mexico;~~

~~(vi) the provinces of Ontario and Quebec Canada; and~~

~~(vii) Mexico;~~

(b) Lake Powell and that portion of the:

(i) Colorado River within the boundaries of Glen Canyon National Recreation Area;

(ii) Escalante River between Lake Powell and the Coyote Creek confluence;

(iii) Dirty Devil River between Lake Powell and the Highway 95 bridge; and

(iv) San Juan River between Lake Powell and Clay Hills Crossing; and

(c) other waters established by the Wildlife Board and published on the DWR website.

(6) The Wildlife Board may remove an infested classification if:

(a) the division samples the affected water body for seven (7) consecutive years without a single sampling event producing evidence sufficient to satisfy the criteria for a "suspected" classification, as defined in this rule; or

(b) the controlling entity eradicates all Dreissena mussels at the water body, facility, or water supply system through chemical or biological treatments, desiccation, or freezing, and the division verifies in writing that Dreissena mussels are no longer present.

**R657-60-8. Closure Order for a Water Body, Facility, or Water Supply System.**

(1)(a) The division may classify a water body, facility, or water supply system as suspected or detected if it meets the minimum criteria for suspected or detected, as defined in this rule.

(b) If the division classifies a water body, facility, or water supply system as either suspected or detected, the division director or designee may, with the concurrence of the executive director, issue an order closing the water body, facility, or water supply system to the introduction or removal of conveyances or equipment.

(c) The director shall consult with the controlling entity of the water body, facility, or water supply system when determining the scope, duration, level and type of closure that will

be imposed in order to avoid or minimize disruption of economic and recreational activities.

(d) A closure order may;

(i) close the water entirely to conveyances and equipment;

(ii) authorize the introduction and removal of conveyances and equipment subject to the decontamination requirements in R657-60-2(2)(b) and R657-60-5; or

(iii) impose any other condition or restriction necessary to prevent the movement of Dreissena mussels into or out of the subject water.

(iv) a closure order may not restrict the flow of water without the approval of the controlling entity.

(2)(a) A closure order issued pursuant to Subsection (1) shall be in writing and identify the:

(i) water body, facility, or water supply system subject to the closure order;

(ii) nature and scope of the closure or restrictions;

(iii) reasons for the closure or restrictions;

(iv) conditions upon which the order may be terminated or modified; and

(v) sources for receiving updated information on the presence of Dreissena mussels and closure order.

(b) The closure order shall be mailed, electronically transmitted, or hand delivered to:

(i) the controlling entity of the water body, facility, or water supply system;

and

(ii) any governmental agency or private entity known to have economic, political, or recreational interests significantly impacted by the closure order; and

(iii) any person or entity requesting a copy of the order.

(c) The closure order or its substance shall further be:

(i) posted on the division's web page; and

(ii) published in a newspaper of general circulation in the state of Utah or the affected area.

(3)(a) If a closure order lasts longer than seven days, the division shall provide the controlling entity and post on its web page a written update every 10 days on its efforts to address the Dreissena mussel infestation.

(b) The 10 day update notice cycle will continue for the duration of the closure order.

(4)(a) Notwithstanding the closure authority in Subsection (1), the division may not unilaterally close or restrict a suspected or detected water supply system where the controlling entity has prepared and implemented a control plan in cooperation with the division that effectively controls the spread of Dreissena mussels from the water supply system.

(b) The control plan shall comply with the requirements in R657-60-9.

(5) Except as authorized by the Division in writing, a person may not violate any provision of a closure order.

(6) A closure order or control plan shall remain effective so long as the water body, water supply system, or facility remains classified as suspected or detected.

(7) The director or his designee may remove a Suspected classification if:

(a) the division samples the affected water body for three

(3) consecutive years without a single sampling event producing

evidence sufficient to satisfy the criteria for a "suspected" classification, as defined in this rule; or

(b) the controlling entity eradicates all Dreissena mussels at the water body, facility, or water supply system through chemical or biological treatments, desiccation, or freezing, and the division verifies that Dreissena mussels are no longer present.

(8) The director or his designee may remove a detected classification if:

(a) the division samples the affected water body for five (5) consecutive years without a single sampling event producing evidence sufficient to satisfy the criteria for a "suspected" classification, as defined in this rule; or

(b) the controlling entity eradicates all Dreissena mussels at the water body, facility, or water supply system through chemical or biological treatments, desiccation, or freezing, and the division verifies that Dreissena mussels are no longer present.

#### **R657-60-9. Control Plan Required.**

(1) The controlling entity of a water body, facility, or water supply system may develop and implement a control plan in cooperation with the division prior to infestation designed to:

(a) avoid the infestation of Dreissena mussels; and

(b) control or eradicate an infestation of Dreissena mussels that might occur in the future.

(2) A pre-infestation control plan developed consistent with the requirements in Subsection (3) and approved by the division will eliminate or minimize the duration and impact of a closure order issued pursuant to Section 23-27-303 and R657-60-8.

(3) If a water body, facility, or water supply system within the state is classified as infested, detected, or suspected, and it does not have an approved control plan, the controlling entity shall cooperate with the division in developing and implementing a control plan to address the:

(a) scope and extent of the presence of Dreissena mussels;

(b) actions proposed to control the pathways of spread of Dreissena mussels;

(c) actions proposed to control the spread or eradicate the presence of Dreissena mussels;

(d) methods to decontaminate the water body, facility, or water supply system, if possible;

(e) actions required to systematically monitor the presence of Dreissena mussels; and

(f) requirements and methods to update and revise the plan with scientific advances.

(4) All control plans prepared pursuant to Subsection (3) shall be approved by the Division before implementation.

(5) A control plan prepared pursuant to this Section may require that all conveyances and equipment entering or leaving the subject water to comply with the decontamination requirements in R657-60-2(2)(b) and R657-60-5.

(6) Except as authorized by the Division and the controlling entity in writing, a person may not violate any provision of a control plan.

#### **R657-60-10. Procedure for Establishing a Memorandum of Understanding with the Utah Department of Transportation.**

(1) The division director or designee shall negotiate an agreement with the Utah Department of Transportation for use of

ports of entry for detection and interdiction of Dreissena Mussels illegally transported into and within the state. Both the Division of Wildlife Resources and the Department of Transportation must agree upon all aspects of Dreissena Mussel interdiction at ports of entry.

- (2) The Memorandum shall include the following:
- (a) methods and protocols for reimbursing the department for costs associated with Dreissena Mussel interdiction;
  - (b) identification of ports of entry suitable for interdiction operations;
  - (c) identification of locations at a specific port of entry suitable for interdiction operations;
  - (d) methods and protocols for disposing of wastewater associated with decontamination of equipment and conveyances;
  - (e) dates and time periods suitable for interdiction efforts at specific ports of entry;
  - (f) signage notifying motorists of the vehicles that must stop at the port of entry for inspection;
  - (g) priorities of use during congested periods between the department's port responsibilities and the division's interdiction activities;
  - (h) methods for determining the length, location and dates of interdiction;
  - (i) training responsibilities for personnel involved in interdiction activities; and
  - (j) methods for division regional personnel to establish interdiction efforts at ports within each region.

**R657-60-11. Conveyance or Equipment Detainment.**

- (1) To eradicate and prevent the infestation of a Dreissena mussel, the division may:
- (a) temporarily stop, detain, inspect, quarantine, and impound a conveyance or equipment that the division reasonably believes is in violation of Section 23-27-201 or R657-60-5;
  - (b) order a person to decontaminate a conveyance or equipment that the division reasonably believes is in violation of Section 23-~~227~~27-201 or R657-60-5.
- (2) The division, a port-of-entry agent or a peace officer may detain, quarantine, or impound a conveyance or equipment if:
- (a) the division, agent, or peace officer reasonably believes that the person transporting the conveyance or equipment is in violation of Section 23-27-201 or R657-60-5.
- (3) The detainment, quarantine, or impoundment authorized by Subsection (2) may continue for:
- (a) up to five days; or
  - (b) the period of time necessary to:
    - (i) decontaminate the conveyance or equipment; and
    - (ii) ensure that a Dreissena mussel is not living on or in the conveyance or equipment.

**R657-60-12. Penalty for Violation.**

- (1) A violation of any provision of this rule is punishable as provided in Section 23-13-11.
- (2) A violation of any provision of a closure order issued under R657-60-8 or a control plan created under R657-60-9 is punishable as a criminal infraction as provided in Section 23-13-11.

**R657-60-13. Inspection Stations.**

- (1) Inspection stations may be established for administrative purposes to interdict the spread of Dreissena mussels consistent with Utah Code Title 23, Chapter 27 "Aquatic Invasive Species Act," and this rule.
- (2) The Division may establish inspection stations at locations authorized under Section 23-27-301 where:
- (a) there is a high probability of intercepting conveyances or equipment transporting Dreissena mussels;
  - (b) there is typically a high level of boat and trailer traffic; or
  - (c) inspection of conveyances or equipment will provide increased protection against the introduction of Dreissena mussels into a water body that is not classified as infested, suspected, or detected under R657-60-2.
- (3) Inspection stations shall have adequate space for conveyances or equipment to be stopped, inspected, and if necessary, decontaminated, without interfering with the public's use of highways or presenting a safety risk to the public.
- (4) Inspection stations shall have adequate signage providing the public:
- (a) notice that the inspection station is open and operational;
  - (b) notice that all persons transporting conveyances or equipment must stop at the inspection station and submit their conveyance and equipment for inspection; and
  - (c) an adequate opportunity to safely stop at the inspection station.
- (5) Any person transporting a conveyance or equipment is required to stop at an inspection station during its hours of operation and submit that conveyance or equipment to the Division for inspection.
- (6) The Division shall conduct an inspection of a conveyance or equipment that is stopped at an inspection station as follows:
- (a) Division personnel will determine whether the conveyance or equipment has been in an infested, suspected, or detected water body within the past 30 days.
  - (b) If the conveyance or equipment has not been in an infested, suspected, or detected water body within the past 30 days, the Division will:
    - (i) conduct a brief visual inspection of the conveyance or equipment to ensure that there are no visible Dreissena mussels;
    - (ii) provide educational materials regarding aquatic invasive species risks and regulations in Utah; and
    - (iii) provide a certificate of inspection to the person in possession of the conveyance or equipment.
  - (c) If the conveyance or equipment has been in an infested, suspected, or detected water body within the past 30 days, the Division will:
    - (i) verify all water is drained from the conveyance or equipment, including water held in ballast tanks, bilges, livewells, motors, and other areas of containment;
    - (ii) verify that the surface of the conveyance or equipment is free of Dreissena mussels, shelled organisms, fish, plants, and mud; and

(iii) verify that the conveyance or equipment has been or will be decontaminated as defined in R657-60-2(b) before launching in a Utah water body.

(d) The Division may require professional decontamination of conveyances or equipment that have been in an infested, suspected, or detected water within the past 30 days and failed to comply with the draining and cleaning requirements established in R657-60-5(3).

(7) The Division may issue a certification of inspection and decontamination to persons who complete inspections and any applicable decontamination at an inspection station.

(8) Inspection stations shall be operated in a manner that minimizes the length of time of an inspection while ensuring that conveyances are free from the presence of Dreissena mussels.

**KEY: fish, wildlife, wildlife law**

**Date of Enactment or Last Substantive Amendment:** [November 10, 2015]2017

**Notice of Continuation:** August 5, 2013

**Authorizing, and Implemented or Interpreted Law:** 23-27-401; 23-14-18; 23-14-19

## Natural Resources, Wildlife Resources **R657-62** Drawing Application Procedures

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41152  
FILED: 01/11/2017

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's drawing application process.

**SUMMARY OF THE RULE OR CHANGE:** This rule is being amended to: 1) add Sandhill Crane to the list of permits a youth may obtain; 2) remove the authorization to withhold 1% of the swan permits from the drawing to address division errors with; 3) amend the youth definition when pertaining to the taking of waterfowl, Wilson's snipe, and coot; and 4) authorize up to four youth to apply as a group.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule amendment alters a process already in place and does not create a cost or savings to the division. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment alters an existing process, this filing does not create any direct cost or savings impact to local governments. Local governments are neither directly nor indirectly impacted by this rule because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amended rule will alter the structure for using preference points in a DWR drawing which DWR has determined would not generate a cost or saving impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amended rule will alter the structure for using preference points in a DWR drawing which DWR has determined would not generate a cost or saving impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** DWR determined that this amendment will not create a cost or savings impact to individuals who participate in hunting in Utah because this amendment simply alters the structure for using preference points in a DWR drawing.

**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 Office 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 03/03/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017**

**AUTHORIZED BY:** Gregory Sheehan, Director

**R657. Natural Resources, Wildlife Resources.  
R657-62. Drawing Application Procedures.  
R657-62-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

**R657-62-21. Sandhill Crane, Sharp-Tailed and Greater Sage Grouse.**

(1) Permit applications.

(a) A person may obtain only one Sandhill Crane permit each year.

(b) A hunting or combination license is required when taking Sandhill Crane, Sharp-Tailed and Greater Sage Grouse and may be purchased when applying for the permit.

(c) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(d) Applicants may select up to four hunt choices. Hunt unit choices must be listed in order of preference.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 17 years of age or younger on July 31 for the purpose of obtaining Sandhill Crane, Sharp-tailed grouse and Greater Sage grouse permits, ~~and 15 years of age or younger on the Youth Waterfowl hunt, as for the purpose of obtaining a Sandhill Crane permit.~~

(b) Fifteen percent of the Sandhill Crane, Sharp-tailed grouse and Greater sage grouse permits are reserved for youth hunters.

(c) Youth applicants who apply for a Sandhill Crane, Sharp-tailed grouse or Greater sage grouse permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Group applications.

(a) Up to four people may apply together.

(b) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(4) Waiting Periods do not apply.

**R657-62-22. Swan.**

(1) Permit applications.

(a) A person may obtain only one swan permit each year.

(i) A person may not apply more than once annually.

(b) A Utah hunting or combination license is required when hunting Swan and may be purchased when applying for the permit.

(c) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

~~(i) The division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.~~

~~(ii) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.~~

~~(iii) Withheld swan permits shall be used to correct division errors reported to or discovered by the division on or before the fifth day preceding the opening day of the swan hunt.~~

~~(iv) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.]~~

(d) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-6 (3)(b).

(i) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(e) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person ~~[15]~~17 years of age or younger on ~~[the Youth Waterfowl Day hunt]~~ July 31st of the year in which the youth hunting day is held, as provided in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

(b) Fifteen percent of the Swan permits are reserved for youth hunters.

(c) Youth who apply for a swan permit will automatically be considered in the youth permit drawing based on their birth date.

(3) Group applications.

(a) Up to four people may apply together in a Group Application.

(b) ~~[Youth hunters who wish to participate in the]~~Up to four youth ~~[drawing must not]~~may apply ~~[as a group.]~~together in a Group Application.

(4) Waiting period does not apply.

**KEY: wildlife, permits**

**Date of Enactment or Last Substantive Amendment:** ~~[March 16, 2015]~~2017

**Notice of Continuation:** April 14, 2014

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

**Workforce Services, Employment  
Development  
R986-700-706  
Provider Rights and Responsibilities**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 41171

FILED: 01/12/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify the timeline for submitting necessary documentation.

**SUMMARY OF THE RULE OR CHANGE:** Because the Department pays child care providers directly, the Department must report the income on a 1099. To do that, the Department needs the provider's tax identification number. Some providers fail to provide the number in a timely fashion. This would end subsidies if the tax number is not provided. The proposed amendment also allows the Department to contract out audits of providers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-310(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This applies to federally-funded programs, so there are no costs or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: This applies to federally-funded programs, so there are no costs or savings to local governments.
- ◆ SMALL BUSINESSES: There will be no costs to small businesses to comply with these changes because this is a federally-funded program.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs to persons other than small businesses, businesses, or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for this change to anyone, including persons affected by this change because this is a federally-funded program.

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 Office 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 03/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2017

AUTHORIZED BY: Jon Pierpont, Executive Director

**R986. Workforce Services, Employment Development.  
 R986-700. Child Care Assistance.  
 R986-700-706. Provider Rights and Responsibilities.**

(1) Providers assume the responsibility to collect copayments and any other fees for child care services rendered.

Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers may retain the full monthly subsidy payment so long as at least eight hours of care were provided by the 15th of the month. The subsidy payment is to support an eligible client's monthly employment and training activities and allows for temporary absences and unforeseen circumstances. Having a child only attend one day per month or sporadically to receive a child care payment is a misuse of funds and will result in an overpayment and possible child care disqualification. Additionally, the subsidy payment is intended to be used to cover the provider's business expenses during the month for reserving the slot(s) and shall not be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service. Providers who choose not to apply the funds as required will be subject to an overpayment and possible child care disqualification.

(4) Providers must keep accurate records of subsidized child care payments, and time and attendance. The Department has the right to investigate child care providers and audit their records. Audits and investigations may be performed by a person or entity under contract with the Department. Time and attendance records for all subsidized clients must be kept for at least three years.

(5) Providers must provide initial verification information to determine eligibility. Providers must also cooperate with an investigation or audit to determine ongoing eligibility or if eligibility was correctly determined. Cooperation includes providing information and verification and returning telephone calls or responding to emails from Department employees or other persons authorized by the Department to obtain information such as an employee of ORS in a timely manner. "A timely manner" is usually considered to be ten business days for written documentation and two business days to return a phone call or email request. Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the eligibility. Failure to disclose a material fact that might affect the eligibility determination can also lead to criminal prosecution. If a provider fails to cooperate with an investigation or audit, provide any and all information or verification requested, or fails to keep records for one year without good cause, the provider will no longer be an approved provider. Good cause is limited to circumstances where the provider can show that the reasons for the delay in filing were due to circumstances beyond the provider's control or were compelling and reasonable. The period the provider will not be an approved provider will be from the date the information or verification was due until when it is received by the Department.

(6) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider is responsible for repayment of the resulting overpayment and there may be a disqualification period and/or criminal prosecution.

(7) CCL will keep a list of all providers that have been disqualified as a provider or against whom a referral or complaint is received.

(8) All providers, except FFN providers as defined in R986-700-705(1)(b)(ii), are required to report their monthly, full-

time child care rates to the local Care About Child Care agency. All providers must also report the rate for each individual child to the Department if the amount is less than the rate reported to Care About Child Care. Failure to report reduced rates may result in an overpayment.

(9) Providers are required to access the Provider Portal at [jobs.utah.gov/childcare](http://jobs.utah.gov/childcare) and:

- (a) submit and manage bank account information;
- (b) read and agree to the terms and conditions contained in the Provider Guide and in the Portal;
- (c) view child care payment information;
- (d) manage Provider Portal user access to ensure only those users with authority to make changes can do so. The provider is liable for all changes made and information provided through the Provider Portal;
- (e) report the following changes within 10 days, or by the 25th of the month, whichever is sooner:
  - (i) a reduced or part-time rate for an individual child in care, as applicable. This includes reporting any rate changes or updates that occur for each child once a rate has been submitted in the portal;
  - (ii) a child is no longer in child care;
  - (iii) a child was not in child care during that month;
  - (iv) that the provider received a greater subsidy payment amount than what was charged to the client for the month of service. Excess subsidy funds cannot be used to cover outstanding balances, copayments, or future services. The provider should notify the Department and the difference will either be deducted

from the next month's subsidy payment or the funds must be returned to the Department;

(v) that a child attended for less than eight hours by the 15th of the month, payment for the month was received and the child is not expected to return; or

(vi) a change in financial institution account information for direct deposit.

(10) Providers must submit a W-9 Form, Federal Employe[e]r Identification Number (EIN) or Social Security Number via the DWS Provider Portal, if required by the Department, and a 1099 will be issued annually. The Federal EIN or Social Security Number must be provided within 30 days of receipt of the first subsidy payment from the Department.

(11) A provider who provides services for any part of a month and then terminates services with the client/child during the month, must reimburse the Department for the days when care was not provided. However, if it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

**KEY: child care**

**Date of Enactment or Last Substantive Amendment: [~~October 1, 2016~~2017]**

**Notice of Continuation: September 3, 2015**

**Authorizing, and Implemented or Interpreted Law: 35A-3-310; 53A-1b-110**

### End of the Notices of Proposed Rules Section

## NOTICES OF 120-DAY (EMERGENCY) RULES

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An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

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### Administrative Services, Finance **R25-7** Travel-Related Reimbursements for State Employees

**NOTICE OF 120-DAY (EMERGENCY) RULE**  
DAR FILE NO.: 41127  
FILED: 01/06/2017

#### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The IRS announced a decrease in the rate for private vehicle use from 54 cents per mile to 53.5 cents per mile. The Division has determined that the reimbursement rate for private vehicles should decrease to 53 cents per mile to avoid exceeding federal mileage reimbursements.

**SUMMARY OF THE RULE OR CHANGE:** The rule decreases reimbursement rate for mileage on private vehicles. (Editor's Note: A corresponding proposed amendment is under Filing No. 41147 in this issue, February 1, 2017, of the Bulletin.)

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

#### **EMERGENCY RULE REASON AND JUSTIFICATION:**

**REGULAR RULEMAKING PROCEDURES WOULD** place the agency in violation of federal or state law.

**JUSTIFICATION:** Effective 01/01/2017, the IRS decreased the mileage reimbursement rate for private vehicles from 54 cents per mile to 53.5 cents per mile. If the state were to reimburse employees at a rate higher than the IRS rate, the amount over the IRS rate would be taxable to the employee. To avoid that complication, the Division has decreased the state reimbursement rate for private vehicles to 53 cents per mile.

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

◆ **THE STATE BUDGET:** There will potentially be a decrease in cost to the state as mileage reimbursements are decreasing. However, the Division cannot determine exactly what the decrease will be because it is impossible to anticipate how much travel state employees will do.

◆ **LOCAL GOVERNMENTS:** There will not be costs to local governments because the rule only governs reimbursements by the state to individuals traveling on state business.

◆ **SMALL BUSINESSES:** Because the change deals only with reimbursement rates for mileage for state employees, small businesses are not affected.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals eligible for reimbursement will see a slight

decrease in their mileage reimbursement amounts for travel in private vehicles.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Because the amendment only changes mileage reimbursement rates and does not require any new action on the part of persons applying for reimbursements, there are not compliance costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed these changes with the Division of Finance Director and believe these changes are warranted. Individuals may see a slight decrease in reimbursements amounts. However, the Division cannot determine exactly what the decrease will be as that depends on the amount of travel by individuals eligible for mileage reimbursement. This rule will have no impact on business.

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

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

EFFECTIVE: 01/06/2017

AUTHORIZED BY: John Reidhead, Director

## **R25. Administrative Services, Finance.**

### **R25-7. Travel-Related Reimbursements for State Employees.**

#### **R25-7-1. Purpose.**

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

#### **R25-7-2. Authority and Exemptions.**

This rule is established pursuant to:

- (1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and
- (2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

#### **R25-7-3. Definitions.**

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Home-Base" means the location the employee leaves from and/or returns to.

(6) "Per diem" means an allowance paid daily.

(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(8) "Rate" means an amount of money.

(9) "Reimbursement" means money paid to compensate an employee for money spent.

(10) "State employee" means any person who is paid on the state payroll system.

#### **R25-7-4. Eligible Expenses.**

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

#### **R25-7-5. Approvals.**

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

#### **R25-7-6. Reimbursement for Meals.**

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is \$41.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$17.00
Total	\$41.00

(b) The daily travel meal allowance for out-of-state travel is \$46.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$22.00
Total	\$46.00

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$66 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$57 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:

Tier I Location

(i) If breakfast is provided deduct \$15, leaving a premium allowance for lunch and dinner of actual up to \$51.

(ii) If lunch is provided deduct \$20, leaving a premium allowance for breakfast and dinner of actual up to \$46.

(iii) If dinner is provided deduct \$31, leaving a premium allowance for breakfast and lunch of actual up to \$35.

Tier II Location

(i) If breakfast is provided deduct \$13, leaving a premium allowance for lunch and dinner of actual up to \$44.

(ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to \$40.

(iii) If dinner is provided deduct \$27, leaving a premium allowance for breakfast and lunch of actual up to \$30.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be

reimbursed the actual meal cost, with original receipts, not to exceed the United States Department of State Meal and Incidental Expenses (M and IE) rate for their location.

(a) The traveler may combine the reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter a.m. 12:00-5:59 *B, L, D	2nd Quarter a.m. 6:00-11:59 *L, D	3rd Quarter p.m. 12:00-5:59 *D	4th Quarter p.m. 6:00-11:59 *no meals
In-State \$41.00	\$31.00	\$17.00	\$0
Out-of-State \$46.00	\$36.00	\$22.00	\$0

\*B = Breakfast, L = Lunch, D = Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter a.m. 12:00-5:59 *no meals	2nd Quarter a.m. 6:00-11:59 *B	3rd Quarter p.m. 12:00-5:59 *B, L	4th Quarter p.m. 6:00-11:59 *B, L, D
In-State \$0	\$10.00	\$24.00	\$41.00
Out-of-State \$0	\$10.00	\$24.00	\$46.00

\*B = Breakfast, L = Lunch, D = Dinner

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns at 6 p.m. or later.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

**R25-7-7. Meals for Statutory Non-Salaried State Boards.**

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

**R25-7-8. Reimbursement for Lodging.**

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

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

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to \$70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

TABLE 5

Cities with Differing Rates

Beaver	\$75.00 plus tax and mandatory fees
Blanding	\$75.00 plus tax and mandatory fees
Bluff	\$90.00 plus tax and mandatory fees
Brigham City	\$80.00 plus tax and mandatory fees
Bryce Canyon City	\$75.00 plus tax and mandatory fees
Cedar City	\$80.00 plus tax and mandatory fees
Duchesne	\$80.00 plus tax and mandatory fees
Ephraim	\$75.00 plus tax and mandatory fees
Farmington	\$85.00 plus tax and mandatory fees
Fillmore	\$75.00 plus tax and mandatory fees

Garden City	\$80.00 plus tax and mandatory fees
Green River	\$85.00 plus tax and mandatory fees
Heber	\$85.00 plus tax and mandatory fees
Kanab	\$85.00 plus tax and mandatory fees
Layton	\$85.00 plus tax and mandatory fees
Logan	\$85.00 plus tax and mandatory fees
Moab	\$100.00 plus tax and mandatory fees
Monticello	\$80.00 plus tax and mandatory fees
Ogden	\$85.00 plus tax and mandatory fees
Park City/Midway	\$100.00 plus tax and mandatory fees
Price	\$75.00 plus tax and mandatory fees
Provo/Orem/Lehi/American Fork/Springville	\$85.00 plus tax and mandatory fees
Roosevelt/Ballard	\$90.00 plus tax and mandatory fees
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	\$100.00 plus tax and mandatory fees
St. George/Washington/Springdale/Hurricane	\$85.00 plus tax and mandatory fees
Torrey	\$85.00 plus tax and mandatory fees
Tremonton	\$90.00 plus tax and mandatory fees
Vernal	\$95.00 plus tax and mandatory fees
All Other Utah Cities	\$70.00 plus tax and mandatory fees

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

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

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

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

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

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

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

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

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

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

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel. These instances will be audited 100% by the State Finance Post-Auditors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **R25-7-9. Reimbursement for Incidentals.**

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

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, transportation costs, maid service, and bellman. Gratuities/tips for various services such as assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of \$5.00 per day.

(a) Tips for doormen and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above \$19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of \$20 or more.

(3) Registration should be paid in advance on a state warrant, with a state purchase card, or with a state travel card.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to \$2.50 per night.

(b) Five to eleven nights - actual amount up to \$20.00

(c) Twelve nights to thirty nights - actual amount up to \$30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to \$18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

### **RT5-7-10. Reimbursement for Transportation.**

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

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the long term parking rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of \$20 or more.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or [54]53 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at [54]53 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than

if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Any exceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director or designee.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) A comparison printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.

(d) Reimbursement will be made at [~~54~~53] cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

**KEY: air travel, per diem allowances, state employees, transportation**

**Date of Enactment or Last Substantive Amendment: January 6, 2017**

**Notice of Continuation: April 15, 2013**

**Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106**

**End of the Notices of 120-Day (Emergency) 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 help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

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Administrative Services, Finance

**R25-14**

Payment of Attorney's Fees in Death  
Penalty Cases

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41124  
FILED: 01/06/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 78B-9-202(3) directs the Division of Finance to establish rules governing the payment of attorney fees and litigation expenses for indigent post-conviction death penalty petitioners.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There has not been any written comments received during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Subsection 78B-9-202(3) continues to require this rule. The Division of Finance continues to make payments under this program as required by the courts. Therefore, this rule should be continued.

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

FINANCE

ROOM 2110 STATE OFFICE BLDG

450 N STATE ST

SALT LAKE CITY, UT 84114-1201

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ John Reidhead by phone at 801-538-1678, by FAX at 801-538-3244, or by Internet E-mail at [jreidhead@utah.gov](mailto:jreidhead@utah.gov)

AUTHORIZED BY: John Reidhead, Director

EFFECTIVE: 01/06/2017

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Agriculture and Food, Animal Industry

**R58-1**

Admission, Identification, and  
Inspection of Livestock, Poultry, and  
Other Animals

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41168  
FILED: 01/12/2017

**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 promulgated under the authority of Title 4, Chapter 31, and Subsections 4-2-2(1)(c)(i) and 4-2-2(1)(i) which allow the department to make rules necessary to prevent the spread of animal disease.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received supporting or opposing the rule since the last review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is the intent of these rules to eliminate or reduce the spread of diseases among animals by providing standards to be met in the movement of animals within the state of Utah and the importation of animals into the state. 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Barry Pittman by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bpittman@utah.gov  
♦ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov  
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/12/2017

**Agriculture and Food, Animal Industry  
R58-3**

**Brucellosis Vaccination Requirements**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41164  
FILED: 01/12/2017

**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 promulgated under the authority of Section 4-31-109 and Subsection 4-2-2(1)(j), which allow the department to make rules regarding the control and prevention of brucellosis among livestock.

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 supporting or opposing this rule since the last review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Is is the intent of this rule to state the brucellosis vaccination requirement for cattle and bison within the state of Utah. 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Barry Pittman by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bpittman@utah.gov  
♦ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov  
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/12/2017

**Agriculture and Food, Animal Industry  
R58-6  
Poultry**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41165  
FILED: 01/12/2017

**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 promulgated under authority of Section 4-31-119, which allows the department to make rules in order to control disease among poultry, waterfowl, and game birds.

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 supporting or opposing this rule since the last review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is the intent of this rule to prevent and control disease in poultry in the state of Utah. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Barry Pittman by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bpittman@utah.gov  
 ♦ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov  
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
 ♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/12/2017

**Agriculture and Food, Animal Industry**  
**R58-18**  
**Elk Farming**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 41162  
 FILED: 01/12/2017

**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: Regulations governing elk farming promulgated under authority of Section 4-39-106.

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 by the department 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: It is the intent of this rule to enforce laws and rules relating to the importation, possession, or transportation of domesticated elk into the state or within the state; the inspection of domesticated elk facilities; prevention of the outbreak and control of the spread of disease-causing pathogens among domesticated elk in domesticated elk facilities; prevention of the spread of disease-causing pathogens from domesticated elk to wildlife, other animals, or humans; and if necessary, the quarantining of any domesticated elk. 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Barry Pittman by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bpittman@utah.gov  
 ♦ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov  
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
 ♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/12/2017

**Agriculture and Food, Animal Industry**  
**R58-22**  
**Equine Infectious Anemia (EIA)**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 41163  
 FILED: 01/12/2017

**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: Promulgated under authority of Title 4, Chapter 31, and Subsection 4-2-2(1)(i), which allow the department to make rules to prevent and control the spread of disease to horses.

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 supporting or opposing this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The intent of this rule is to eliminate or reduce the spread of equine infectious anemia (EIA) among equines by providing for a protocol for testing and handling of equines infected and exposed to EIA. 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Barry Pittman by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bpittman@utah.gov
- ◆ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/12/2017

**Agriculture and Food, Animal Industry**  
**R58-23**  
**Equine Viral Arteritis (EVA)**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41167  
FILED: 01/12/2017

**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 promulgated under authority of Title 4, Chapter 2, and Subsection 4-2-2(1)(i), which allows the department to make rules necessary to prevent the spread of disease to horses.

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 supporting or opposing this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is the intent of this rule to eliminate or reduce the spread of Equine Viral Arteritis (EVA) among equids by providing for a protocol for handling of equids and semen infected and/or exposed to equine arteritis virus. 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Barry Pittman by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bpittman@utah.gov
- ◆ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/12/2017

**Agriculture and Food, Regulatory Services**  
**R70-201**  
**Compliance Procedures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41160  
FILED: 01/12/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 4-2-2(1)(j) allows the department, when necessary, to make investigations,

subpoena witnesses and records, conduct hearings, issue orders, and make recommendations concerning all matters related to agriculture. The department promulgated this rule in order to clearly establish the process for issuing orders.

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 by the department 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 sets forth the procedures that the Division of Regulatory Services must follow in issuing emergency orders and conducting hearings. The rule should be continued for orders to be issued in a consistent manner.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
 ♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov  
 ♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/12/2017

**Agriculture and Food, Regulatory  
 Services  
 R70-320**

**Minimum Standards for Milk for  
 Manufacturing Purposes, Its Production  
 and Processing**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41166  
 FILED: 01/12/2017

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR

STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 4-2-2(1)(i) and Section 4-3-2 allow the department to promulgate rules setting standards on milk used for manufacturing purposes.

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 by the department 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 sets sanitation conditions for dairies which produce milk for manufacturing purposes. Further, it establishes the sanitation conditions for dairy plants and the standards/grade of the milk that can be used in various manufactured processes. A continuation of this rule is necessary to protect the public health and promote fair practices amongst the industry.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
 ♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov  
 ♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/12/2017

**Agriculture and Food, Regulatory  
 Services  
 R70-350**

**Ice Cream and Frozen Dairy Food  
 Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41159  
 FILED: 01/12/2017

**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 promulgated under Section 4-3-2 which allows the department to set standards for milk that is used to make ice cream and other frozen products.

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 by the department 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 the standards for labeling, sanitation, pasteurization, misbranding, and bacteria. The rule needs to be continued in order to protect public safety.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov  
♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/12/2017

**Agriculture and Food, Regulatory Services  
R70-360**

**Procedure for Obtaining a License to Test Milk for Payment**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION  
DAR FILE NO.: 41161  
FILED: 01/12/2017**

**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 promulgated under Section 4-3-2, which allows the department to set the standards and requirements for persons conducting tests on milk.

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 by the department 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 sets up the licensing requirements for persons conducting the test on milk to establish bacterial quality and to grade the milk. The rule should be continued so as to have a standard testing procedure in place for all milk producers.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov  
♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/12/2017

**Agriculture and Food, Regulatory Services  
R70-550**

**Utah Inland Shellfish Safety Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION  
DAR FILE NO.: 41158  
FILED: 01/12/2017**

**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 promulgated under Section 4-5-17 which allows the department to make rules regarding the processing of food.

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 by the department 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 the sanitation and record keeping practices necessary to manufacture and process shellfish in Utah. This rule is necessary not only for producers to sale their product in Utah, but also to be allowed to transport and market their products in other states. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov  
♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/12/2017

**Agriculture and Food, Regulatory Services  
R70-560  
Inspection and Regulation of Cottage Food Production Operations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION  
DAR FILE NO.: 41157  
FILED: 01/12/2017**

**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 promulgated under Subsection 4-5-9.5(2) which allows the department to make rules regarding the cottage food production.

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 by the department 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 the licensing, labeling, distribution, and storage requirements for cottage food production. This rule needs to be continued in order to ensure the safety of the food being produced for human consumption.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov  
♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/12/2017

**Commerce, Occupational and Professional Licensing  
R156-56  
Building Inspector and Factory Built Housing Licensing Act Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION  
DAR FILE NO.: 41144  
FILED: 01/10/2017**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 56, provides for the licensure and regulation of building inspectors and factory built housing. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-56-8.5(3) provides that the Building Inspector Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 56, with respect to building inspectors and factory built housing matters.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in January 2012, the Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued, as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 56, with respect to building inspectors and factory built housing. The rule should also be continued, as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 01/10/2017

Professional Licensing

**R156-64**

**Deception Detection Examiners  
Licensing Act Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41145

FILED: 01/10/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 64, provides for the licensure and regulation of deception detection examiners, deception detection interns, and deception detection examination administrators. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-64-201(3) provides that the Deception Detection Examiners Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division director. This rule was enacted to clarify the provisions of Title 58, Chapter 64, with respect to deception detection examiners, deception detection interns, and deception detection examination administrators.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in January 2012, the Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued, as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 64, with respect to deception detection examiners, deception detection interns, and deception detection examination administrators. The rule should also be continued, as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

Commerce, Occupational and

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

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jana Johansen by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at janajohansen@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 01/10/2017

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**Commerce, Occupational and  
Professional Licensing  
R156-78B  
Prelitigation Panel Review Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41146  
FILED: 01/10/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 78B, Chapter 3, Part 4, provides that the Division of Occupational and Professional Licensing shall be responsible for a medical liability prelitigation program. Subsection 78B-3-416(1)(b) provides the Division shall establish procedures for prelitigation consideration of medical liability claims for damages arising out of the provision of or alleged failure to provide health care and provides the Division may establish rules necessary to administer the process and procedures related to prelitigation hearings and the conduct of prelitigation hearings in accordance with Sections 78B-3-416 through 78B-3-426. This rule was enacted to clarify the provisions of Title 78B, Chapter 3, Part 4, with respect to the medical liability prelitigation program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in February 2012, the Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform persons of the Division's requirements with respect to the medical liability prelitigation program as provided in Title 78B, Chapter 3, Part 4.

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

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ W. Ray Walker by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 01/10/2017

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**Education, Administration  
R277-702  
Procedures for the Utah High School  
Completion Diploma**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41186  
FILED: 01/17/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(b) directs the Utah State Board of Education (Board) to adopt rules regarding access to programs, competency levels, and graduation requirements. Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-702 continues to be necessary because it provides the standards and procedures required for an individual to obtain a Utah High School Completion Diploma. Therefore, this rule should be continued.

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

EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

EFFECTIVE: 01/17/2017

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**Environmental Quality, Waste  
Management and Radiation Control,  
Radiation  
R313-15  
Standards for Protection Against  
Radiation**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41177  
FILED: 01/17/2017

**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 pursuant to Subsections 19-3-104(4) and 19-3-104(7). Subsection 19-3-104(4) allows the Board to make rules necessary for controlling exposure to sources of radiation that constitute a significant health hazard. Subsection 19-3-104(7) restricts the Board's rulemaking to be no more stringent than federal regulations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: During the period from the previous five-year review, three modifications to the rule were made. Comments received for each modification were related to the modification only, and no comments were received either expressing support or opposition to the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued to ensure that the state's rules are adequate to protect public health and safety. The requirements are necessary to control the receipt, possession, use, transfer, and disposal of sources of radiation by a licensee or registrant so that the total dose to an individual, including the doses resulting from all sources of radiation other than background radiation, do not exceed established safety standards. The rule is also needed to meet Utah's commitment, as an Agreement State with the U.S. Nuclear Regulatory Commission (NRC), in order to maintain regulatory compatibility with the NRC.

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

ENVIRONMENTAL QUALITY  
WASTE MANAGEMENT AND RADIATION  
CONTROL, RADIATION  
THIRD FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at [rlundberg@utah.gov](mailto:rlundberg@utah.gov)

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 01/17/2017

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**Environmental Quality, Waste  
Management and Radiation Control,  
Radiation  
R313-21  
General Licenses**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41178  
FILED: 01/17/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

OR REQUIRE THE RULE: Rule R313-21 is adopted pursuant to the provisions of Subsections 19-3-104(3) and 19-3-104(6). Subsection 19-3-104(3) states that all sources of ionizing radiation shall be registered and licensed. Subsection 19-3-104(6) allows the assessment of fees for licensing and registration.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the period from the previous five-year review, one modification to the rule was made. Comments received for the modification were related to the modification only, and no comments were received either expressing support or opposition to 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: Rule R313-21 establishes general licenses for the possession and use of radioactive material contained in certain items and a general license for ownership of radioactive material. The licensing is required by statute and is for the protection of citizens and of Utah and the control of radioactive material. As an Agreement State with the U.S. Nuclear Regulatory Commission (NRC), this rule is necessary in order to maintain regulatory compatibility with the NRC. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY  
WASTE MANAGEMENT AND RADIATION  
CONTROL, RADIATION  
THIRD FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at [rlundberg@utah.gov](mailto:rlundberg@utah.gov)

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 01/17/2017

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**Environmental Quality, Waste  
Management and Radiation Control,  
Radiation  
R313-24  
Uranium Mills and Source Material Mill  
Tailings Disposal Facility Requirements**

## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41179  
FILED: 01/17/2017

### 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 19-3-104, the Radiation Control Act, and Section 19-6-107, the Solid and Hazardous Waste Act, provide the Waste Management and Radiation Control Board and the director of the Division of Waste Management and Radiation Control authority to make and enforce rules regarding the possession, use, transfer, or delivery of source and byproduct material (uranium mill tailings) and the disposal of byproduct material as necessary to protect the public and environment. The rule meets the requirements of federal law relating to radiation control programs to ensure the state of Utah is qualified to maintain primacy from the U.S. Nuclear Regulatory Commission.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the period from the previous five-year review, three modifications to the rule were made. Comments received for each modification were related to the modification only and no comments were received either expressing support or opposition to 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: It is necessary to continue this rule because it establishes the requirements for the regulation of uranium milling facilities and disposal of uranium mill tailings in the state of Utah. In addition, under an agreement with the U.S. Nuclear Regulatory Commission, the Division is the regulator and the rule is required for the state of Utah to maintain primacy from the U.S. Nuclear Regulatory Commission. There are four facilities in Utah that are regulated under this rule. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY  
WASTE MANAGEMENT AND RADIATION  
CONTROL, RADIATION  
THIRD FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at [rlundberg@utah.gov](mailto:rlundberg@utah.gov)

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 01/17/2017

**Environmental Quality, Waste  
Management and Radiation Control,  
Radiation  
R313-30  
Therapeutic Radiation Machines**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION  
DAR FILE NO.: 41180  
FILED: 01/17/2017**

**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 19-1-106 created the Waste Management and Radiation Control Board (Board) within the Department of Environmental Quality. Subsection 19-3-104(4) provides that the Board may make rules necessary for controlling exposure to sources of radiation that constitute a significant health hazard.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the period from the previous five-year review, one modification to the rule was made. Comments received for the modification were related to the modification only, and no comments were received either expressing support or opposition to 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 Board has determined that there is a need to write rules to control the use of radiation sources that constitute a significant health hazard. This rule specifies the regulatory requirements for radiation originating from Therapeutic Radiation Machines, such as a linear accelerator. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 WASTE MANAGEMENT AND RADIATION  
 CONTROL, RADIATION  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 01/17/2017

**Environmental Quality, Waste  
Management and Radiation Control,  
Radiation  
R313-34  
Requirements for Irradiators**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION  
DAR FILE NO.: 41181  
FILED: 01/17/2017**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-1-106(1) creates the Waste Management and Radiation Control Board within the Department of Environmental Quality. Subsection 19-3-104(4) provides that the Board may make rules necessary for controlling exposures to sources of radiation that constitute a significant health hazard and to meet the requirements of federal law relating to radiation control.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the period from the previous five-year review, one modification to the rule was made. Comments received for the modification were related to the modification only and no comments were received either expressing support or opposition to the rule during the comment period on the modification or at any other time during the period from the previous five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it establishes the requirements for the possession and use of sealed sources containing radioactive materials in irradiators. These devices use high levels of gamma radiation to sterilize various products, primarily medical devices and pharmaceutical chemicals. The rule provides for protection of public health and safety by controlling the use of panoramic irradiators that have either dry or wet storage of the radioactive sealed sources; underwater irradiators in which

both the source and object being irradiated are under water; and irradiators whose dose rate exceeds 55 rad per hour at one meter from the radioactive source in air or in water. As an Agreement State, this rule is needed to maintain regulatory compatibility with the U.S. Nuclear Regulatory Commission (NRC).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 WASTE MANAGEMENT AND RADIATION  
 CONTROL, RADIATION  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at [rlundberg@utah.gov](mailto:rlundberg@utah.gov)

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 01/17/2017

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**Environmental Quality, Waste  
 Management and Radiation Control,  
 Radiation  
 R313-35  
 Requirements for X-Ray Equipment  
 Used for Non-Medical Applications**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41183  
 FILED: 01/17/2017

**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 19-1-106 establishes the Radiation Control Board within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules that are necessary for controlling exposure to sources of radiation that constitute a significant health hazard.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the period from the previous five-year review, two modifications to the rule were made.

Comments received for each modification were related to the modification only, and no comments were received either expressing support or opposition to the rule during the comment periods on the modifications or at any other time during the period from the previous five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to continue to ensure that requirements and standards are in place for the adequate protection of public health and safety associated with the use of x-ray machines used for non-medical applications. The rule is consistent with national standards established by radiation control program experts.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 WASTE MANAGEMENT AND RADIATION  
 CONTROL, RADIATION  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at [rlundberg@utah.gov](mailto:rlundberg@utah.gov)

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 01/17/2017

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**Environmental Quality, Waste  
 Management and Radiation Control,  
 Radiation  
 R313-37  
 Physical Protection of Category 1 and  
 Category 2 Quantities of Radioactive  
 Material**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41184  
 FILED: 01/17/2017

**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 19-1-106 establishes the

Radiation Control Board within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules that are necessary for controlling exposure to sources of radiation that constitute a significant health hazard.

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 modifications to this rule have been made since its adoption, and no comments have been received either expressing support or opposition to 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: It is necessary to continue this rule because it prescribes requirements for the physical protection program for a licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material. As an Agreement State, this rule is needed to maintain regulatory compatibility with the U.S. Nuclear Regulatory Commission (NRC).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 WASTE MANAGEMENT AND RADIATION CONTROL, RADIATION  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at [rlundberg@utah.gov](mailto:rlundberg@utah.gov)

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 01/17/2017

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**Environmental Quality, Waste  
 Management and Radiation Control,  
 Radiation  
 R313-38  
 Licenses and Radiation Safety  
 Requirements for Well Logging**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41185  
 FILED: 01/17/2017

**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 19-1-106 created the Radiation Control Board (Board) within the Department of Environmental Quality. Subsection 19-3-104(4) provides that the Board may make rules necessary for controlling exposure to sources of radiation that constitute a significant health hazard.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the period from the previous five-year review, two modifications to the rule were made. Comments received for each modification were related to the modification only, and no comments were received either expressing support or opposition to the rule during the comment periods on the modifications or at any other time during the period from the previous five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Waste Management and Radiation Control Board has determined that there is a need for rules to control the use of radiation sources that constitute a significant health hazard. This rule specifies the regulatory requirements for radiation sources used in Well Logging operations. Therefore, this rule should be continued. As an Agreement State, this rule is needed to maintain regulatory compatibility with the U.S. Nuclear Regulatory Commission (NRC).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 WASTE MANAGEMENT AND RADIATION CONTROL, RADIATION  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at [rlundberg@utah.gov](mailto:rlundberg@utah.gov)

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 01/17/2017

**Environmental Quality, Water Quality  
R317-12**

**Certification of Water Pollution Control  
Facility or Freestanding Pollution  
Control Property**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41193  
FILED: 01/17/2017

**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 statutory provisions under which the rule is enacted is Title 19, Chapter 12, the Pollution Control Act, in which Subsection 19-12-305(2) defines rulemaking authority. These provisions require the rule because they allow for tax relief to industries that have obtained certification for a pollution control facility from a state agency. Rule R317-12 is the mechanism for how the Utah Division of Water Quality determines whether a pollution control facility is eligible for certification.

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 by the Utah Division of Water Quality since the last five-year review, nor when Rule R317-12 was amended 08/27/2014 in response to H.B. 31 (2014).

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 should be continued because it provides guidance to companies as to whether their pollution control facility is eligible for certification from the Utah Division of Water Quality.

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

ENVIRONMENTAL QUALITY  
WATER QUALITY

THIRD FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at [jetherington@utah.gov](mailto:jetherington@utah.gov)

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 01/17/2017

**Financial Institutions, Nondepository  
Lenders  
R343-1**

**Rule Governing Form of Disclosures  
For Title Lenders, Who Are Under the  
Jurisdiction of the Department of  
Financial Institutions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41123  
FILED: 01/06/2017

**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 7-24-203 requires that the department adopt a disclosure form for title loans. This rule establishes minimum standards for the form of disclosure for title lenders to protect the public interest.

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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statutory provision states that the department shall, by rule, specify the information to be provided in a disclosure form. This rule establishes minimum standards for the form of disclosure for title lenders to protect the public interest. Therefore, this rule should be continued.

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

FINANCIAL INSTITUTIONS  
NONDEPOSITORY LENDERS

ROOM 201

324 S STATE ST

SALT LAKE CITY, UT 84111-2393

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at [pallred@utah.gov](mailto:pallred@utah.gov)

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 01/06/2017

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-10A**

**Transplant Services Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41125

FILED: 01/06/2017

**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 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to administer the Medicaid program. Additionally, Section 26-1-5 allows the Department to adopt rules that provide access to Medicaid services, and 42 CFR 482.68 sets forth special requirements for transplant service centers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department received written comments from Molina Health Care, National Marrow Donor Program, Intermountain Health Care, and University of Utah Health Care, after filing a notice of repeal and reenactment for this rule to clarify Medicaid policy in June 2016. The comments reflected concerns over coverage for stem cell transplant services that include research, searches for donors, and requests to expand coverage for various childhood illnesses that may be responsive to stem cell treatment.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it defines important terms and provisions, sets forth eligibility and access requirements, specifies service coverage and prior authorization, clarifies covered and non-covered services for stem cell transplantation, and lists criteria for requests of non-covered services. There is no opposition to the rule itself and the Department filed a change in proposed rule that addresses the written comments and makes other clarifications.

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 Office 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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 01/06/2017

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-21**

**Physical Therapy and Occupational  
Therapy**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41126

FILED: 01/06/2017

**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 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to administer the Medicaid program. Additionally, Section 26-1-5 authorizes the Department to adopt rules that provide access to Medicaid services, and 42 CFR 440.110 authorizes qualified therapists to provide or supervise physical therapy and occupational therapy services.

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 did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: The Department will continue this rule because it implements physical therapy and occupational therapy for Medicaid clients and reimbursement to service providers.

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 Office 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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 01/06/2017

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**Insurance, Administration**  
**R590-70**  
**Insurance Holding Companies**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41134

FILED: 01/09/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 authorizes the department to write rules to implement the provisions of the Utah Insurance Code, Title 31A. The rule provides guidance regarding the registration of an insurance holding company, forms to be used, and filings to be made with the department as noted in Section 31A-16-105.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule during 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: Rule R590-70 contains detailed instructions for the registration and filings of Utah domestic insurers in a holding company corporate structure. Without this rule, the statute itself is not adequate to prescribe uniformity, completeness, and accuracy in compliance with the same. Without the rule, there would be little or no guidance for insurers and no linkage to the department's policies, procedures, and forms. 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 01/09/2017

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**Insurance, Administration**  
**R590-95**  
**Rule to Permit the Same Minimum  
Nonforfeiture Standards for Men and  
Women Insureds Under the 1980 CSO  
and 1980 CET Mortality Tables**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41135

FILED: 01/09/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 authorizes the department to write rules to implement the provisions of the Utah Insurance Code, Title 31A. Section 31A-22-408 authorizes the writing of a rule to set the cash surrender values and paid-up nonforfeiture benefits provided by a plan and computed by a method consistent with the principles of the Standard Nonforfeiture Law for Life Insurance. The rule provides the same cash surrender values and paid-up nonforfeiture benefits to both men and women.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** The department has received no written comments regarding this rule during 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 was adopted as a result of the 1983 U.S. Supreme Court Case of Arizona Governing Committee v. Norris. The court ruled that the use of gender-based actuarial tables in an annuity for an employer's pension plan violates the federal Civil Rights Act of 1964. As a result, the National Association of Insurance Commissioners (NAIC) created regulations that recognize mortality tables utilizing gender-blended nonforfeiture standards for men and women. Most states, including Utah, adopted the rule. It allows insurance companies that issue annuity contracts to employer-clients to comply with the Norris decision. 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 Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

**AUTHORIZED BY:** Steve Gooch, Information Specialist

**EFFECTIVE:** 01/09/2017

provisions of the Utah Insurance Code, Title 31A. Subsection 31A-17-404(3) provides for a rule to determine the form that letters of credit must take to be used as security to protect a ceding insurer in a transaction of reinsurance. This rule sets the standards and form for letters of credit.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** The department has received no written comments regarding this rule during 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:** Without Rule R590-114, letters of credit may not be of adequate quality to ensure the effectiveness of certain reinsurance agreements. The rule protects the ceding insurer's security interest in reinsurance ceded by means of the letter of credit. The rule may also affect other areas of statutory accounting, such as credit for reinsurance ceded. 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 Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

**AUTHORIZED BY:** Steve Gooch, Information Specialist

**EFFECTIVE:** 01/09/2017

**Insurance, Administration**  
**R590-114**  
**Letters of Credit**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41136  
FILED: 01/09/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) provides broad rulemaking authority to implement the

**Insurance, Administration**  
**R590-142**  
**Continuing Education Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41137  
FILED: 01/09/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)

authorizes the commissioner to implement the provisions of the Utah Insurance Code, Title 31A. Subsection 31A-23a-202(1) authorizes the commissioner to prescribe the continuation requirements for a producer and a consultant. Subsection 31A-23a-202(5) authorizes the commissioner to prescribe the processes and procedures for continuing education provider registration and course approval. Subsection 31A-26-206(1) authorizes the commissioner to prescribe the continuing education requirements for an adjuster. Section 31A-30-209 authorizes the commissioner to adopt a rule to implement the continuing education requirements for a defined contribution market. Section 31A-35-401.5 authorizes the commissioner to implement the continuing education requirement for renewal of a bail bond producer license.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** The department received only one written comment regarding this rule during the past five years. The comment included two questions that were submitted during the comment period for a proposed amendment regarding the usage of the name "Utah Health Exchange" and certification requirements for producers selling on Avenue H. The comment did not result in any changes to the proposed rule.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** This rule is important because it specifies how continuing education (CE) courses are approved by the department. The rule also sets standards for the issuance and filing of the certificate for CE credit. This rule makes clear the standards that all licensees must meet in order to receive the CE hours required by law. It also helps build the professionalism of those who work in the insurance industry and improves the accuracy of insurance information delivered to consumers. 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 Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [sgooch@utah.gov](mailto:sgooch@utah.gov)

**AUTHORIZED BY:** Steve Gooch, Information Specialist

**EFFECTIVE:** 01/09/2017

## Insurance, Administration **R590-143** Life and Health Reinsurance Agreements

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41138  
FILED: 01/09/2017

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

**CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE:** Section 31A-2-201 authorizes the commissioner to write rules to implement the provisions of the Utah Insurance Code, Title 31A.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** The department has received no written comments regarding this rule during 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 prevents insurers from reducing a liability or increasing an asset when any of the listed provisions exist. This rule contains scenarios that should not exist relating to the Life and Health Reinsurance Agreements to assure transfer of risk. Risk transfer is essential if a large event (claim) should occur that would cause the insurer to make a monetary settlement beyond its surplus capacity. The contracts shall be written in a manner that assures the reinsurer is assuming the risk to prevent a significant drain of the insurer's surplus. 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 Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [sgooch@utah.gov](mailto:sgooch@utah.gov)

**AUTHORIZED BY:** Steve Gooch, Information Specialist

EFFECTIVE: 01/09/2017

SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

**Insurance, Administration**  
**R590-147**  
**Annual and Quarterly Statement Filing**  
**Instructions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41139  
FILED: 01/09/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the commissioner to establish by rule specific requirements for filing forms, rates, or reports required by the Utah Insurance Code, Title 31A. Section 31A-2-202 authorizes the commissioner to require statements, reports, and information to be delivered to the department or the National Association of Insurance Commissioners (NAIC) in a form specified by the commissioner. Section 31A-4-113 authorizes the commissioner to prescribe by rule the information to be submitted with, and the form of, the annual statement. The rule provides instructions for the filing of annual and quarterly statements with supplementary schedules, exhibits, and documents by insurers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule during 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: If this rule is not continued in force, it may create confusion for insurers regarding their quarterly and annual reporting requirements for the NAIC and the Utah Insurance Department. Annual and quarterly statements may be filed incorrectly more frequently, resulting in costly and unnecessary follow-ups both by insurers and the department. 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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 01/09/2017

**Insurance, Administration**  
**R590-150**  
**Commissioner's Acceptance of**  
**Examination Reports**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41140  
FILED: 01/09/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 authorizes the commissioner to make rules to implement the provisions of the Utah Insurance Code, Title 31A. Subsection 31A-2-203(4) authorizes the commissioner to approve actuarial evaluations made by an actuary. The rule supports Subsection 31A-2-203(4) by defining standards that must be met in reports of examinations conducted by insurance departments of other states in order to be acceptable to the commissioner. Standards were implemented as a result of the National Association of Insurance Commissioners' (NAIC) accreditation program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule supports Subsection 31A-2-203(4) by defining standards that must be met in reports of examinations conducted by insurance departments of other states in order to be acceptable to the commissioner. Standards were implemented as a result of the NAIC accreditation program. 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 01/09/2017

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**Insurance, Title and Escrow  
Commission  
R592-14**

**Delay or Failure to Record Documents  
and the Insuring of Properties with the  
False Appearance of Unmarketability  
as Unfair Title Insurance Practices**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41141  
FILED: 01/09/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-404(2) authorizes the Title and Escrow Commission to write rules related to rating standards and methods, licensing requirements, continuing education requirements, examination procedures, and standards for conduct for a title licensee. This rule relates to standards of conduct in the recording of documents and insuring of properties.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule during 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: Continuation of this rule was approved by the Title and Escrow Commission at its 01/09/2017 meeting. This rule is important to prohibit intentional delay, neglect, or refusal by insurers to record or deliver for recording documentation that is necessary to support policy insuring provisions, resulting in the false appearance of unmarketability, in the record only, of property that would otherwise be marketable. This practice is deemed to be an unfair or deceptive act or practice detrimental to free competition in the business of insurance and is injurious to the public. Therefore, this rule should be continued.

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

INSURANCE  
TITLE AND ESCROW COMMISSION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 01/09/2017

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**Natural Resources; Forestry, Fire and  
State Lands  
R652-140  
Utah Forest Practices Act**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41143  
FILED: 01/10/2017

**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 adopted pursuant to the authority of Subsection 65A-1-4(2), which requires the Division to promulgate rules, and by Section 65A-8a-101 et seq. to clarify the procedure through which operators must register with the Division and notify the Division of the intent to conduct forest practices.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: The Division has received no written comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule clarifies the procedure through which operators must register with the Division and notify the Division of their intent to conduct forest practices. Therefore, this rule should be continued.

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 STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 01/10/2017

**Pardons (Board of), Administration  
R671-101  
Rules**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41122  
FILED: 01/05/2017

**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 77-27-9 and Title 63G, Chapter 3, obligates the Board to make rules under certain circumstances. In particular, the Board makes rules to implement public policy set forth by the legislature in statute.

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 regarding Rule R671-101.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides an introduction to the

Board's administrative rules and is a statement that rules should be interpreted in the interest of public safety so long as the rights of a party are not substantially impacted. Therefore, this rule should be continued.

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

PARDONS (BOARD OF)  
ADMINISTRATION  
ROOM 300  
448 E 6400 S  
SALT LAKE CITY, UT 84107-8530  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at gregjohnson@utah.gov

AUTHORIZED BY: Angela Micklos, Chair

EFFECTIVE: 01/05/2017

**Pardons (Board of), Administration  
R671-402  
Special Conditions of Parole**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41176  
FILED: 01/17/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 77-27-5, 77-27-6, 77-27-9, 77-27-10, and 77-27-11 give the Board the authority, proceedings guidelines, conditions and/or revocation of parole. Rule R671-402 states the Board may add special conditions to a standard parole agreement which are intended to help hold an offender accountable or to help rehabilitate the offender.

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 were received related to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The best practice for setting parole conditions is to tailor the conditions to the individual's risk and need. For example, a person who commits sex offenses against

children would have a special parole condition restricting the individual from being in positions of trust over children. The Board supports the continuation of this rule because it allows the Board the ability to add special conditions to a standard parole agreement according to the needs of the individual.

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

PARDONS (BOARD OF)  
ADMINISTRATION  
ROOM 300  
448 E 6400 S  
SALT LAKE CITY, UT 84107-8530  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bev Uipi by phone at 801-261-6446, or by Internet E-mail at [buipi@utah.gov](mailto:buipi@utah.gov)  
◆ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at [gregjohnson@utah.gov](mailto:gregjohnson@utah.gov)

AUTHORIZED BY: Angela Micklos, Chair

EFFECTIVE: 01/17/2017

Pardons (Board of), Administration  
**R671-403**  
Restitution

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41121  
FILED: 01/05/2017

**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 77-27-6 gives the Board the authority to order restitution even if the court has not determined restitution. Rule R671-403 sets rules about the procedure the Board uses to order restitution.

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 were received related to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued because it provides direction about how restitution may be ordered by the Board including the process and parameters for approval.

The rule gives explanation and direction to victims and offenders who need to claim restitution or dispute the order of the Board.

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

PARDONS (BOARD OF)  
ADMINISTRATION  
ROOM 300  
448 E 6400 S  
SALT LAKE CITY, UT 84107-8530  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at [gregjohnson@utah.gov](mailto:gregjohnson@utah.gov)

AUTHORIZED BY: Angela Micklos, Chair

EFFECTIVE: 01/05/2017

Public Safety, Driver License  
**R708-3**  
Driver License Point System  
Administration

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41128  
FILED: 01/08/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Pursuant to Subsection 53-3-221(4), the division shall make rules establishing a point system and will assign a number of points to each type of moving traffic violation as a measure of its seriousness. Pursuant to Subsection 53-3-209(2), the division shall make rules for the establishment and administration of a separate point system for persons younger than 21 years of age. Pursuant to Subsection 63G-4-203(1), if an agency enacts rules designating one or more categories of adjudicative proceedings as informal adjudicative proceedings, the agency shall, by rule, prescribe procedures for informal adjudicative proceedings.

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 public comment was received in reference to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The division is required by Utah code to set rules and establishing a point system. Each moving traffic violation will be assigned a number of points as a measure of the seriousness of the violation. Therefore, this rule should be continued.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
- ◆ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Chris Caras, Director

EFFECTIVE: 01/08/2017

**Public Safety, Driver License  
R708-7**

**Functional Ability in Driving: Guidelines  
for Physicians**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41133  
FILED: 01/08/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 53-3-104(13), which requires the Division to make rules to provide administrative support to the Driver License Medical Advisor Board created in Section 53-3-303. This rule interprets Section 53-3-303, which directs the Driver License Division to create a Medical Advisory Board in order to make recommendations for medical standards and guidelines to address conditions that may impact an individual's ability to safely operate a motor vehicle. The Board is also directed to function in an advisory capacity to review decisions made by

the Division in reference to an individual's privilege to drive. This rule interprets Section 53-3-304, which directs the Driver License Division to review physical, mental, and emotional ability of drivers based on information submitted by a health care professional and to issue restricted driving privileges when appropriate. 49 CFR 391.43 is a federal mandate which outlines medical requirements for commercial driver license applicants and the process for issuance of a DOT medical card.

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 public comment was received either supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required by Subsection 53-3-104(13). This rule interprets Section 53-3-303 and Section 53-3-304 as it outlines the responsibilities of the driver, health care professional, and Medical Advisory Board with regards to health and driving. The rule establishes guidelines for licensing drivers who have a mental, emotional, or physical condition that might impair their ability to safely operate a motor vehicle. Therefore, this rule should be continued.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Chris Caras, Director

EFFECTIVE: 01/08/2017

**Public Safety, Driver License  
R708-8**

**Review Process: Driver License  
Medical Review Section**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41129  
FILED: 01/08/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53-3-104(13) authorizes the Division to make rules to support the Driver License Medical Advisory Board created in Section 53-3-303. Pursuant to Subsections 53-3-303(10) and (11), this rule outlines the steps for Division employees and the public that will be used when determining a driver's medical competence to drive. It outlines the driver's responsibilities and the process of review by the medical advisory board. This information is also provided to the driver in letters. Section 53-3-224 outlines the process for filing a petition for hearing or judicial review of a decision made by the Division.

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 public comment was received in reference to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is set in place to accomplish the legislative intent set forth in Section 53-3-303 as it pertains to a driver's right to have a review of any action taken by the Division as it pertains to a suspension, revocation, denial, disqualification, cancellation, or restriction placed upon the applicant's driving privilege as a result of a physical, mental, or emotional condition which may impair the applicant's ability to safely operate a motor vehicle. This rule sets forth clear guidelines and establishes a process that organizes this Division to help ensure due process of law as it pertains to any actions imposed on the driver. Each step creates an obligation for the Division, Medical Board, and the driver in ensuring that a proper review is conducted when an aggrieved applicant or licensee wishes to petition the state as is the applicant's right established in Section 53-3-224. Therefore, this rule should be continued.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at [kgibb@utah.gov](mailto:kgibb@utah.gov)  
♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at [modalton@utah.gov](mailto:modalton@utah.gov)

AUTHORIZED BY: Chris Caras, Director

EFFECTIVE: 01/08/2017

**Public Safety, Driver License  
R708-14  
Adjudicative Proceedings for Driver  
License Actions Involving Alcohol and  
Drugs**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41130

FILED: 01/08/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 53-3-104 and Subsection 63G-4-203 (1). This rule designates alcohol- and drug-related adjudicative proceedings as informal and prescribes procedures for conducting alcohol- and drug-related adjudicative proceedings.

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 supporting or opposing comments have been received since the last review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Subsection 63G 4-203(1) authorizes the Division to enact rules designating adjudicative proceedings as informal adjudicative proceedings and prescribing procedures for informal adjudicative proceedings. This rule designates alcohol- and drug-related adjudicative proceedings as informal and prescribes procedures for conducting alcohol- and drug-related adjudicative proceedings. Therefore, this rule should be continued.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov  
 ♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Chris Caras, Director

EFFECTIVE: 01/08/2017

**Public Safety, Driver License  
 R708-34  
 Medical Waivers for Intrastate  
 Commercial Driving Privileges**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41132  
 FILED: 01/08/2017

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 63G-3-201(2), which requires an agency to make rules when agency action authorizes, requires, or prohibits an action; provides or prohibits a material benefit; applies to a class of persons or another agency; or is explicitly or implicitly authorized by statute. This rule interprets Section 53-3-303.5, as it outlines the process for commercial drivers to apply for an intrastate exception when they do not qualify for Federal DOT fitness standards. This process allows the driver to meet certain Utah qualifications and drive a commercial motor vehicle within the state of Utah.

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 public comment was received either supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: When an applicant does not meet the minimum medical fitness qualifications as stated in 49 CFR 391.41, the applicant may still qualify for an intrastate waiver that would allow the applicant to operate a commercial motor vehicle within the boundaries of the state. This rule outlines the process that a driver must go through in order to qualify and apply for an intrastate medical waiver. As part, this rule creates a set of qualifications, responsibilities, and guidelines for both the driver and the Division to follow in order to qualify

and issue a Utah Intrastate Waiver. In accordance with Subsection 63G-4-202(1), this rule designates all adjudicative proceedings with regards to a medical waiver as informal. Therefore, this rule should be continued.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov  
 ♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Chris Caras, Director

EFFECTIVE: 01/08/2017

**Public Safety, Driver License  
 R708-35  
 Adjudicative Proceedings for Driver  
 License Offenses Not Involving Alcohol  
 or Drug Actions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41131  
 FILED: 01/08/2017

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 53-3-104 and Subsection 63G-4-203(1). Subsection 63G 4-203(1) authorizes the Division to enact rules designating adjudicative proceedings as informal adjudicative proceedings and prescribing procedures for informal adjudicative proceedings. This rule designates adjudicative proceedings for driver license offenses that are not alcohol- or drug-related as informal and prescribes procedures for conducting such informal adjudicative proceedings.

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 supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Subsection 63G 4-203(1) authorizes the Division to enact rules designating adjudicative proceedings as informal adjudicative proceedings and prescribing procedures for informal adjudicative proceedings. This rule designates adjudicative proceedings for driver license offenses that are not alcohol- or drug-related as informal and prescribes procedures for conducting such informal adjudicative proceedings. Therefore, this rule should be continued.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov  
♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Chris Caras, Director

EFFECTIVE: 01/08/2017

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**School and Institutional Trust Lands,  
Administration  
R850-90  
Land Exchanges**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41155  
FILED: 01/12/2017

**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 53C-1-302(1)(a)(ii) and 53C-4-101(1) authorize the Director of the School and Institutional Trust Lands Administration to make rules for the day-to-day administration of the agency and to specify the application and review criteria used for the exchange of trust lands.

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 by the agency concerning this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There continues to be a need for the agency to consider exchanging trust lands for other lands and/or resources. Land exchanges are typically very complicated transactions that require a lot of preliminary review and evaluation. This rule provides the application procedures and review criteria required for the exchange of trust lands in order that the agency may fulfill its fiduciary responsibility to the various trust beneficiaries by optimizing and maximizing the return on the exchanged lands and/or resources. Therefore, this rule should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
ROOM 500  
675 E 500 S  
SALT LAKE CITY, UT 84102-2818  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at jandrews@utah.gov

AUTHORIZED BY: David Ure, Director

EFFECTIVE: 01/12/2017

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**School and Institutional Trust Lands,  
Administration  
R850-120  
Beneficiary Use of Institutional Trust  
Land**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41156  
FILED: 01/12/2017

**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 53C-1-302(1)(a)(ii) and 53C-4-101(1) authorize the Director of the School and Institutional Trust Lands Administration to make rules governing the use of lands granted under Sections 7, 8, and 12 of the Utah Enabling Act by their respective beneficiary. This rule provides the guidelines whereby beneficiary institutions may request non-compensated, in-kind use of their own granted lands as a direct economic benefit to that institution.

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 by the agency since the previous five-year review was filed.

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 allows for in-kind use by the trust beneficiaries of their respective institutional trust lands administered by the agency for a direct economic benefit. The procedures and criteria outlined in this rule allow for the

agency to respond to beneficiary requests for non-compensated use of their respective lands without having to use the same standards that apply to members of the general public or other governmental entities. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
ROOM 500  
675 E 500 S  
SALT LAKE CITY, UT 84102-2818  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at [jandrews@utah.gov](mailto:jandrews@utah.gov)

AUTHORIZED BY: David Ure, Director

EFFECTIVE: 01/12/2017

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**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 administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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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. 40951 (AMD): R58-11. Slaughter of Livestock and

Poultry

Published: 12/01/2016

Effective: 01/12/2017

### Commerce

#### Consumer Protection

No. 40920 (AMD): R152-6. Utah Administrative Procedures Act Rules

Published: 11/15/2016

Effective: 01/09/2017

### Education

#### Administration

No. 41004 (NEW): R277-499. Seal of Biliteracy

Published: 12/01/2016

Effective: 01/10/2017

No. 41005 (AMD): R277-503. Licensing Routes

Published: 12/01/2016

Effective: 01/10/2017

No. 41006 (AMD): R277-507. Driver Education

Endorsement

Published: 12/01/2016

Effective: 01/10/2017

No. 41007 (AMD): R277-512. Online Licensure

Published: 12/01/2016

Effective: 01/10/2017

No. 41008 (NEW): R277-517. LEA Codes of Conduct

Published: 12/01/2016

Effective: 01/10/2017

No. 41009 (AMD): R277-531. Public Educator Evaluation Requirements (PEER)

Published: 12/01/2016

Effective: 01/10/2017

No. 41010 (AMD): R277-533. District Educator Evaluation Systems

Published: 12/01/2016

Effective: 01/10/2017

### Health

#### Administration

No. 40993 (REP): R380-400. Use of Statistical Sampling and Extrapolation

Published: 12/01/2016

Effective: 01/10/2017

#### Children's Health Insurance Program

No. 40997 (AMD): R382-10-11. Household Composition and Income Provisions

Published: 12/01/2016

Effective: 01/17/2017

Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health

No. 40901 (REP): R388-803. HIV Test Reporting

Published: 11/15/2016

Effective: 02/01/2017

Health Care Financing, Coverage and Reimbursement Policy  
No. 40998 (AMD): R414-304-5. MAGI-Based Coverage Groups

Published: 12/01/2016

Effective: 01/17/2017

Disease Control and Prevention, Laboratory Services  
No. 40868 (REP): R438-10. Rules for Establishment of a Procedure to Examine the Blood of All Adult Pedestrians and All Drivers of Motor Vehicles Killed in Highway Accidents for the Presence and Concentration of Alcohol, for the Purpose of Deriving Statistics Therefrom  
Published: 11/01/2016  
Effective: 01/11/2017

Disease Control and Prevention, Laboratory Improvement  
No. 41000 (REP): R444-11. Rules for Approval to Perform Blood Alcohol Examinations  
Published: 12/01/2016  
Effective: 01/20/2017

Human Services

Administration, Administrative Services, Licensing  
No. 40929 (R&R): R501-1. General Provisions  
Published: 11/15/2016  
Effective: 01/17/2017

No. 40931 (AMD): R501-14. Human Service Program Background Screening  
Published: 11/15/2016  
Effective: 01/17/2017

Child and Family Services  
No. 40933 (NEW): R512-311. Out-of-Home Services. Psychotropic Medication Oversight Panel  
Published: 12/01/2016  
Effective: 01/10/2017

Substance Abuse and Mental Health  
No. 40934 (AMD): R523-4. Screening, Assessment, Prevention, Treatment and Recovery Support Standards for Adults Required to Participate in Services by the Criminal Justice System  
Published: 12/01/2016  
Effective: 01/17/2017

No. 40999 (AMD): R523-11-3. Certification Requirements for DUI Educational Providers  
Published: 12/01/2016  
Effective: 01/17/2017

Insurance

Administration  
No. 40954 (R&R): R590-70. Insurance Holding Companies  
Published: 12/01/2016  
Effective: 01/10/2017

No. 40955 (AMD): R590-173. Credit for Reinsurance  
Published: 12/01/2016  
Effective: 01/10/2017

Natural Resources

Forestry, Fire and State Lands  
No. 41012 (AMD): R652-1. Definition of Terms  
Published: 12/01/2016  
Effective: 01/10/2017

No. 41011 (AMD): R652-120. Wildland Fire  
Published: 12/01/2016  
Effective: 01/10/2017

No. 41013 (AMD): R652-121. Wildland Fire Suppression Fund  
Published: 12/01/2016  
Effective: 01/10/2017

No. 41014 (AMD): R652-122. County Cooperative Agreements with State for Fire Protection  
Published: 12/01/2016  
Effective: 01/10/2017

No. 41015 (REP): R652-123. Exemptions to Wildland Fire Suppression Fund  
Published: 12/01/2016  
Effective: 01/10/2017

Public Safety

Emergency Management  
No. 40956 (NEW): R704-3. Local Government Emergency Response Loan Program  
Published: 12/01/2016  
Effective: 01/12/2017

**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, 2017 through January 17, 2017. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (<http://www.rules.utah.gov/>).

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**RULES INDEX - BY AGENCY (CODE NUMBER)**

**ABBREVIATIONS**

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	41127	EMR	01/06/2017	Not Printed
R25-14	Payment of Attorney's Fees in Death Penalty Cases	41124	5YR	01/06/2017	Not Printed
<b>AGRICULTURE AND FOOD</b>					
<u>Administration</u>					
R51-2	Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	41120	5YR	01/03/2017	2017-2/45
<u>Animal Industry</u>					
R58-1	Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals	41168	5YR	01/12/2017	Not Printed
R58-3	Brucellosis Vaccination Requirements	41164	5YR	01/12/2017	Not Printed
R58-6	Poultry	41165	5YR	01/12/2017	Not Printed
R58-11	Slaughter of Livestock and Poultry	40951	AMD	01/12/2017	2016-23/16
R58-18	Elk Farming	41162	5YR	01/12/2017	Not Printed
R58-22	Equine Infectious Anemia (EIA)	41163	5YR	01/12/2017	Not Printed
R58-23	Equine Viral Arteritis (EVA)	41167	5YR	01/12/2017	Not Printed
<u>Regulatory Services</u>					
R70-201	Compliance Procedures	41160	5YR	01/12/2017	Not Printed
R70-320	Minimum Standards for Milk for Manufacturing Purposes, Its Production and Processing	41166	5YR	01/12/2017	Not Printed
R70-350	Ice Cream and Frozen Dairy Food Standards	41159	5YR	01/12/2017	Not Printed
R70-360	Procedure for Obtaining a License to Test Milk for Payment	41161	5YR	01/12/2017	Not Printed
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**ABBREVIATIONS**

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

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<u>poultry</u> Agriculture and Food, Animal Industry	41165	R58-6	5YR	01/12/2017	Not Printed
	40951	R58-11	AMD	01/12/2017	2016-23/16
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	41178	R313-21	5YR	01/17/2017	Not Printed
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