

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed August 2, 2002, 12:00 a.m. through August 15, 2002, 11:59 p.m.

Number 2002-17
September 1, 2002

Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

The *Utah State Bulletin (Bulletin)* is the official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63-46a-10, *Utah Code Annotated* 1953.

Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: <http://www.rules.utah.gov/>

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

The *Bulletin* is printed and distributed semi-monthly by Legislative Printing. The annual subscription rate (24 issues) is \$174. Inquiries concerning subscription, billing, or changes of address should be addressed to:

LEGISLATIVE PRINTING
PO BOX 140107
SALT LAKE CITY, UT 84114-0107
(801) 538-1103
FAX (801) 538-1728

ISSN 0882-4738

Division of Administrative Rules, Salt Lake City 84114

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Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
- I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

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NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between August 2, 2002, 12:00 a.m., and August 15, 2002, 11:59 p.m. are included in this, the September 1, 2002, issue of the *Utah State Bulletin*.

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

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least October 1, 2002. The agency may accept comment beyond this date and will list 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 to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through December 30, 2002, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

Agriculture and Food, Regulatory
Services
R70-310
Grade A Pasteurized Milk

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 25146
FILED: 08/06/2002, 15:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change adopts the latest version of the Grade A Pasteurized Milk Ordinance.

SUMMARY OF THE RULE OR CHANGE: This rule change adopts the 2001 version of the Grade A Pasteurized Milk Ordinance. There are no significant changes in this version.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-2-2(1)(j)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: USPHS Grade A Pasteurized Milk Ordinance, 2001 version

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no cost or savings to the state budget. Dairy owners will be affected if they violate any portion of the Grade A Pasteurized Milk Ordinance.
- ❖ LOCAL GOVERNMENTS: There is no cost or savings to local government. Dairy owners will be affected if they violate any portion of the Grade A Pasteurized Milk Ordinance.
- ❖ OTHER PERSONS: A penalty not to exceed \$5,000 per violation in a civil proceeding would apply to dairy owners if any portion of the Ordinance is violated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Violation of any portion of the Grade A Pasteurized Milk Ordinance recommendation may result in civil or criminal action. A penalty not to exceed \$5,000 per violation in a civil proceeding would apply, and in a criminal proceeding the offending party would be guilty of a Class B misdemeanor.

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

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 84116-3087, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Marolyn Leetham or Don McClellan at the above address, by phone at 801-538-7114 or 801-538-7145, by FAX at 801-538-

7126, or by Internet E-mail at mleetham@utah.gov or dmccllellan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2002

AUTHORIZED BY: Cary G. Peterson, Commissioner

R70. Agriculture and Food, Regulatory Services.

R70-310. Grade A Pasteurized Milk.

R70-310-1. Authority.

- A. Promulgated Under the Authority of Subsection 4-2-2(1)(j).
- B. Scope - this rule shall apply to all Grade A pasteurized milk products sold, bought, processed, manufactured or distributed within the State of Utah.

R70-310-2. Adoption of USPHS Ordinance.

The Grade A Pasteurized Milk Ordinance, [~~1999~~2001 Recommendations of the United States Public Health Service/Food and Drug Administration, is hereby adopted and incorporated by reference within this rule. This document is available for public inspection, during normal working hours, and may be reviewed at the main office of the Utah Department of Agriculture and Food, 350 No. Redwood Road, SLC, UT 84116.

R70-310-3. Regulatory Agency Defined.

The definition of "regulatory agency" as given in section 1(x) of the Grade A Pasteurized Milk Ordinance shall mean the Commissioner of Agriculture and Food of the State of Utah or his authorized representative(s).

R70-310-4. Penalty.

Violation of any portion of the Grade A Pasteurized Milk Ordinance 1999 recommendation may result in civil or criminal action, pursuant to Section 4-2-15.

KEY: food inspection

~~April 3, 2000~~2002

Notice of Continuation February 10, 2000

4-2-2

▼ ————— ▼

Commerce, Occupational and
Professional Licensing

R156-46b

Division Utah Administrative
Procedures Act Rules

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 25148
FILED: 08/08/2002, 14:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division has determined it needs to clarify and establish both formal and informal adjudicative proceedings.

SUMMARY OF THE RULE OR CHANGE: Amendments made to Sections R156-46b-201 and R156-46b-202 clarify formal and informal proceedings for claims to the Residence Lien Recovery Fund. the rule change eliminates informal advice from the Division regarding the applicability of statute, rule, or order as an informal adjudicative proceeding; and adds disciplinary actions imposed by memorandum of understanding and agreements terminating an individual from a diversion agreement as informal adjudicative proceedings.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63-46b-1(6) and 58-1-106(1)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs, approximately \$40, to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: The Division anticipates no effect on local government since only clarifications and additions are being made to formal and informal adjudicative proceedings.

❖ OTHER PERSONS: The proposed changes clarify adjudicative proceedings conducted by the Division. Those individuals or licensees seeking relief may hire legal counsel to appeal a decision. The aggrieved person would bear the cost of engaging such legal counsel.

COMPLIANCE COSTS FOR AFFECTED PERSONS: An individual may, if desired, incur legal costs to appeal a Division decision.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule change includes amendments that are procedural in nature and within the Division's authority under the Utah Administrative Procedures Act. There does not appear to be any negative fiscal impact to businesses as a result of the proposed amendments. Ted Boyer, Executive Director

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 Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

W. Ray Walker at the above address, by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2002

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rules.
R156-46b-201. Formal Adjudicative Proceedings.**

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

- (a) denial of application for renewal of licensure;
- (b) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(5);
- (c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(b);
- (d) special appeals board held in accordance with Section 58-1-402;

(e) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, in which the claimant is precluded from obtaining the required civil judgment or administrative order against the ~~[original contractor]~~ nonpaying party involved in the claim because the ~~[original contractor]~~ nonpaying party filed bankruptcy; ~~and~~

(f) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (e); and

([f]g) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding.

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

- (a) disciplinary proceedings which result in the following sanctions:
 - (i) revocation of licensure;
 - (ii) suspension of licensure;
 - (iii) restricted licensure;
 - (iv) probationary licensure;
 - (v) issuance of a cease and desist order except when imposed by citation or by an order in a contested citation hearing;
 - (vi) administrative fine except when imposed by citation or by an order in a contested citation hearing; and
 - (vii) issuance of a public reprimand; and
- (b) unilateral modification of a disciplinary order.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

- (a) approval or denial of application to take a licensure examination;
- (b) disqualification of examination results for cheating on examination;
- (c) request for rescoring of examination;
- (d) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;
- (e) denial of application for initial licensure or relicensure;
- (f) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(a);

(g) denial of application for reinstatement of restricted, suspended, or probationary licensure during the term of the restriction, suspension, or probation;

(h) approval or denial of application for inactive or emeritus licensure status;

(i) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, except those in which the claimant is precluded from obtaining the required civil judgment or administrative order against the ~~[original contractor]~~nonpaying party involved in the claim because the ~~[original contractor]~~nonpaying party filed bankruptcy;

(j) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (i);

~~(j)~~k approval or denial of request to surrender licensure;

~~(k)~~l approval or denial of request for entry into diversion program under Section 58-1-404;

~~(l)~~m matters relating to diversion program;

~~(m)~~n contested citation hearing held in accordance with Subsection 58-55-503(4)(b);

~~(n)~~o board of appeal held in accordance with Subsection 58-56-8(3);

~~(o)~~p approval or denial of request for modification of disciplinary order;[

~~(p) informal advice determining the applicability of statute, rule or order to specified circumstances;]~~

(q) 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;

(r) approval or denial of request for correction of procedural or clerical mistakes;

(s) approval or denial of request for correction of other than procedural or clerical mistakes; and

(t) all other requests for agency action not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a ~~[A]~~notice of [A]agency [A]action or request for agency action are classified as informal adjudicative proceedings:

(a) disciplinary proceeding seeking exclusively the issuance of a private reprimand;~~and~~

(b) nondisciplinary proceeding which results in cancellation of licensure[-];

(c) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure; and

(d) termination of diversion agreements.

KEY: administrative procedures, government hearings, occupational licensing

~~[October 17, 2000]~~2002

Notice of Continuation June 11, 2001

63-46b-1(6)

58-1-106(1)

▼ ————— ▼

Environmental Quality, Administration
R305-2
Electronic Meeting

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 25154

FILED: 08/13/2002, 14:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule describes a procedure which is already being used. This procedure is being put into rule to better serve the public so that they will be informed of the process being used and will be able to participate in an electronic meeting.

SUMMARY OF THE RULE OR CHANGE: This rule establishes procedures for conducting a telephonic or electronic meeting, including notification, procedures, provisions for telephonic and electronic appearance, and anchor location.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 19-1-201(k) and 19-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no costs or savings since this is a procedure that is already used by all of the boards. It is not anticipated that the procedure will be used any more or less than it is now.

❖ **LOCAL GOVERNMENTS:** There are no costs or savings since this is a procedure that is already used by all of the boards. It is not anticipated that the procedure will be used any more or less than it is now.

❖ **OTHER PERSONS:** There are no costs or savings since this is a procedure that is already used by all of the boards. It is not anticipated that the procedure will be used any more or less than it is now.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost is the same as any associated with a regularly conducted meeting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The cost is the same as any associated with a regularly conducted meeting.

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

ENVIRONMENTAL QUALITY

ADMINISTRATION

168 N 1950 W

SALT LAKE CITY UT 84116-3085, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Oberndorfer at the above address, by phone at 801-536-4402, by FAX at 801-536-0061, or by Internet E-mail at doberndorfer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/17/2002

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R305. Environmental Quality, Administration.**R305-2. Electronic Meeting.****R305-2-1. Purpose.**

Section 52-4-7.8 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting meetings of the Department of Environmental Quality and the Boards established within the Department in accordance with Section 19-1-106.

R305-2-2. Authority.

This rule is established under the authority of Sections 19-1-201(k) and 202(1)(a).

R305-2-3. Procedure.

The following provisions govern any meeting at which one or more Board members appear telephonically or electronically pursuant to Section 52-4-7.8.

(1) If one or more members of a Board may participate electronically or telephonically, public notice of the meeting shall so indicate. In addition the notice shall specify the anchor location where the members of the Board not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(2) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meeting.

(3) Notice of the possibility of an electronic meeting shall be given to the Board members at least 24 hours before the meeting. In addition, the notice shall describe how a Board Member may participate in the meeting electronically or telephonically.

(4) When notice is given of the possibility of a Board member appearing electronically or telephonically, any board member may do so and shall be counted as present for the purposes of a quorum and may fully participate and vote on any matter coming before the Board. At the commencement of the meeting, or at such a time as any Board member initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Board who are not at the physical location of the meeting shall be confirmed by the Chair.

(5) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Environmental Quality, 160 North 1950 West, Salt Lake City, Utah 84116. The anchor location is the physical location from which the electronic meeting originates or from where the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: electronic meetings, board meetings**2002****19-1-201(k)****19-1-202(1)(a)**

Environmental Quality, Administration

R305-3

Emergency Meeting

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 25153

FILED: 08/13/2002, 13:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule describes a procedure which is already being used. This procedure is being put into rule to better serve the public so that they will be informed of the process being used and will be able to participate in an emergency meeting.

SUMMARY OF THE RULE OR CHANGE: This rule establishes procedures for conducting an emergency meeting, including notification, procedures, provisions for telephonic and electronic appearance, and anchor location.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-46a-3, and Subsections 19-1-201(k) and 19-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no costs or savings since this is a procedure that is already used by all of the boards. It is not anticipated that the procedure will be used any more or less than it is now.

❖ **LOCAL GOVERNMENTS:** There are no costs or savings since this is a procedure that is already used by all of the boards. It is not anticipated that the procedure will be used any more or less than it is now.

❖ **OTHER PERSONS:** There are no costs or savings since this is a procedure that is already used by all of the boards. It is not anticipated that the procedure will be used any more or less than it is now.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost is the same as any associated with a regularly scheduled meeting with the possibility of savings by promptly addressing an emergency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Cost will be the same as those for a regularly scheduled meeting, with possibility of savings by promptly addressing the emergency.

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

ENVIRONMENTAL QUALITY
ADMINISTRATION
168 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Oberndorfer at the above address, by phone at 801-536-4402, by FAX at 801-536-0061, or by Internet E-mail at doberndorfer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/17/2002

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R305. Environmental Quality, Administration.**R305-3. Emergency Meeting.****R305-3-1. Purpose.**

The Department of Environmental Quality and the Boards established within the Department in accordance with Section 19-1-106 recognize that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public provisions of Sections 52-4-6(1), (2), and (3) cannot be met. Pursuant to Sections 52-4-6(5), under such circumstance those notice requirements need not be followed but rather the best notice practicable shall be given.

R305-3-2. Authority.

This rule is enacted under the authority of Sections 63-46a-3 and 19-1-201(k) and 202(1)(a).

R305-3-3. Procedure.

(1) No emergency meeting shall be held unless an attempt has been made to notify all members of the Board of the proposed meeting and a majority of the convened Board votes in the affirmative to hold such an emergency meeting.

(2) Public notice of each emergency meeting shall be provided as soon as practicable and shall include at minimum the following:

(a) The agenda and notice of the meeting shall be posted in writing at the offices of the division or department.

(b) If members of the Board may appear electronically or telephonically, each such notice shall specify the anchor location for the meeting at which all interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting:

(c) Notice to the Board members shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum:

(d) Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.

(3) If one or more members of the Board appear electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirement which shall be governed by these provisions.

(4) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the Board shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the Board to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Section 52-4-6 could not be followed.

KEY: emergency meetings, board meetings**2002****63-46a-3****19-1-201(k)****19-1-202(1)(a)**

Environmental Quality, Environmental Response and Remediation

R311-207

Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25161

FILED: 08/15/2002, 10:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Several of the proposed rule changes are "housekeeping" and clarifications. These are based on comments received and observed ambiguities. Cost reduction and cost containment of remediation costs are the purpose of other proposed changes. The change in the way the Petroleum Storage Tank (PST) Fund sets allowable labor rates is proposed to simplify the process and place all PST Fund-approved consultants on an equal basis.

SUMMARY OF THE RULE OR CHANGE: Changes that are "housekeeping" and clarification: In Subsection R311-207-2(f), clarifies that each release must stand on its own with respect to cost reimbursement. Funding for one release cannot be used to pay for another release. In Subsection R311-207-3(c)(2), removes a partial definition of a certified consultant and refers back to the full definition. In Subsection R311-207-5(b), removes the lengthy list of specific reimbursable and nonreimbursable items from the rules and adopts a more complete list by reference. In Subsection R311-207-5(c), adopts by reference a list of allowable charges for frequently used equipment and supplies. The Fund has used this list on a policy basis since November 2000. Changes that are cost reduction and cost containment measures: In Subsection R311-207-3(h), requires that all claims for reimbursement shall be received by the Fund within one year from the date the work was performed. The intent is that responsible parties keep their billings current so that the fund can better estimate cash flow. In Subsection R311-207-4(e)(1), expands on the requirement for three competitive bids for subcontracted work. Two of the bids must be from subcontractors who are not "related parties." "Related parties" are defined. A consultant may do yearly bidding for frequently used services. The lowest bid from a qualified bidder will be the amount the fund will reimburse a responsible party. In Subsection R311-207-4(e)(2), sole source justification for subcontractors is deleted except in the case of

analytical laboratories. In Subsection R311-207-4(i), requires that all remedial action estimated to cost more than \$150,000 must be competitively bid on a pay for performance contract basis. This provision will significantly reduce the costs for large scale active remediation systems. In Subsection R311-207-7(d), allows the Executive Secretary to set reimbursement rates for commonly performed tasks based on appropriate methods such as competitive bids and market surveys. An additional change is in the way the Fund sets allowable labor rates: In Subsection R311-207-7(b), eliminates setting allowable labor rates for each individual consultant. The current method requires each consultant to submit a list of proposed rates. The maximum rate is set by calculating the average proposed rate plus one standard deviation. Each consultant's rates must be below the maximum. The proposed change will use the rates submitted by each consultant and calculate a single rate for each labor category based on the mean of all rates. This new method should not result in an increase or decrease in the overall amount of reimbursement from the Fund. Some consultants will have labor rates higher than their current rates and other consultants will receive less. However, the new method will be easier to understand and simpler to administer.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-419

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: "Utah Petroleum Storage Tank Trust Fund Time and Material Reimbursement Standards"; and "Utah Petroleum Storage Tank Fund, Maximum Allowable Rates for Equipment and Supplies"

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: \$1,140,000 savings per year. The savings to the PST Trust Fund will come from consultants and contractors performing cleanups reimbursed by the PST Fund at lower costs than they enjoy now under the current rules.
- ❖ LOCAL GOVERNMENTS: As owner/operators of underground storage tanks systems, local governments will participate in any savings due to lower fees than otherwise might be required.
- ❖ OTHER PERSONS: Owner/operators may lose reimbursements if they do not submit claims for payment within one year of the date the work was performed. The amount of the loss will vary with the value of the work that is submitted after the deadline.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no changes or additions to eligibility requirements or application procedures that would affect owner/operators. Consultants will be required to submit proposed labor rates once every three years instead of the current annual submittal. Consultants and contractors will incur additional costs in preparing bids. This is similar to other programs where public bidding is required. They will also be required to provide financial data to back up proposed rental costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The main fiscal impact will be on consultants and contractors who perform work

reimbursable by the PST Fund. Competition will reduce costs at their expense. To be successful, consultants and contractors must be willing to take on some of the risks and be paid on the basis of performance. The owner/operators will continue to receive payment for their costs in cleaning up releases with the prospect of fees lower than they might otherwise be required to pay. This may translate to the advantage of everyone in the State of Utah who purchases gasoline or diesel fuel.

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

ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE AND REMEDIATION
168 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2002

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 9/24/2002 at 2:00 PM, Department of Environmental Quality, 168 North 1950 West, Room 101, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 10/15/2002

AUTHORIZED BY: Brent Bradford, Deputy Director

R311. Environmental Quality, Environmental Response and Remediation.

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

R311-207-1. Definitions.

Definitions are found in Section R311-200.

R311-207-2. Notification of Intent and Eligibility to Claim Against the Petroleum Storage Tank Trust Fund.

(a) Any responsible party who is making any claim against the Petroleum Storage Tank Trust Fund shall have previously satisfied the requirements of Section R311-206-3(a), have a valid certificate of compliance at the time of product release by the covered UST; and meet the requirements of 19-6-424.

(b) Except as provided in Section R311-207-2(c), a responsible party eligible to receive payments in accordance with Section 19-6-419 shall submit to the Executive Secretary a written Eligibility Application to make a claim against the Petroleum Storage Tank Trust Fund,

(1) during a period for which that tank was covered by the fund;
or

(2) within one year after that fund-covered tank is closed; or

(3) within six months after the end of the period during which the tank was covered by the fund; or

(4) before the responsible party expends any amount over their share in eligible costs, whichever is sooner.

(c) For eligible releases that are discovered and reported to the Executive Secretary after July 1, 1994, the responsible party is required to expend the first \$10,000 in eligible costs as determined by the Executive Secretary. For eligible releases that are discovered prior to July 1, 1994, the responsible party is required to expend the first \$25,000 in eligible costs as determined by the Executive Secretary.

(d) A completed eligibility application form submitted by the responsible party requesting coverage, within the time frames specified in R311-207-2(b), shall constitute a claim against the fund in accordance with Section 19-6-424.

(e) The responsible party's share of eligible costs shall remain the same, regardless of the number of responsible parties who are associated with a release and covered by the fund. Only one responsible party can claim against the fund per release in accordance with 19-6-419.

(f) When a facility has an open release and a subsequent PST Fund eligible release occurs at that facility, the PST Fund allowable coverage for the subsequent release will be limited to the amount required to investigate and remediate the subsequent release up to the maximum allowable by the Utah Underground Storage Tank Act 19-6-419. Additional PST Fund monies cannot be obtained for the investigation and remediation of the original release through the coverage of a subsequent release. The Executive Secretary shall determine the allowable coverage for a subsequent release. When the Executive Secretary has made a determination that the clean up standards established for the site pursuant to R311-211-5 have been achieved for a release, the release shall receive a "No Further Action" status. The maximum coverages allowed in 19-6-419 for a series of releases cannot be aggregated to provide additional reimbursement over the maximum for any release included in the series.

R311-207-3. [Criteria for Payment] Prerequisites for Submission of Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.

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

- (1) tasks required to bring the site under control;
- (2) tasks required to determine the extent and degree of the release; and
- (3) tasks required to remediate the site until the Executive Secretary is satisfied that remediation has achieved the clean up goals as described in Section R311-211 or until further remediation is not feasible as determined by the Executive Secretary.

(b) The work plan shall include a budget for the work. The budget ~~[may be in the form of a contractor's bid]~~ shall be in compliance with R311-207-4(e)(1) and R311-207-4(i) and (j). The budget shall include proposed costs in an itemized format as described in Section R311-207-4(a).

(c) The proposed consultant must have an approved Statement of Qualification. The Statement of Qualification shall include information about the qualifications of all proposed consultants or other persons who will be performing investigation or corrective action activities concurrently with the work plans. The submission shall include information required by the Statement of Qualification form prepared by the Executive Secretary, and at least three letters of reference from

entities that have retained the services of the consultant. This Statement of Qualification must be updated annually and shall be approved, by the Executive Secretary, for a period of one year. Letters of reference are not required to be resubmitted annually. The information submitted shall demonstrate that the following standards have been met:

(1) The proposed consultant shall be of good character and reputation regarding such matters as control of costs, quality of work, ability to meet deadlines, and technical competence;

~~(2) [After December 31, 1995, key personnel must hold certification as a Certified UST Consultant.]~~ The person directly overseeing the work must be a Certified UST Consultant in conformance with R311-201-2(a), R311-201-4(a) and (R311-201-6(a) and

~~(3) [Key personnel have at least 3 years, within the past 5, of relevant experience, or an equivalent combination of appropriate education and experience, as determined by the Executive Secretary; and~~

~~(4)]~~ Personnel must have completed Occupational Safety and Health Agency-approved safety training and any other applicable safety training, as required by federal and state law.

~~(5)~~ (4) The consultant must carry the following insurance:

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

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

(C) Workers' Compensation and Employers' Liability Insurance, as required by applicable state law.

(d) The work plan shall include information about the responsible party's contract with any proposed consultant or other person performing remedial action concurrently with the work plans. That information shall demonstrate that the following requirements have been met, as determined by the Executive Secretary:

(1) The contract shall be with the consultant, and shall specify the key personnel, for which qualifications are submitted under R311-207-3(c);

(2) The contract shall require a 100 percent payment bond through a United States Treasury-listed bonding company, or other equivalent assurance;

(3) The consultant shall have no cause of action against the state for payment;

(4) The contract will specify a subcontracting method consistent with the requirements of R311-207;

(5) The contract shall require, and include documentation that the consultant carries the insurance specified in R311-207-3(c)(5).

(6) Payment under the contract shall be limited to amounts that are customary, legitimate, and reasonable;

(7) The contract shall include a provision indicating that the State of Utah is not a party to the contract, unless the State of Utah is a responsible party; and

(8) Any other requirements specified by the Executive Secretary.

(e) The work plan shall include any additional information required by 40 CFR 280.

(f) The Executive Secretary may waive specific requirements of Section R311-207 if he determines there is good cause for a waiver, and that public health and the environment will be protected. The Executive Secretary may also consider, in determining whether to grant

a waiver, the extent to which the financial soundness of the fund will be affected.

(g) Once the responsible party's share of eligible costs has been spent in accordance with Section 19-6-419, the Executive Secretary shall review and approve or disapprove work plans and the corrective action plan and all associated budgets. For costs to be covered by the fund, the Executive Secretary must approve all work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Sections 19-6-420(3)(b) and 19-6-420(6).

(h) A request for time and material reimbursement from the Fund must be received by the Executive Secretary within one year from the date the included work was performed or reimbursement shall be denied. If there are any deficiencies in the request, the owner/operator shall have 90 days from the date of their notification of the deficiency to correct the deficiency or the amount of the deficient item(s) shall not be reimbursed. If a release was initially denied eligibility and is subsequently found to be eligible, this provision shall apply only to the portion of work conducted following the determination that the release is eligible for reimbursement. The responsible party may submit claims for reimbursement where the work is more than one year old until April 2, 2003.

(i) The request for final reimbursement from the fund must be received by the Executive Secretary within one year from the date of the "No Further Action" letter issued by the Executive Secretary or reimbursement shall be denied. If a release is re-opened as provided for in the "No Further Action" letter, payments from the fund may be resumed when approved by the Executive Secretary.

R311-207-4. ~~[Expense Itemization and Payment]~~ Submission Requirements for Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.

(a) In order to receive payment from the fund, a claimant shall submit an invoice to the Executive Secretary. The invoice from the owner to the fund shall be on the form or forms provided by the Executive Secretary. Reimbursement may be on a pay for performance or on a time and material basis as approved in advance by the Executive Secretary. All costs for time and material reimbursement shall be itemized at a minimum to show the following:

- (1) amounts allocated to each approved work plan budget;
- (2) employee name, date of work, task or description of work, labor cost and the number of hours spent on each task;
- (3) sampling, reporting, and laboratory analysis costs;
- (4) equipment rental and materials;
- (5) utilities;
- (6) other direct costs; and
- (7) other items as determined by the Executive Secretary.

(b) All itemized expenses shall indicate the full name and address of the company or contractor providing materials or performing services.

(c) All expenses for time and material reimbursement shall be documented on a monthly basis, or as otherwise directed by the Executive Secretary, with a copy of the original bill provided to the Executive Secretary by the owners or operators. The claimant shall provide documentation that claimed costs and associated work were reasonable, customary, and legitimate in accordance with Sections R311-207-5 and R311-207-4(e).

(d) For time and material based reimbursement, b[B]efore receiving payment under Section 19-6-419(1)(b), the responsible party shall provide proof of past payments for services or construction rendered, in a form acceptable to, or as directed by, the Executive

Secretary, unless the Executive Secretary has agreed to other arrangements. The owner or operator shall remain primarily liable, however, for all costs incurred and should obtain lien releases from the company or contractor providing material or performing services.

(e) For time and material based reimbursement, d[D]ocumentation of expenses for construction or other services provided by a subcontractor retained by an environmental consultant or contractor [for time and material reimbursement] shall include one or more of the following items:

- (1) a minimum of three competitive bids by responsive bidders[;].

To be competitive:

(A) Two of the bids must be from bidders who are not related parties. "Related parties" for the purpose of this rule, shall mean organizations or persons related to the consultant by any of the following: marriage; blood; one or more partners in common with the consultant; one or more directors or officers in common with the consultant; more than 10% common ownership direct or indirect with the consultant.

(B) The bid specifications shall contain a clear and accurate description of the technical requirements for the material, product or service and shall not contain features which unduly restrict competition. The bid specifications shall include a statement of the qualitative nature of the material, product or service to be procured, and, when necessary shall set forth those minimum essential characteristics.

(C) For frequently used services such as drilling, competitive bid schedules may be taken by the consultant once each calendar year in January with the results provided to the Executive Secretary. The prices from the lowest responsible bidder will be used for at least the following 12 months and will remain in effect until re-bid by the consultant and approved by the Executive Secretary. The Executive Secretary may reject bid prices that are not customary, reasonable and legitimate. The lowest bid from a responsible bidder will establish the maximum dollar amount the PST Fund will reimburse the owner for these services, regardless of whether the owner accepts that bid or another;

(2) ~~[sole source justification;]~~ Analytical laboratories may be justified based on service, data quality and cost;

(3) documentation that expenses have been for reasonable, customary, and legitimate purposes; or

(4) other documentation as required or requested by the Executive Secretary.

(f) In accordance with Section 19-6-420, the Executive Secretary may not authorize payment from the fund for services provided by consultants, contractors, or subcontractors which are in non-compliance with the requirements of Section R311-207 or any other applicable federal, state, or local law.

(g) Any third party claims brought against the owner or operator or any occurrence likely to result in third party claims against the owner or operators as a result of the release must be immediately reported to the State Risk Manager and to the Executive Secretary.

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

(i) Unless otherwise directed by the Executive Secretary, all remedial action that is estimated to cost \$150,000 or more including design, installation, operations and maintenance for the life of the project shall be competitively bid on a pay for performance basis. The Executive Secretary will make the estimate taking into account information provided by the consultant. The Executive Secretary may negotiate pay for performance contracts for remedial action or investigation costing less than \$150,000. The Executive Secretary will act as the coordinator between the responsible party and prospective contractors. The Executive Secretary will prepare, advertise and open the bids. The lowest responsive bid from a responsible bidder will establish the maximum dollar amount the PST Fund will reimburse the owner for the remedial action, regardless of whether the owner accepts that bid or another.

R311-207-5. Responsible Parties' Standard Liability and Customary, Reasonable and Legitimate Expenses.

(a) Costs claimed by the responsible party in accordance with Section 19-6-419(1) must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the Executive Secretary. The Executive Secretary may determine the amount of fund monies that will be reimbursed to an owner or operator for items including, but not limited to, labor, equipment, services, and tasks established according to the provisions of R311-207-7 or such other methods that are applicable to the item or task. As conditions require, costs of the following activities may be considered to be customary, reasonable, and legitimate: performing abatement, investigation, site assessment, monitoring, or corrective action activities; providing alternative drinking water supplies; and settling or otherwise resolving third party damage claims and settlements in accordance with Section 19-6-422.

(b) ~~Costs of preparation of work plans and budgets for eligible work are reimbursable from the Fund if the costs and associated work are determined to be reasonable, customary, and legitimate.~~

~~(c) The following additional charges are eligible for reimbursement unless otherwise disallowed. All charges must be accompanied by invoices, receipts or billings.~~

- ~~(1) Long distance telephone charges specific to the project.~~
- ~~(2) Supplies and materials directly associated with the project (e.g., equipment purchased or withdrawn from inventory specifically for the corrective action, sample charges, or well supplies).~~
- ~~(3) Outside copying.~~
- ~~(4) Mileage at the rates allowed by the IRS.~~
- ~~(5) Lodging at actual cost unless clearly excessive under the circumstances.~~
- ~~(6) Meals at cost or per diem not to exceed that allowed by the State for State employees.~~

~~(d) The following costs or activities are not customary, reasonable, or legitimate, and are therefore ineligible for payment under the Petroleum Storage Tank Trust Fund:~~

- ~~(1) Work performed or expenses to achieve compliance or used for system upgrading;~~
- ~~(2) All work and expenses related to an UST closure other than product removal from within the UST associated with emergency abatement actions;~~
- ~~(3) Any costs assessed by the consultant as a percentage for coordination and handling fees for work performed by subcontractors or expenses associated with other direct costs which are in excess of the actual amount expended on other direct costs, unless documented as an expense associated with project or contract management;~~
- ~~(4) Travel to and from the state and lodging and meals along the~~

~~Wasatch Front for consultants not based in Utah unless the skill or knowledge required is not available in the state and prior approval is obtained from the Executive Secretary; and~~

~~(5) Other costs or activities as determined by the Executive Secretary on a site specific basis.~~

~~(e) The following costs are not eligible for reimbursement because of excessive administrative workload and related processing expenses for both the state and responsible parties. These costs, however, may be added into a firm's general overhead and recovered through basic labor rates.~~

- ~~(1) Postage.~~
- ~~(2) Computer charges.~~
- ~~(3) In house copying.~~
- ~~(4) Standard office supplies.~~
- ~~(5) Basic telephone service.~~
- ~~(6) Interest.]This rule incorporates by reference the UTAH PETROLEUM STORAGE TANK TRUST FUND TIME AND MATERIAL REIMBURSEMENT STANDARDS dated July 16, 2002. This document contains specific items that will and will not be reimbursed by the Fund.~~

~~(c) This rule incorporates by reference the UTAH PETROLEUM STORAGE TANK FUND, MAXIMUM ALLOWABLE RATES FOR EQUIPMENT AND SUPPLIES as revised June 10, 2002. This document contains specific rates the Fund will reimburse the responsible party or consultant for the included items.~~

~~(d) If a claim that does not comply with the requirements of R311-207 is returned by the Executive Secretary to a responsible party or consultant for correction, the responsible party or consultant shall not claim for reimbursement the costs expended to correct and re-submit the claim.~~

R311-207-6. Subrogation.

When the State makes a payment from the Petroleum Storage Tank Trust Fund, the State shall have the right to sue or take other action as may be necessary and appropriate to recover the amount of payment from any third party who may be held responsible. The petroleum underground storage tank owner or operator or both who receive payment from the Fund must execute and deliver all necessary documents and cooperate as necessary to preserve the State's rights and do nothing to prejudice them.

R311-207-7. Consultant Labor Codes, Titles, Duties and Fee Schedules.

(a) This rule incorporates by reference the Consultant Personnel Qualifications and Task Descriptions table, dated May 1998, and consisting of standardized personnel qualification categories and task descriptions to be used for PST Fund-reimbursable activities. Consultants must assign to one of the categories listed in the table, any service time for an individual that is billed to a responsible party or directly to the PST Fund and for which reimbursement is claimed, unless the duties of the individual are so unusual that they do not closely approximate any of the listed categories. By submitting a proposed fee claim for reimbursement for a labor category, the consultant warrants that they have on staff individuals that the person so claimed meets the described education, skills and experience.

(b) ~~[A consultant may file with the Executive Secretary, and amend once a year in January (absent unusual circumstances), the hourly fees at which it bills clients in Utah for the service of its personnel as described in (a). The Executive Secretary shall calculate new allowable reimbursement rates once a year. Consultant fees, reimbursement rate schedules and amendments must be maintained in~~

confidence by and accessible only to the staff of the Executive Secretary, as the consultant's expectation of privacy is reasonable and outweighs the merits of public disclosure. The calculated maximum allowable reimbursement rates must be maintained in confidence by and accessible only to the staff of the Executive Secretary.

(c) When fee schedules, from companies who have performed work reimbursed by the Fund, have been filed in a number sufficient for meaningful statistical analysis, the Executive Secretary shall compute a range of allowable reimbursement rates for each code listed in (a), the maximum of each range shall be the mean fee for each code plus one standard deviation (rounded up to the nearest whole dollar) unless modified as provided for in R311-207-7(e). The Executive Secretary shall then notify each filing firm whether its fees exceed the range of allowable reimbursement rates, and if so, by how much. The amount by which a consultant's fee for a particular code exceeds the allowable reimbursement rate will be presumed unreasonable and will not be reimbursed by the Fund.

(d) The Executive Secretary may approve a range of reimbursement rates for a particular category when proposed by a consultant. However, the maximum of this range shall not exceed the maximum reimbursement rate as calculated in R311-207-7(e). When a range is proposed, the average of the range will be used for the calculations in R311-207-7(e).

(e) If a consultant's fees exceed the maximum of the range in not more than three categories but are lower in the other categories, the average of the maximum reimbursement rates as calculated in R311-207-7(e) for the categories for which that consultant provides services will be calculated. If the average of the consultant's fees is lower than this average, the Executive Secretary may approve all of the fees as proposed.

(f) The Executive Secretary may request a detailed explanation of fee structures when a submitted fee appears to vary significantly from those submitted by other consultants for the same code. The Executive Secretary reserves the right not to use fees that significantly vary from similar fees submitted by other consultants, fees from consultants who have not submitted claims for reimbursement, fees from consultants who have not submitted proper documentation for claim reimbursement, fees from consultants that do not currently have key personnel holding valid certification as a Certified UST Consultant and other fees not deemed acceptable by the Executive Secretary.

(g) A consultant not filing its schedule of fees must submit its invoices for services formatted in accordance with R311-207-7(a). Any fees which exceed the range of allowable reimbursement rates will be presumed unreasonable.

(h) A responsible party or consultant may overcome the presumption that a fee is unreasonable by presenting clear and concise evidence to the Executive Secretary that their fees are reasonable and customary. Excessive overhead factors will not meet this test. The Executive Secretary will establish a single allowable rate for each labor category. The rates will be calculated by determining the mean of the rates proposed by consultants who are approved to perform work reimbursable by the PST Fund. The Executive Secretary will request proposed rate schedules from consultants every three years beginning in December 2002. The rates will become effective January 1 of the following year. For those years that the Executive Secretary does not request proposed rate schedules, the Executive Secretary may adjust rates annually in accordance with the percentage change in the bureau of labor statistics annual number for the producer price index for finished goods less food and energy not seasonally adjusted. The percent change will be calculated based on the annual change for the

calendar year ending November 30. Adjusted labor rates will be effective January 1 of the following year.

(c) The Executive Secretary shall not include in the calculation of the mean any proposed rates that are not customary and reasonable based on a comparison of previously approved rates.

(d) The Executive Secretary may determine the amount of fund monies that will be reimbursed to an owner operator for commonly performed tasks [when there are a sufficient number of actual costs histories for a specific task to allow a statistically meaningful analysis].

The [procedure for determining the] amount of fund monies that will be reimbursed for a particular task, item or activity may be established by [will be similar to that in] R311-207-7([e]b), competitive bid, market survey or other applicable method as determined by the Executive Secretary. Public comment will be taken before proposed [tasks] reimbursement rates are adopted.

R311-207-8. Third Party Claims Apportionment.

To prioritize payments from the Petroleum Storage Tank Fund as required by Subsection 19-6-419(5)(a), yet promptly authorize the payment of third party claims prior to a determination that corrective action has been properly performed and completed, the Executive Secretary may utilize budget projections to allocate coverage available for the payment of third party claims. The Executive Secretary may amend budget projections as frequently as he deems appropriate. Costs among third party claimants shall be apportioned after the responsible party has agreed to the settlement and the state risk manager has approved the settlement. Apportionment and priority shall be based upon the order in which an approved and agreed upon claim is received by the Executive Secretary.

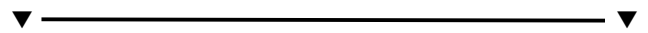
KEY: financial responsibility[²], petroleum, underground storage tanks

[October 9, 1998]2002

Notice of Continuation March 6, 2002

19-6-105

19-6-419



Health, Health Care Financing, Coverage and Reimbursement Policy

R414-1

Utah Medicaid Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25164

FILED: 08/15/2002, 16:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking eliminates an inconsistency in podiatry services to bring the reimbursement into alignment with proposed amendments to Rule R414-11, Podiatry Services, which restores a limited podiatry benefit to the Medicaid program. (DAR NOTE: The proposed amendment to Rule R414-11 is under DAR No. 25163 in this Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This amendment eliminates language that lists podiatry services as a noncovered service in Medicaid.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5, 26-18-2.1, and 26-18-2.3

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Costs of restoring a limited podiatry benefit are listed with the amendment to Rule R414-11 filed simultaneously with this amendment. There are no costs associated with eliminating this inconsistency.

❖ **LOCAL GOVERNMENTS:** Costs of restoring a limited podiatry benefit are listed with the amendment to Rule R414-11 filed simultaneously with this amendment. There are no costs associated with eliminating this inconsistency.

❖ **OTHER PERSONS:** Costs of restoring a limited podiatry benefit are listed with the amendment to Rule R414-11 filed simultaneously with this amendment. There are no costs associated with eliminating this inconsistency.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs of restoring a limited podiatry benefit are listed with the amendment to Rule R414-11 filed simultaneously with this amendment. There are no costs associated with eliminating this inconsistency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Restoring a limited benefit for services of a podiatrist is estimated to save the State a significant amount of money in excess of the cost of the service by avoiding complications, especially for those with diabetes. This rulemaking will have a positive impact on podiatrists and Medicaid recipients. Rod L. Betit

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin or Don Hawley at the above address, by phone at 801-538-6592 or 801-538-6483, by FAX at 801-538-6099 or 801-538-6099, or by Internet E-mail at rmartin@utah.gov or dhawley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2002

AUTHORIZED BY: Rod Betit, Executive Director

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

R414-1. Utah Medicaid Program.

R414-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance under the medical programs available through the Division.
- (3) "Categorically needy" means aged, blind or disabled individuals or families and children:
 - (a) who are otherwise eligible for Medicaid; and
 - (i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or
 - (ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or
 - (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
 - (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
 - (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
 - (vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
 - (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or
 - (viii) who is a child for whom an adoption assistance agreement with the state is in effect.
 - (b) whose categorical eligibility is protected by statute.
- (4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.
- (5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.
- (6) "Department" means the Department of Health.
- (7) "Director" means the director of the Division.
- (8) "Division" means the Division of Health Care Financing within the Department.
- (9) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:
 - (a) placing the patient's health in serious jeopardy;
 - (b) serious impairment to bodily functions;
 - (c) serious dysfunction of any bodily organ or part; or
 - (d) death.
- (10) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(11) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(12) "Executive Director" means the executive director of the Department.

(13) "InterQual" means the InterQual Medical Review Criteria and System, a comprehensive, clinically based, patient focused medical review criteria and system developed by InterQual Inc.

(14) "Medicaid agency" means the Department of Health.

(15) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18, UCA.

(16) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(17) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(18) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(19) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(20) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(21) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. State Plan.

As a condition for receipt of federal funds under title XIX of the Act, the Utah Department of Health must submit a State Plan contract to the federal government for the medical assistance program, and agree to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XI and XIX of the Act, and all applicable federal regulations and other official issuances of the United States Department of Health and Human Services. A copy of the State Plan is available for public inspection at the Division's offices during regular business hours.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set

forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(i) The Department shall conduct an annual open enrollment period for Medicaid recipients residing in Intermediate Care Facilities for the Mentally Retarded to allow each person the opportunity, on a yearly basis, to move to Medicaid Home and Community-Based Waiver covered services and supports that the Department has deemed appropriate for the identified needs of the individual.

(ii) The Department shall designate a three-month open enrollment period each fiscal year. The Department relocates individuals whom it determines to be eligible through the open enrollment process at the time appropriate services and supports are available, and the Department has completed the required Home and Community-Based Services Waiver procedures.

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services:

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals

determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

(3) Effective June 1, 2002, dental services are not covered for non-pregnant adult recipients ages 21 and older except for dental emergency services for the relief of pain and infection which is limited to an emergency examination, emergency x-ray and emergency extraction only. Effective July 1, 2002, [podiatry,] speech-language pathology, and audiology-hearing services are not covered for non-pregnant adult recipients ages 21 and older. This supercedes previous definitions of coverage for these three categories of services made in [R414-11,]R414-49, R414-50, R414-54, and R414-59.

KEY: Medicaid

~~June 1,~~ 2002

Notice of Continuation April 30, 2002

26-1-5

26-18-1



Health, Health Care Financing, Coverage and Reimbursement Policy

R414-11

Podiatry Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25163

FILED: 08/15/2002, 16:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Because of cuts in podiatry services that were effective July 1, 2002, there currently exists a hardship to those Medicaid clients in need of podiatric services for serious problems such as circulatory deficiencies. This rulemaking restores a limited benefit to allow foot care for Medicaid clients who could face amputations or other serious complications without the coverage.

SUMMARY OF THE RULE OR CHANGE: This rulemaking restores a limited podiatric benefit to adults older than 21 years of age. The rule references the Utah Medicaid Provider Manual for specific services covered. There are also some nonsubstantive updates and corrections made.

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

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** \$29,800 in General Fund dollars will be spent which will allow \$72,600 in federal matching funds to come to the state. There is no way to gauge the emergency and acute services savings based on the prevention services created by this rulemaking.

❖ **LOCAL GOVERNMENTS:** There is no impact to local government since there are no podiatry services provided by local governments.

❖ **OTHER PERSONS:** Podiatrists will receive an additional \$282,900 in Medicaid reimbursements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no way to estimate the savings by clients who may or may not have paid for podiatric services. It is likely that some of these services may have been donated and there is no way to estimate how much of those costs will be saved by this rulemaking.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Restoring a limited benefit for services of a podiatrist is estimated to save the State a significant amount of money in excess of the cost of the service by avoiding complications, especially for those with diabetes. This rulemaking will have a positive impact on podiatrists and Medicaid recipients. Rod L. Betit

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Don Hawley or Ross Martin at the above address, by phone at 801-538-6483 or 801-538-6592, by FAX at 801-538-6099 or 801-538-6099, or by Internet E-mail at dhawley@utah.gov or rmartin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2002

AUTHORIZED BY: Rod Betit, Executive Director

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

R414-11. Podiatry Services.

R414-11-0. Policy Statement.

A. Podiatry services are available to eligible Medicaid recipients, and may be performed by a physician, osteopath or podiatrist as specified by the respective professional license.

B. Podiatric services include the examination, diagnosis and treatment of the human foot through medical, mechanical or surgical means. Podiatric service may be provided to Medicaid recipients when the recipient has a foot problem that causes:

1. difficulty walking or inability to walk;
2. painful or distressing impairment which limits independent function; or
3. crippling.

C. Reasonable and necessary diagnosis and treatment of symptomatic conditions such as osteoarthritis, bursitis (including bunion), tendinitis, and other related conditions, that result from, or are associated with, partial displacement of foot structures are covered services.

D. Surgical correction in the subluxated foot structure that is an integral part of the treatment of a foot injury is a benefit of the Medicaid program. Surgical correction undertaken to improve the function of the foot or to alleviate an associated symptomatic condition is also a covered service.

R414-11-1. Authority and Purpose.

A. Authority. Medicaid podiatry services are authorized under the provisions of 42 CFR [at Part 405.310]440.225 and 42 CFR [at Part]440.60. The Medicaid program is designed to provide services within financial limitations.

B. Purpose. The purpose of the program is to increase the functioning ability of the Medicaid patient.

R414-11-2. Definitions.

A. The "practice of podiatry" means the examination, diagnosis, or treatment medically, mechanically or surgically of the ailments of the human foot.

B. The medical term "subluxation" means a partial or complete dislocation.

C. The medical term "pes planus" means flatfoot.

D. "Retroactive eligibility" means that if payment for past medical expenses is requested, and eligibility exists, retroactive medical assistance may be approved. [~~The Department of Social Services, Office of Community Operations, will determine the eligibility.~~]

R414-11-3. Eligibility Requirements/Coverage.

A. Podiatry services are available to [~~categorically and medically needy individuals under Medicaid~~] children age 20 and younger and to pregnant adults. A more limited scope of services is available to adults age 21 and older as described in the Utah Medicaid Provider Manual.

B. Retroactive eligibility (See R414-11-8 (~~E~~)D) below).

R414-11-4. Program Access Requirements.

The podiatry services are available to [~~categorically and medically needy individuals under Medicaid~~] children age 20 and younger and pregnant adults. A more limited scope of services is available to adults age 21 and older as described in the Utah Medicaid Provider Manual.

R414-11-5. Service Coverage.

A. Procedures determined to be appropriate for the podiatry program are identified by CPT-4 codes found in the Health Common Procedure Coding System (HCPCS). These procedures include:

1. foot incision;
2. foot excision;
3. repair, revision or reconstruction;
4. surgery;
5. nail treatment;
6. laboratory procedures; and
7. radiology.

B. Laboratory procedures necessary for diagnosis and treatment of the patient may be performed by the podiatrist in the office when appropriate equipment is available. Laboratory services provided by an independent laboratory or hospital outpatient laboratory, on the order of a podiatrist, must be billed directly by the laboratory.

C. Treatment of a fungal (mycotic) infection of the toenail is a Medicaid benefit in the following circumstances:

1. There is clinical evidence of mycosis demonstrated by;
 - a. inflammation;
 - b. infection;
 - c. Erythema (redness of the skin due to congestion of capillaries); or
 - d. there is marked limitation of ambulation.

D. Nursing Home Care:

Medicaid recipients who reside in a nursing home may receive benefits from the podiatry program. Some of the benefits include:

1. excision of nail or nail matrix;
2. removal of partial or complete ingrown or deformed nails;
3. surgical procedures;
4. radiology procedures;
5. laboratory procedures;

6. the cutting or removal of corns, warts, callouses or nails of patients who are at risk due to complications from certain diseases such as diabetes, arteriosclerosis, or Buerger's Disease;

7. reasonable and necessary diagnosis and treatment of symptomatic conditions such as osteoarthritis, bursitis (including bunion), tendinitis, which result from or are associated with partial displacement of foot structures; or

8. surgical correction in the subluxated foot structure which is an integral part of the treatment of a foot injury, or if it is undertaken to improve the function of the foot or to alleviate an associated symptomatic condition.

E. Medical Supplies

1. Shoes are a Medicaid benefit only when:

- a. attached to a brace or prosthesis; or
- b. especially constructed to provide for a totally or partially missing foot.

2. Supplies and materials used by the podiatrist over and above those usually included for the surgery procedure may be billed separately. The materials provided must be listed.

3. Supplies for surgery performed in the office rather than a surgical center or outpatient hospital are a benefit of this service.

R414-11-6. Standards of Care.

A. The services must be considered under accepted standards of medical practice to be a specific and effective treatment for the recipient's condition.

B. The services must be:

1. of a level of complexity and sophistication, or the condition of the recipient must be such that services required can be safely and effectively performed only by a qualified podiatrist. To constitute podiatry, a service must, among other things, be reasonable and necessary to the treatment of the patient's illness. If the patient's expected health benefit would be insignificant in relation to the extent and duration of the patient's podiatry service, it would not be considered reasonable and necessary.

2. reasonable with regard to the amount, frequency and duration of services.

R414-11-7. Limitations.

A. General Limitation

1. Limitations which apply to the physicians program will also apply to the services provided by a podiatrist. If prior approval is required for a procedure performed by a physician, although it relates to the foot or foot structure, it requires prior authorization in the podiatry program.

2. Podiatric services are limited to examination, diagnosis, and treatment described in service coverage [R414-11-5] above.

3. A person licensed to practice podiatry may not administer general anesthesia, and may not amputate the foot.

4. Palliative care must include the specific service and must be billed by the specific service and not by using an office call procedure code.

B. Specific Limitations

1. Routine Foot Care

a. The preventive maintenance care of the type ordinarily within the realm of self care or nursing home care considered to be routine, is not covered as a podiatry service. This includes:

(1) the cutting or removal of corns, warts or callouses[~~(42 CFR 405.310)~~], unless a danger to the patient exists (for example: diabetes, arteriosclerosis or Buerger's disease);

(2) the trimming of nails (including mycotic nails)[~~(42 CFR 405.310)~~], except as specifically identified in [R414-11-5, Service Coverage[~~(~~above)];

(3) the cleaning and soaking of the feet;

(4) the use of massage or skin creams;

(5) any services performed in the absence of localized illness or injury[~~(42 CFR 405.310)~~];

(6) any application of topical medication or

(7) any treatment of fungal (mycotic) infection of the toenail, except as specifically documented.

2. Nursing Home Foot Care

a. Nursing home patient foot care is limited to one visit every two months. Services in excess of this standard require prior authorization and must be documented in sufficient detail to reasonably justify the necessity of the service.

b. Foot care which may be performed for a nursing home recipient by a nursing home employee is not a Medicaid benefit.

c. The debridement of mycotic toenails is limited to once every 60 days. Exceptions will be authorized if medical necessity is documented by the patient's physician and attached to the request for prior authorization.

3. Subluxation or Pes Planus:

Further services excluded from coverage are defined [~~in 42 CFR 405.310(4)~~]as:

1. The treatment, including evaluation, of subluxations of the feet. These are structural misalignments, or partial dislocation (other than fractures or complete dislocations) of the joints of the feet which require treatment only by nonsurgical methods regardless of underlying pathology.

2. The treatment, including evaluations and the prescriptions of supporting devices, of the local condition of flattened arches (pes planus) regardless of the underlying pathology.

C. Prosthetic Devices/Shoes/Orthotics

1. A "prosthetic device" means a replacement, corrective or supportive device prescribed by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by State law to:

a. artificially replace a missing portion of the body;

b. prevent or correct physical deformity or malfunctions (including promotion of adaptive functioning); or

c. support a weak or deformed portion of the body.

2. Orthotics, metatarsal head appliances, arch supports, are not benefits of Medicaid although they may generally fit the description of a prosthetic device.

D. Additional Limitations

The following services are excluded from coverage as a Medicaid benefit:

1. shoes, orthopedic shoes or other supportive devices for the feet, except when shoes are integral parts of leg braces or a prosthesis.

2. special shoes such as:

a. mismatched shoes (unless attached to a brace);

b. shoes to support an overweight individual;

c. trade name or brand name shoes considered "orthopedic" or "corrective";

d. "athletic" or "walking" shoes;

3. shoe repair except as it relates to external modification of an existing shoe to meet a medical need, i.e., leg length discrepancy requiring a shoe build up of one inch or more;

4. internal modifications of a shoe;

5. arch supports, foot pads, metatarsal head appliances or foot supports;
6. personal comfort items and services. Comfort items include, but are not limited to arch supports, foot pads, "cookies" or other accessories, shoes for comfort or athletic shoes;
7. manufacture, dispensing or services related to orthotics of the feet;
8. devices which do not artificially replace a missing portion of the body;
9. devices which do not prevent or correct physical deformity or malfunction;
10. devices which do not support a weak or deformed portion of the body;
11. office calls, house calls, nursing home calls, billed in addition to a service. Post payment claims review will be performed.
12. Services to adults age 21 and older are more limited as described in the Utah Medicaid Provider Manual.

R414-11-8. Prior Authorization.

A. "Prior authorization" means that degree of agency approval for payment of services required to be obtained by a provider. Such approval must be obtained precedent to service being provided. Services requiring prior authorization performed in life threatening or justifiable emergency situations are an exception. Approval of emergency service can be obtained after the fact with appropriate documentation.

1. Unlisted Services

a. All procedure codes which end in 99 and some which end in 49 have the nomenclature[-] "unlisted service or procedure." These procedures require a prior authorization. They also require a "Special Report."

b. A special report is required because the procedure is rarely provided, unusual, variable or new. The special report must include:

- (1) medical appropriateness;
- (2) information covering need for the procedure;
- (3) time, effort, equipment necessary;
- (4) complexity of symptoms;
- (5) final diagnosis;
- (6) pertinent physical findings;
- (7) diagnostic and therapeutic procedures previously completed or expected;
- (8) concurrent problems;
- (9) follow-up care.

2. Service to Nursing Home Patients:

a. Prior authorization is not necessary for the following procedures in behalf of a nursing home patient:

- (1) excision of nail and/or nail matrix;
- (2) excision of ingrown or deformed nail for permanent removal.

b. Surgical procedures in behalf of Medicaid recipients who reside in a nursing home will be subject to post payment review and recovery if not appropriate.

c. Prior authorization is required for the debridement of mycotic toenails in excess of once every 60 days.

d. Prior authorization is required if trimming corns, warts, callouses or nails is performed for any patient with diabetes, arteriosclerosis, or Buerger's Disease, more frequently than every 60 days.

B. Criteria for Approval of Requests

Prior approval for treatment or surgery that requires prior authorization will be reviewed and approved or denied based on the following criteria:

1. Services are for treatment of medical disorders or disabilities.

2. Services are provided for those disorders that are incapacitating for the patient and are reasonable and necessary for treatment of specific medical disorders or disabilities. Removing bunions for a bedfast patient would be disallowed;

3. Services are provided with the expectation that the condition under treatment will improve in a reasonable and generally predictable time.

4. Services are professionally appropriate under the standard in the field, utilizing professionally appropriate methods and materials in a professionally appropriate environment.

5. Services that are requested are justified with sufficient information for approval.

C. Request for Prior Authorization Form:

This form must include the following information:

1. the diagnosis and the severity of the condition;
2. the prognosis;
3. the expected independence of the recipient or benefit of the procedures;
4. the procedure code(s);
5. the patient x-rays (if applicable);
6. adequate clinical assessment of patient needs.

All requests for prior approval must be made before the surgery or service is performed, except for recipients made retroactively eligible for Medicaid.

D. Retroactive Eligibility

When a patient is made retroactively eligible for Medicaid and services have already been rendered which require prior approval, the following procedures must be followed:

1. The recipient must present a Medicaid Identification Card (ID Card), or an Interim Verification of Eligibility Form (695) which verifies the eligibility status of the recipient and the inclusive dates of eligibility.

2. The Request for Prior Approval Form must be completed.

3. The retroactive eligibility status of the recipient and appropriate documentation of the medical need for the procedure must be stated on the Request for Prior Approval Form.

4. The date of surgery or service must be within the dates of eligibility.

E. Out-of State

1. Any Medicaid request for out-of-state medical services or travel other than those listed below, must have prior authorization from the Division of Health Care Financing. There are four areas in which a Medicaid recipient may live (adjacent to the state line) and may go to another state, as stipulated, for medical services.

2. The following border towns have been identified by the Department of Social Services, Office of Assistance Payments, and entered into the Medicaid Provider File:

a. Rich County residents may go to Evanston, Wyoming; Riverton, Wyoming; Preston, Idaho; Paris, Idaho or Montpelier, Idaho.

b. San Juan County residents may go to Cortez, Del Norte, Dolores, Durango, Grand Junction and Montrose, Colorado; or to Shiprock or Farmington, New Mexico.

c. Residents of the Snake Valley area in Millard County, (Garrison, Gandy, Burbank and Eskdale), may go to Ely, Nevada and East Ely, Nevada.

R414-11-9. Reimbursement for Podiatry Service.

A. Introduction

There are numerous procedure codes listed in the Podiatrist Provider Manual for Medicaid services. Only the listed procedure codes are reimbursable by the Medicaid Medical Information System (MMIS).

B. Office Calls

Office calls are not designated by the time involved but by the service provided. The CPT identifies the elements and services included in each level of office call or house call. Utilizing these designations, the appropriate codes are identified in the podiatry index.

C. Nursing Home Patients

All surgical procedures provided for a nursing home recipient must be medically necessary and appropriate, and may be subject to post payment review.

D. Injection Procedures

Procedure codes with the J prefix are for injections. The J codes specifically identified for podiatric use are in the Podiatry Provider Manual.

E. Laboratory Procedures

Only those laboratory procedures for which the podiatrist or physician has the appropriate office equipment may be billed to Medicaid. Reimbursable laboratory procedure codes are listed in the Podiatry Provider Manual.

R414-11-10. Co-payment Policy.

This ~~rule~~ section establishes co-payment policy for podiatrist services for Medicaid clients who are not in any of the federal categories exempted from co-payment requirements. The rule is authorized by 42 CFR ~~[440.60]~~447.15 and 447.50, Oct. 1, 200~~0~~¹ ed., which ~~is~~ are adopted and incorporated by reference.

(1) The Department shall impose a co-payment in the amount of \$2 for each podiatrist visit when a non-exempt Medicaid client, as designated on his Medicaid card, receives that podiatrist service. The Department shall limit the out-of-pocket expense of the Medicaid client to \$100 annually. (Co-payments for pharmacy services will continue to be limited to \$5~~[-40]~~ per month.)

(2) The Department shall deduct \$2 from the reimbursement paid to the provider for each podiatrist visit, limited to one per day.

(3) The provider should collect the co-payment amount from the Medicaid client for each podiatrist visit, limited to one per day.

(4) Medicaid clients in the following categories are exempt from co-payment requirements:

- (a) children;
- (b) pregnant women;
- (c) institutionalized individuals;

(d) individuals whose total gross income, before exclusions or deductions, is below the Temporary Assistance to Needy Families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility case worker on a monthly basis to maintain their exemption from the co-pay requirements.

~~—(5) Podiatrist services for family planning purposes are exempt from the co-payment requirements.~~

KEY: ~~[m]~~ Medicaid

~~[November 1, 2001]~~2002

Notice of Continuation December 20, 1999

26-1-5

26-18-3

▼ ————— ▼

Health, Health Systems Improvement, Licensing **R432-2-6** Application

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 25157

FILED: 08/14/2002, 09:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A feasibility study will be completed prior to the issuance of a license that results in the increase of capacity for a health care facility or agency. This change adds a written narrative identifying the types of services being offered, estimation of construction costs, and anticipated revenues.

SUMMARY OF THE RULE OR CHANGE: The amendments require a feasibility study to be completed prior to issuing a new or amended license, identify the contents for the written narrative, identify the time frames for submitting the study, require public notification and 30-day comment period, and require the Department to summarize the comments and prepare a written evaluation of the study.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Cost of copying and distribution of the rule will be paid within current appropriations. Costs are anticipated to be less than \$2,000 per year.

❖ **LOCAL GOVERNMENTS:** If a local government agency owns a health care facility and decides to expand services, it will assume a cost of approximately \$1,500 to complete the mandated study. Currently, there are no construction plans for a local government-owned facility on file with the Department.

❖ **OTHER PERSONS:** The Bureau receives an estimated 20 construction plans annually. At an average cost of \$1,500 per study, the aggregate cost may be \$30,000. Industry representatives have informed the Bureau that this study is typically part of their business planning process as a new program seeks financing and would not be burdensome.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost may be \$1,500 per health care facility for the initial study; however there would be a resulting savings if the program is prevented from realizing a loss in revenue for over-building the required number of beds to address a community need and is, therefore, forced to close due to lack of revenues or utilization.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will stabilize certain aspects of the health care system and assist licensed facilities to avoid unnecessary construction. Most businesses already conduct the necessary feasibility study before obtaining financing. The relatively small cost for the study is justified to avoid unnecessary construction. Rod L. Betit

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2002

AUTHORIZED BY: Rod Betit, Executive Director

R432. Health, Health Systems Improvement, Licensing.

R432-2. General Licensing Provisions.

R432-2-6. Application.

(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) A satisfactory Food Services Sanitation Clearance report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) The applicant shall submit the following:

(a) a list of all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and

(c) a list, of all persons, of all health care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest;

(4) The applicant shall provide the following written assurances on all individuals listed in R432-2-6(3):

(a) None of the persons has been convicted of a felony;

(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

(5) An applicant or licensee shall submit a feasibility study as part of its application for a license for a new facility or agency or for a new license for an increase in capacity at a health care facility or expansion of the areas served by an agency.

(a) The feasibility study shall be a written narrative and provide at a minimum:

(i) the purpose and proposed license category for the proposed newly licensed capacity;

(ii) a detailed description of the services to be offered;

(iii) identification of the operating entity or management company;

(iv) a listing of affiliated health care facilities and agencies in Utah and any other state;

(v) identification of funding source(s) and an estimate of the total project capital cost;

(vi) an estimate of total operating costs, revenues and utilization statistics for the twelve month period immediately following the licensing of the new capacity;

(vii) identification of all components of the proposed newly licensed capacity which ensures that residents of the surrounding area will have access to the proposed facility or service;

(viii) identification of the impact of the newly licensed capacity on existing health care providers; and

(ix) a list of the type of personnel required to staff the newly licensed capacity and identification of the sources from which the facility or agency intends to recruit the required personnel.

(b) The applicant or licensee shall submit the feasibility study no later than the time construction plans are submitted. If new construction is not anticipated, the applicant or licensee shall submit the study at least 60-days prior to beginning the new service. The applicant shall provide a statement with the feasibility study indicating whether it claims business confidentiality on any portion of the information submitted and, if it does claim business confidentiality, provide a statement meeting the requirements of Utah Code section 63-2-308.

(c) The Department shall publish public notice, at the applicant's expense, in a newspaper in general circulation for the location where the newly licensed capacity will be located that the feasibility study has been completed. The Department shall accept

public comment for 30 days from initial publication. The Department shall retain the feasibility study and make it available to the public.

(d) The Department shall review the feasibility study, summarize the public comment, review demographics of the geographic area involved and prepare a written evaluation to the applicant regarding the viability of the proposed program.

KEY: health care facilities

~~[May 31,]2002~~

Notice of Continuation January 11, 1999

26-21-9

26-21-11

26-21-12

26-21-13



Health, Health Systems Improvement,
Licensing

R432-31

Transferable Physician Order for Life-
Sustaining Treatment

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 25158

FILED: 08/14/2002, 10:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is to assure that patient preferences for end-of-life medical treatment are identified and followed throughout the health care delivery system.

SUMMARY OF THE RULE OR CHANGE: This rule establishes a transferable physician order form on which a physician may enter an order for life sustaining treatment. The rule describes that the facilities and agencies are required to transfer this order between health care settings and that the receiving facility shall honor the physician order upon the individuals admission for treatment or care.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule will cost \$10,000 which includes the cost of creating the transferable physician order form, copying the rule, and distributing the rule and copies of the form to affected facilities.

❖ LOCAL GOVERNMENTS: No costs for the form are anticipated for local governments that operate health care facilities since the Department provides the forms. There will be negligible costs for forwarding the form because it will be included with discharge papers that facilities are already required to prepare and send with the patient.

❖ OTHER PERSONS: No costs for the form are anticipated for health care facilities since the Department provides the forms.

There will be negligible costs for forwarding the form because it will be included with discharge papers that facilities are already required to prepare and send with the patient.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only mandate for facilities is to transfer the medical treatment form if it was completed by a patient. Facilities already transfer discharge orders to the receiving facility so any new cost should be negligible.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Health support for patients and their health care providers to understand the wishes of a terminally ill patient and assure that those wishes are recorded in a way that the health care system will understand and implement those wishes will be supported by this rule. The cost of transferring this form when the patient goes to a new health facility will have a negligible fiscal cost and is justified. Rod L. Betit.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2002

AUTHORIZED BY: Rod Betit, Executive Director

R432. Health, Health Systems Improvement, Licensing.
R432-31. Transferable Physician Order for Life-Sustaining Treatment.

R432-31-1. Legal Authority.

_____ This rule is adopted pursuant to Title 26, Chapter 21.

R432-31-2. Purpose.

_____ This rule provides for the orderly communication and transfer of patient preferences for life-sustaining treatment when a patient transfers from one licensed health care facility to another.

R432-31-3. Transferable Physician Order.

_____ (1) A physician may enter a patient's preferences and the physician's orders for life- sustaining treatment on a transferable physician order form. The Department shall, in consultation with the Health Facility Committee, design a uniform transferable

physician order form that may be used by physicians and health care facilities.

(2) Upon admission to a health care facility or acceptance to a home health agency, the facility or agency shall make a good faith effort to determine whether the individual's physician has completed a transferable physician order for life-sustaining treatment.

(3) A health care facility or its employee that makes a good faith effort to follow the instructions in a transferable physician order for life-sustaining treatment is not subject to any Department sanction as a result of those good faith efforts.

(4) The transferable physician order for life-sustaining treatment is fully transferable between all licensed health care facilities.

(5) A transferring licensed health care facility shall send the physician order for life-sustaining treatment, if it exists, with the patient to the receiving facility. The receiving facility and health care providers at the receiving facility shall honor the physician order for life-sustaining treatment until it has been properly changed or voided.

KEY: health facilities

**2002
26-21**



Natural Resources, Wildlife Resources **R657-9** Taking Waterfowl, Wilson's Snipe and Coot

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25165

FILED: 08/15/2002, 20:14

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to incorporate the required one-time orientation course for successful swan permit applicants pursuant to the Wildlife Board, who adopted such requirement for the 2002 swan hunting season.

SUMMARY OF THE RULE OR CHANGE: Section R657-9-5 is being amended to add that a person who is successful in obtaining a swan permit must complete a one-time orientation course before the swan permit is issued. Other provisions are being amended to clarify the application withdrawal and amendment process; update the Migratory Game Bird Harvest Information; and change "Wilson's" snipe to "Common" snipe.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 50 CFR 20, 50 CFR 32.64, and 50 CFR 27.21, 2001 edition

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment is adding a one-time orientation course requirement for persons who obtain a swan permit. The Division of Wildlife Resources will incur costs for developing the course, recording and maintaining a record of those persons who have taken the course, and providing on-site and website interfacing of the course. The actual costs are currently unknown. The Division determines that initially the cost may be considerable, however, once the course is developed and implemented, there may be less impact. The other amendments are for clarification and do not create a cost or savings impact to 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.

❖ OTHER PERSONS: This amendment is adding a one-time orientation course requirement for persons who obtain a swan permit. The other amendments are for clarification. Therefore, the amendments do 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 is adding a one-time orientation course requirement for persons who obtain a swan permit. Those persons who attend the orientation course or take the orientation course online will not incur any additional compliance costs. The Division is providing the orientation course free of charge. The other amendments are for clarification, and therefore, do not impose any additional requirements, nor generate an additional compliance cost.

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

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2002

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.**R657-9. Taking Waterfowl, [Wilson's]Common Snipe and Coot.****R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, [2000]2001 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, [Wilson's]Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking waterfowl, [Wilson's]Common snipe and coot.

R657-9-2. Definitions.

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

(2) In addition:

(a) "Aggregate daily bag limit" means the maximum number of migratory game birds permitted to be taken by one person in any one day during the open season when such person hunts in more than one specified geographic area and/or for more than one species for which a combined daily bag limit is prescribed.

(b) "Aggregate possession limit" means the maximum number of migratory game birds of a single species or combination of species taken in the United States permitted to be possessed by any one person when taking and possession occurs in more than one specified geographic area for which a possession limit is prescribed. The aggregate possession limit is equal to, but shall not exceed, the largest possession limit prescribed for any one of the species or specified geographic areas in which taking and possession occurs.

(c) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(d) "Baited area" means any area on which shelled, shucked or unshucked corn, wheat or other grain, salt or other feed has been placed, exposed, deposited, distributed or scattered, if that shelled, shucked or unshucked corn, wheat or other grain, salt or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take migratory game birds. Any such area will remain a baited area for ten days following the complete removal of all such shelled, shucked or unshucked corn, wheat or other grain, salt or other feed.

(e) "Baiting" means the direct or indirect placing, depositing, exposing, distributing or scattering of shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take migratory game birds.

(f) "CFR" means the Code of Federal Regulations.

(g) "Closed season" means, for purposes of this rule, the days on which migratory game birds shall not be taken.

(h) "Daily bag limit" means the maximum number of migratory game birds of a single species or combination (aggregate) of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

(i) "Live decoys" means tame or captive ducks, geese or other live birds.

(j) "Migratory game birds" means those migratory birds included in the terms of conventions between the United States and any foreign country for the protection of migratory birds, for which open seasons are prescribed in this part and belong to the following families:

(i) Anatidae (ducks, geese, including brant, and swans);

(ii) Columbidae (doves and pigeons);

(iii) Gruidae (cranes);

(iv) Rallidae (rails, coots, and gallinules); and

(v) Scolopocidae (woodcock and snipe).

(k) "Nontoxic shot" means soft iron, steel, copper-plated steel, nickel-plated steel, zinc-plated steel, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tin and any other shot types approved by the U.S. Fish and Wildlife Service. Lead, nickel-plated lead, copper-plated lead, copper and lead/copper alloy shot have not been approved.

(l) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(m) "Open season" means, for purposes of this rule, the days on which migratory game birds may lawfully be taken. Each period prescribed as an open season shall be construed to include the first and last days thereof.

(n) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(o) "Personal abode" means one's principal or ordinary home or dwelling place, as distinguished from one's temporary or transient place of abode or dwelling, such as a hunting club, or any cabin, tent or trailer house used as a hunting club or any hotel, motel or rooming house used during a hunting, pleasure or business trip.

(p) "Possession limit" means the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

(q) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(r) "Transport" means to ship, export, import or receive or deliver for shipment.

(s) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(t) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

(u) "Youth" means a person 12 to 15 years of age.

R657-9-3. Stamp Requirements.

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird stamp is not required for any person 12 through 15 years of age.

R657-9-4. Permit Applications for Swan.

(1) Applications for swan permits are available from license agents and division offices. Residents and nonresidents may apply.

(2)(a) Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking waterfowl, [Wilson's]Common snipe and coot.

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

(c) The division reserves the right to correct applications.

(3)(a) Late applications received by the date published in the proclamation of the Wildlife Board for taking waterfowl, ~~Wilson's~~ Common snipe and coot will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw database to provide:

- (i) future pre-printed applications;
- (ii) notification by mail of late application and other draw opportunities; and
- (iii) re-evaluation of division or third-party errors.

(b) The handling fee will be used to process the late application. Any license fees submitted with the application shall be refunded.

(c) Late applications received after the date published in the proclamation of the Wildlife Board for taking waterfowl, ~~Wilson's~~ Common snipe and coot will not be processed and will be returned.

- (4) A person may obtain only one swan permit each year
- (5) A person may not apply more than once annually.
- (6) Group applications are not accepted.
- (7) A small game or combination license may be purchased before applying, or the small game or combination license will be issued to the applicant upon successfully drawing a permit.
- (8) Each application must include:
 - (a) a \$5 nonrefundable handling fee; and
 - (b) the small game or combination license fee, if it has not yet been purchased.

R657-9-5. Drawing.

(1)(a) Drawing results are posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the proclamation of the Wildlife Board for taking waterfowl, ~~Wilson's~~ Common snipe, and coot.

(b) Any remaining permits are available by mail-in request or over the counter at the Salt Lake division office beginning on the date specified in the proclamation of the Wildlife Board for taking waterfowl, ~~Wilson's~~ Common snipe and coot.

(2)(a) The Division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(b) 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.

(c) Division errors may be corrected using the withheld swan permits in accordance with the Division Error ~~Policy~~ Remedy Rule R657-50.

(d) 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.

(e) 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.

(3)(a) A person who is successful in drawing a swan permit, must complete a one-time orientation course, except as provided under Subsection R657-9-7(3)(b), as prescribed by the division before the swan permit is distributed.

(b) Remaining swan permits available for sale by mail shall be issued only to persons having previously completed the orientation course.

(4) Licenses and permits are mailed to successful applicants.

~~(4)(a)~~ (5)(a) An applicant may withdraw their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, ~~Wilson's~~ Common snipe, and coot.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

~~(c) [An applicant may reapply in the swan drawing provided:~~

~~(d) the original application is withdrawn;~~

~~(e) the new application is submitted with the request to withdraw the original application;~~

~~(f) both the new application and request to withdraw the original application are received by the initial application deadline; and~~

~~(g) both the new application and request to withdraw the original application are submitted to the Salt Lake Division office.~~

~~(h)] Handling fees will not be refunded.~~

~~(5)(a)~~ (6)(a) An applicant may amend their application for the swan permit drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

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

R657-9-6. Tagging Swans.

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

R657-9-7. Return of Swan Harvest and Hunt Information.

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must complete the swan questionnaire included with the permit and return it to the division within ten days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the Division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the Division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

R657-9-8. Purchase of License and Wildlife Habitat Authorization by Mail.

(1) A person may purchase a license by mail by sending the following information to the Salt Lake division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of hunter education certification, and fees.

(2)(a) Personal checks, money orders and cashier's checks are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-9-9. Firearms.

(1) Migratory game birds may be taken with a shotgun or archery tackle.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, crossbow, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells.

R657-9-10. Nontoxic Shot.

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs; or

(d) on the Scott M. Matheson wetland preserve.

R657-9-11. Use of Firearms on State Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division:

(a) Box Elder County - Harold S. Crane, Locomotive Springs, Public Shooting Grounds, and Salt Creek;

(b) Daggett County - Brown's Park;

(c) Davis County - Farmington Bay, Howard Slough, and Ogden Bay;

(d) Emery County - Desert Lake;

(e) Millard County - Clear Lake;

(f) Tooele County - Timpie Springs;

(g) Uintah County - Stewart Lake;

(h) Utah County - Powell Slough;

(i) Wayne County - Bicknell Bottoms; and

(j) Weber County - Ogden Bay and Harold S. Crane.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-9-12. Airborne, Terrestrial, and Aquatic Vehicles.

Migratory game birds may not be taken:

(1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furled and its progress has ceased: provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or

(2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

R657-9-13. Airboats.

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:

(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line as posted.

(b) Daggett County: Brown's Park

(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units.

(d) Emery County: Desert Lake

(e) Millard County: Clear Lake

(f) Tooele County: Timpie Springs

(g) Uintah County: Stewart Lake

(h) Utah County: Powell Slough

(i) Wayne County: Bicknell Bottoms

(j) Weber County: Ogden Bay within diked units or as posted and all of Harold S. Crane Waterfowl Management Area.

(2) "Personal watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

R657-9-14. Motorized Vehicle Access.

(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(2) Off-highway vehicles are confined to those areas open to the use of airboats, and as marked and posted.

(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(4) Motorized boat use is restricted on waterfowl management areas as specified in the proclamation of the Wildlife Board for taking waterfowl, [~~Wilson's~~ Common snipe and coot.

R657-9-15. Sinkbox.

A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

R657-9-16. Live Decoys.

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within

an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

R657-9-17. Amplified Bird Calls.

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds.

R657-9-18. Baiting.

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-9-19. Possession During Closed Season.

No person shall possess any freshly killed migratory game birds during the closed season.

R657-9-20. Live Birds.

(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag limit.

(2) No person shall at any time, or by any means possess or transport live migratory game birds.

R657-9-21. Waste of Migratory Game Birds.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

R657-9-22. Termination of Possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the

birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

R657-9-23. Tagging Requirement.

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

R657-9-24. Donation or Gift.

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

R657-9-25. Custody of Birds of Another.

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-23.

R657-9-26. Species Identification Requirement.

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

R657-9-27. Marking Package or Container.

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

R657-9-28. Migratory Bird Preservation Facilities.

(1) No migratory bird preservation facility shall:

(a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show:

(i) the number of each species;

(ii) the location where taken;

(iii) the date such birds were received;

(iv) the name and address of the person from whom such birds were received;

(v) the date such birds were disposed of; and
 (vi) the name and address of the person to whom such birds were delivered; or

(b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.

(2) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.

(3) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

R657-9-29. Importation.

A person may not:

(1) import migratory game birds belonging to another person;
 or

(2) import migratory game birds in excess of the following importation limits:

(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;

(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;

(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

R657-9-30. Use of Dogs.

(1) Dogs may be used to locate and retrieve migratory game birds during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the division.

R657-9-31. Season Dates and Bag and Possession Limits.

(1) Season dates and bag and possession limits are specified in the proclamation of the Wildlife Board for taking waterfowl, ~~[Wilson's]~~Common snipe and coot.

(2) A youth duck hunting day may be allowed for any person 15 years of age or younger as provided in the proclamation of the Wildlife Board for taking waterfowl, ~~[Wilson's]~~Common snipe and coot.

R657-9-32. Closed Areas.

(1) A person may not trespass on state waterfowl management areas except during prescribed seasons, or for other activities as posted without prior permission from the division.

(2) A person may not participate in activities that are posted as prohibited.

(3) A person may not trespass, take, hunt, shoot at, or rally any waterfowl, snipe, or coot in the following specified areas:

- (a) Brown's Park - That part adjacent to headquarters.
- (b) Clear Lake - Spring Lake.
- (c) Desert Lake - That part known as "Desert Lake."

(d) Farmington Bay - Headquarters area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.

(e) Ogden Bay - Headquarters area.

(f) Public Shooting Grounds - That part as posted lying above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake."

(g) Salt Creek - That part as posted known as "Rest Lake."

(h) Bear River Migratory Bird Refuge - For information contact the refuge manager, U.S. Fish and Wildlife Service, at (435) 723-5887. The entire refuge is closed to the hunting of snipe.

(i) Fish Springs and Ouray National Wildlife Refuges - Waterfowl hunters must register at Fish Springs refuge headquarters prior to hunting. Both refuges are closed to the hunting of swans, and Fish Springs is closed to the hunting of geese.

(j) State Parks

Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated open by appropriate signing as provided in Rule R651-614-4.

(k) Great Salt Lake Marina and adjacent areas as posted.

(l) Millard County

Gunnison Bend Reservoir and the inflow upstream to the Southerland Bridge.

(m) Salt Lake International Airport - Hunting and shooting prohibited as posted.

R657-9-33. Shooting Hours.

(1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.

(2) Legal shooting hours for taking or attempting to take waterfowl, ~~[Wilson's]~~Common snipe, and coot are provided in the proclamation of the Wildlife Board for taking waterfowl, ~~[Wilson's]~~Common snipe and coot.

R657-9-34. Falconry.

(1) Falconers must obtain a valid small game or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.

(2) Areas open and bag and possession limits for falconry are specified in the proclamation of the Wildlife Board for taking waterfowl, ~~[Wilson's]~~Common snipe and coot.

R657-9-35. Migratory Game Bird Harvest Information Program (HIP).

(1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person must call ~~[1-800-WETLAND-(1-800-938-5263)]~~ or register online at the address ~~[the telephone number published in the proclamation of the Wildlife Board for taking waterfowl, ~~[Wilson's]~~Common snipe and coot, or register online at the address published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot to obtain their HIP registration number. Use of a public pay phone will not allow access to [1-800-WETLAND-]the telephone number published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.~~

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

- (a) hunting license number;
- (b) hunting license ~~[code key]~~type;
- (c) name;
- (d) address;
- (e) phone number;
- (f) birth date; and

(g) information about the previous year's migratory bird hunts.
 (4) Lifetime license holders will receive a sticker every three years from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-9-36. Waterfowl Blinds on Waterfowl Management Areas.

(1) Waterfowl blinds on Division waterfowl management areas may be constructed or used as provided in Subsection (a) through Subsection (e).

(a) Waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located.

(b) Trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the Division.

(c) Excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the Division.

(d) Rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind.

(e) Waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit and Crystal Unit.

(b) Howard's Slough Waterfowl Management Areas - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake.

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3.

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the Division without notice.

(4) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

(5) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

KEY: wildlife, birds, migratory birds, waterfowl[≠]

~~[March 5,]~~2002

Notice of Continuation August 30, 2001

23-14-18

23-14-19

50 CFR part 20



Natural Resources, Wildlife Resources

R657-10

Taking Cougar

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25166

FILED: 08/15/2002, 20:15

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 cougar program.

SUMMARY OF THE RULE OR CHANGE: Provisions of this rule are being amended to clarify and make consistent the application and drawing procedures for limited entry cougar permits, including implementing a three-year waiting period, and making the cougar bonus point system consistent with the big game bonus point system. Other changes are made for consistency and clarity.

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

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This amendment clarifies the procedures and requirements for obtaining cougar permits, and other administrative details. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.

❖ **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.

❖ **OTHER PERSONS:** The amendments provide procedures and requirements for obtaining cougar permits, and other administrative details, therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide procedures and requirements for obtaining cougar permits, and other administrative details. DWR determines that there are no additional compliance costs associated with this amendment.

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

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2002

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.

R657-10. Taking Cougar.

R657-10-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking cougar.

R657-10-2. Definitions.

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

(2) In addition:

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

(b) "Cougar" means Puma concolor, commonly known as mountain lion, lion, puma, panther or catamount.

(c) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.

(d) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

(e) "Green pelt" means the untanned hide or skin of any cougar.

(f) "Kitten" means a cougar less than one year of age.

(g) "Pursue" means to chase, tree, corner or hold a cougar at bay.

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

R657-10-3. Permits for Taking Cougar.

(1)(a) To harvest a cougar, a person must first obtain a valid limited entry cougar permit or a harvest objective cougar permit for the specified management units as provided in the proclamation of the Wildlife Board for taking cougar.

(b) Any person who obtains a limited entry cougar permit or a harvest objective cougar permit may pursue cougar on the unit for which the permit is valid.

(2) To pursue cougar, a person must first obtain a valid cougar pursuit permit from a division office. A cougar pursuit permit does not allow a person to kill a cougar.

(3) A person may not apply for or obtain more than one cougar permit for the same season, except:

(a) as provided in Subsection R657-10-26(3); or

(b) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective permit.

(4) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

R657-10-4. Permit Exchanges.

(1)(a) Any person who has obtained a harvest objective cougar permit may exchange that permit for any other harvest objective units provided the unit objectives have not been met and the units are still open.

(b) Limited entry cougar permits may not be exchanged.

(2)(a) A [~~\$5~~]handling fee will be charged for the exchange of a harvest objective permit.

(b) Any person who exchanges a harvest objective permit must complete a questionnaire at the time the exchange is made.

(3)(a) Any harvest objective permit exchanged is not valid until the day after the exchange is made.

(b) Harvest objective permits may be exchanged only at division offices.

R657-10-5. Purchase of Permit by Mail.

(1) A person may obtain a wildlife habitat authorization, cougar pursuit permit or cougar harvest objective permit by mail by sending the following information to the Salt Lake division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter education certification, and fee.

(2)(a) Personal checks, cashier's checks, or money orders are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-10-6. Hunting Hours.

Cougar may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-10-7. Firearms and Archery Tackle.

A person may use the following to take cougar:

(1) any firearm not capable of being fired fully automatic; and

(2) a bow and arrows, except a crossbow may not be used.

R657-10-8. Traps and Trapping Devices.

(1) Cougar may not be taken with a trap, snare or any other trapping device, except as authorized by the Division of Wildlife.

(2) Cougar accidentally caught in any trapping device must be released unharmed, and must not be pursued or taken.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a cougar from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-10-9. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-10-10. Prohibited Methods.

(1) Cougar may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking cougar. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare or in any way harm or transport cougar.

(2) After a cougar has been pursued, chased, treed, cornered or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

(5) Electronic locating equipment may not be used to locate cougars wearing electronic radio devices.

R657-10-11. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

R657-10-12. Party Hunting.

A person may not take a cougar for another person.

R657-10-13. Use of Dogs.

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

(2) The owner and handler of dogs used to take or pursue cougar must have a valid cougar permit or cougar pursuit permit in possession while engaged in taking or pursuing cougar.

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

(4) When dogs are used to take cougar and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3), or have a valid pursuit permit and a cougar permit.

R657-10-14. Tagging Requirements.

(1) The carcass of a cougar must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a cougar after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(4) A person may not possess a cougar pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-10-15. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each cougar until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) It is mandatory that a tooth (PM1) be removed by the division at the time of permanent tagging to be used for aging purposes.

(4) The division may seize any pelt not accompanied by its skull or not having sufficient evidence of biological sex designation attached.

R657-10-16. Permanent Tag.

(1)(a) Each cougar must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass and for the removal of a tooth.

(b) After regular business hours, on weekends, or on holidays, a conservation officer may be reached by contacting the local police dispatch office.

(2) A person may not possess a green pelt after the 48-hour check-in period, or ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-10-17. Transporting Cougar.

Cougar that have been legally taken may be transported by the permit holder provided the cougar is properly tagged and the permittee possesses the appropriate permit.

R657-10-18. Exporting Cougar from Utah.

(1) A person may export a legally taken cougar or its parts if that person has a valid permit and the cougar is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a cougar pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-10-19. Donating.

(1) A person may donate protected wildlife or their parts to another person as provided in Section 23-20-9.

(2) A green pelt of any cougar donated to another person must have a permanent possession tag affixed.

(3) The written statement of donation must be retained with the pelt.

R657-10-20. Purchasing or Selling.

(1) Legally obtained, tanned cougar hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale, or barter a tooth, claw, paw, or skull of any cougar.

R657-10-21. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) The skinned carcass of a cougar may be left in the field and does not constitute waste of wildlife.

R657-10-22. Livestock Depredation and Human Health and Safety.

(1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a USDA, Wildlife Services specialist; or

(c) the livestock owner may notify a USDA, Wildlife Services specialist of the depredation who may take the depredating cougar.

(2) Depredating cougar may be taken at any time by a USDA, Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating cougar may be taken with any weapon authorized for taking cougar.

(4)(a) Any cougar taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) In accordance with Subsection (1)(a) the cougar shall remain the property of the state, except the division may issue a cougar damage permit to a person who has killed a depredating cougar in accordance with this section, if that person wishes to maintain possession of the cougar.

(c) A person may acquire only one cougar annually.

(5)(a) Hunters interested in taking depredating cougar as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating cougar as needed.

R657-10-23. Questionnaire.

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, harvest success and other valuable information.

R657-10-24. Taking Cougar.

(1)(a) A person may take only one cougar during the season and from the area specified on the permit.

(b) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking cougar.

(c) Harvest objective permits may be purchased over-the-counter at division offices.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots; or

(b) repeatedly pursue, chase, tree, corner, or hold at bay, the same cougar during the same day after the cougar has been released.

(3) Any cougar may be taken during the prescribed seasons, except a kitten with spots, or any cougar accompanied by kittens, or any cougar accompanied by an adult.

(4) A person may not take a cougar wearing a radio collar from any areas that are published in the proclamation of the Wildlife Board for taking cougar.

(5) The division may authorize hunters who have obtained a limited entry cougar permit to take cougar in a specified area of the state in the interest of protecting wildlife from depredation.

(6) Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking cougar.

R657-10-25. Extended and Preseason Hunts.

(1) An extended or preseason hunt may be authorized by the division on selected cougar management units to control depredation or nuisance problems.

(2) The director may authorize only those hunters who drew a limited entry permit or have purchased a harvest objective permit to hunt on that management unit and participate in a preseason or extended season hunt.

R657-10-26. Cougar Pursuit.

(1) Cougar may be pursued only by persons who have obtained an annual cougar pursuit permit. The cougar pursuit permit does not allow a person to kill a cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots;

(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day; or

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

(i) The weapon restrictions set forth in the subsection do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code,

provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill cougar.

(3) If eligible, a person who has obtained a cougar pursuit permit may also obtain a limited entry cougar permit or harvest objective cougar permit.

(4) Cougar may be pursued only on limited entry units or harvest objective units during the dates provided in the proclamation of the Wildlife Board for taking cougar.

(5) A cougar pursuit permit is valid on a calendar year basis.

R657-10-27. General Application Information.

(1) A person may not apply for or obtain more than one cougar permit for the same year, except as provided in Section R657-10-4.

(2) A person must be 12 years of age or older by the posting date of the drawing to apply for a limited entry cougar permit.

(3) Limited entry cougar permits are valid only for the management unit and for the specified season designated on the permit.

R657-10-28. Waiting Period.

(1) Any person who obtained a limited entry permit valid for the current season may not apply for a permit for a period of ~~two~~ three years.

(2) Any person who draws a limited entry permit for the current season may not apply for a permit for a period of ~~two~~ three years.

(3) Waiting periods are not incurred as a result of purchasing harvest objective permits.

R657-10-29. Application Procedure.

(1) Applications are available from license agents and division offices.

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

(b) Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.

(3)(a) Applications must be mailed by the date published in the proclamation of the Wildlife Board for taking and pursuing cougar.

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

(c) The division reserves the right to correct applications.

(4)(a) Late applications received by the date published in the proclamation of the Wildlife Board for taking and pursuing cougar will not be considered in the drawing, but will be processed for the purpose of entering data into the Division's draw database to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of Division or third-party errors.

(b) The ~~[\$5-]~~handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the proclamation of the Wildlife Board for taking and pursuing cougar will not be processed and will be returned.

(5) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should

get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-10-31.

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

(8) The posting date of the drawing shall be considered the purchase date of a permit.

R657-10-30. Fees.

(1) Each application must include:

(a) the permit fee; and

(b) the nonrefundable handling fee.

(2) Permits are mailed to successful applicants.

(3)(a) Unsuccessful applicants, who applied in the drawing and who applied with a check or money order, will receive a refund in December.

(b) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(c) The handling fees are nonrefundable.

R657-10-31. Drawing and Remaining Permits.

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

(2) Drawing results will be posted on the date published in the proclamation of the Wildlife Board for taking cougar at division offices, Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center and on the division Internet address.

(3) Beginning on the date published in the proclamation of the Wildlife Board for taking cougar, residents or nonresidents may purchase any of the remaining permits by mail-in application from the Salt Lake division office.

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

(5) Waiting periods do not apply to the purchase of remaining limited entry permits after the drawing. However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying for limited entry permits in the drawing in following years.

(6)(a) An applicant may withdraw their application for the limited entry cougar permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking cougar.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) ~~[An applicant may reapply in the limited entry cougar drawing provided:~~

~~— (d) the original application is withdrawn;~~

~~— (e) the new application is submitted with the request to withdraw the original application;~~

~~— (f) both the new application and request to withdraw the original application are received by the initial application deadline; and~~

~~— (g) both the new application and request to withdraw the original application are submitted to the Salt Lake Division office.~~

~~(h)~~ Handling fees will not be refunded.

(7)(a) An applicant may amend their application for the limited entry cougar permit drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

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

R657-10-32. Bonus Points.

(1) A bonus point is awarded for:

~~(a) A valid unsuccessful application when applying for a [in the drawing.~~

~~(2) Bonus points are forfeited if the person obtains a permit, including any] limited entry permit [obtained after the drawing.] in the cougar drawing; or~~

~~[(3)](b) a valid application when applying for a bonus point in the cougar drawing.~~

(2) The purchase of a harvest objective permit will not affect bonus points.

~~(3)(a) A person may apply for one cougar bonus point each year, except a person may not apply in the drawing for both a limited entry cougar permit and a cougar bonus point in the same year.~~

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

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

~~(4)(a) Each applicant receives a random drawing number for:~~

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

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

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

~~(5)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.~~

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

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

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

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

~~(6) Bonus points are forfeited if a person obtains a limited entry cougar permit except as provided in Subsection (7).~~

~~(7) Bonus points are not forfeited if:~~

~~(a) a person is successful in obtaining a Conservation Permit; or~~

~~(b) a person obtains a harvest objective cougar permit.~~

~~(8)[(4)] Bonus points are not transferable.~~

~~[(5)](9) Bonus points are tracked [by] using [the applicant's] social security [number] numbers or [division] Division-issued hunter identification [number] numbers.~~

R657-10-33. Harvest Objective General Information.

(1) Harvest objective permits are valid only for the management units designated on the permit and for the specified seasons published in the proclamation of the Wildlife Board for taking cougar.

(2) Residents may select up to two harvest objective management units and nonresidents may select up to three harvest objective management units, wherein the permit will be valid.

(3) Harvest objective permits are not valid in a specified management unit after the harvest objective has been met for that specified management unit.

R657-10-34. Harvest Objective Permit Sales.

(1) Harvest objective permits are available to residents and nonresidents over-the-counter beginning on the date published in the proclamation of the Wildlife Board for taking cougar from division offices.

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

(3) Any harvest objective permit exchanged is not valid until the day after the exchange is made.

R657-10-35. Harvest Objective Unit Closures.

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-LION to verify that the cougar management unit is still open. The phone line will be updated each day by 8 p.m.

(2) Harvest objective units are open to hunting until:

(a) the female cougar sub-objective for that unit is met;

(b) the cougar harvest objective for that unit is met; or

(c) the end of the hunting season as provided in the proclamation of the Wildlife Board for taking cougar.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue cougar except as provided in Section R657-10-26.

(4) Any person who obtains a harvest objective cougar permit may exchange that permit as provided in Section R657-10-3.

R657-10-36. Harvest Objective Unit Reporting.

(1) Any person taking a cougar with a harvest objective permit shall report to the Division, when the permanent tag is affixed pursuant to Section R657-10-16, where the cougar was killed.

(2) Failure to accurately report the correct harvest objective management unit where the cougar was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered prima facie evidence of a knowing and flagrant violation for purposes of permit ~~[revocation]~~ suspension.

KEY: wildlife, cougar[*], game laws

~~[March 5,]2002~~

Notice of Continuation August 30, 2001

23-14-18

23-14-19



Natural Resources, Wildlife Resources

R657-41

Conservation and Sportsman Permits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25167

FILED: 08/15/2002, 20:15

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 allocation of conservation and sportsman permits.

SUMMARY OF THE RULE OR CHANGE: Provisions of this rule are being amended, which may allow a second statewide conservation permit for big game or small game species to be authorized for a special event or fund raising activity. Provisions are being amended to provide clarification to conservation organizations when applying for conservation permits, and provide additional criteria that the Wildlife Board may consider when allocating such permits.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment clarifies the standards and procedures for issuing conservation permits. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.

❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: This amendment clarifies the standards and procedures for issuing conservation permits, therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments are for clarification and providing procedures for issuing conservation permits. DWR determines that there are no additional compliance costs associated with this amendment.

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

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2002

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.**R657-41. Conservation and Sportsman Permits.****R657-41-1. Purpose and Authority.**

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities; and

(b) sportsman permits.

(2) The division shall use all revenue derived from conservation permits for the benefit of the species for which the permit is issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

R657-41-2. Definitions.

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

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a specific species, and may include an extended season, or legal weapon choice, or both, beyond the general season.

(i) Area Conservation permits issued for limited entry units are not valid on cooperative wildlife management units, and Area Conservation permits issued for general season hunt areas are not valid on cooperative wildlife management units or limited entry units.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting wildlife conservation and has established tax exempt status under Internal Revenue Code, Section 501C-3 as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division for purposes identified in Section R657-41-1(2).

(d) "Sportsman Permit" means a harvest permit authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(e) "Statewide Conservation Permit" means a permit which allows a permittee to hunt:

(i) big game species on any open unit from September 1 through December 31, except pronghorn and moose from September 1 through October 31;

(ii) turkey on any open unit from April 1 through May 31;

(iii) any other small game species on any open unit during the season authorized by the Wildlife Board;

(iv) bear on any open unit during the season authorized by the Wildlife Board for that unit; and

(v) cougar on any open unit during the season authorized by the Wildlife Board for that unit and during the season dates authorized by the Wildlife Board on any harvest objective unit that has been closed by meeting its objective.

R657-41-3. Method for Determining the Number of Conservation and Sportsman Permits.

(1) The number of conservation permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) the potential revenue that will support protection and enhancement of the species.

(2) One statewide conservation permit may be authorized for each big game and small game species for which limited permits are available, except that a second statewide conservation permit for a big game or small game species may be authorized for a special event or fund raising activity.

(3) A limited number of area conservation permits may be authorized, with a maximum of 5% of the permits or eight permits, whichever is less, for any unit or hunt area, unless a higher number is specifically authorized by the Wildlife Board.

(4) The number of conservation and sportsman permits available for use during the following year will be determined by the Wildlife Board annually.

(5) Area Conservation permits shall be deducted from the number of public drawing permits.

(6) One sportsman permit may be authorized for each statewide conservation permit authorized.

R657-41-4. Obtaining Conservation Permits.

(1) Statewide and area conservation permits are available to eligible conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities.

(2)(a) Conservation organizations may apply for conservation permits by sending an application to the division for each permit requested.

(b) Only one application per conservation organization may be submitted. Multiple chapters of the same conservation organization may not apply individually.

(3) The application must be submitted to the division by September 1 to be considered for the following year's conservation permits. Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a copy of the conservation organization's mission statement;

(c) verification of the conservation organization's tax exempt status under Internal Revenue Code, Section 501C-3 as amended;

(d) the name of the president or other individual responsible for the administrative operations of the conservation organization;

(e) the type of permit and species for which the permit is requested; and

(f) any requested variances for an extended season or legal weapon choice for area conservation permits.

(4)(a) Conservation organizations must include the information as provided in Subsection (b) or (c).

(b) The proposed bid amount for each permit. The proposed bid amount is the revenue the organization anticipates to be raised from the auction or fund raising activity. The recommended minimum permit bid amount is listed in Table 1.

(i) The basis for the bid amount must include the conservation organization's experience in similar activities, and details of the marketing plan.

TABLE 1
RECOMMENDED MINIMUM PERMIT BID AMOUNT

Species	Statewide	Area
Rocky Mountain Bighorn (Ram)	\$30,000	\$20,000
Desert Bighorn (Ram)	30,000	20,000
Buck Deer	10,000	2,000
Bull Elk	10,000	4,000
Bull Moose	10,000	3,000
Bison (Hunter's Choice)	5,000	5,000
Rocky Mountain Goat (Hunter's Choice)	5,000	3,000
Buck Pronghorn	2,000	1,000
Black Bear	2,000	1,000
Cougar	2,000	500
Turkey	350	250

(c) A specific project proposal that includes:

(i) a schedule for project completion;

(ii) the benefits to the identified species;

(iii) justification for the conservation organization retaining more than ten percent of the revenue, showing increased benefit to the species, over remitting the funds to the division. Under this option, the division must receive the cost of the permit.

(iv) Proposals which integrate well with the division's species plans and objectives will be given emphasis in the evaluation.

(5) An application which is incomplete or completed incorrectly may be rejected.

(6) The application of a conservation organization that has not fully reported on the preceding years conservation permits may be rejected.

(7) Conservation permits shall be awarded for one year, except as provided in Subsection (8).

(8) Conservation organizations may apply for specific area conservation permits, which may be awarded for up to five consecutive years, provided the conservation organization meets the requirements provided in Subsection (a) for a multi-year permit.

(a)(i) the conservation organization must submit a bid for each multi-year area conservation permit requested and submit a specific project proposal for which the funds will be utilized, as provided in Subsection (4)(c);

(ii) the project must require more than one year of funding to complete;

(iii) the conservation organization must show the increased benefit to the division by the conservation organization carrying out the project;

(iv) the conservation organization must maintain each year a minimum performance standard, raising no less than 80% of the funds bid for each multi-year permit; and

(v) the conservation organization must report annually on the funds raised and expended, and the project activities accomplished.

(b) Conservation organizations failing to satisfy the performance standards in any given year during the multi-year period or reporting requirements shall lose the multi-year area conservation permit for the balance of the multi-year award period.

(c) Conservation organizations must submit a separate bid for each multi-year area conservation permit.

(d) Bids for multi-year area conservation permits shall be evaluated based on:

(i) an average annual benefit when compared to annual bids for permits; and

(ii) the requirements as provided in Subsection (9).

(9) The division shall recommend the conservation organization to receive each of the conservation permits based on:

(a) first, the bid amount pledged to the species, adjusted by:

(i) the performance of the organization over the previous two years in meeting proposed bids;

(ii) if returning the bid amount to the division, at least 90% of the bid amount;

(iii) if retaining the bid amount for projects, at least 90% of the bid amount, multiplied by the percent the project integrates with species plans and objectives; and

(iv) organizations must maintain a minimum two-year average performance of 70% to be eligible for consideration of permits. Performance of the organization is the proportion of the amount returned to the division, divided by 90% of the bid amount for all permits, calculated annually and averaged for the last two years.

(b) second, if two or more conservation organizations are tied using the criteria in Subsection (a), the closeness of the organization's purpose to the species of the permit; and

(c) third, if two or more conservation organizations are tied using the criteria in Subsection (a) and (b), the geographic closeness of the organization to the location of the permit.

(10)(a) Between the time the division recommends that a conservation permit be awarded to a conservation organization and the time the Wildlife Board approves that recommendation, a conservation organization may withdraw their application for any given permit or exchange their application with another conservation organization without penalty, provided the bid amount upon which the permit application was evaluated is not changed.

(b) If a conservation organization withdraws its bid and the bid is awarded to another organization at a lower amount, then the difference between the two bids will be subtracted from the organization making the higher bid for purposes of evaluating organization performance.

(11) The Wildlife Board shall make the final assignment of conservation permits at a meeting prior to December 1 annually; ~~considering the:~~

(12) The Wildlife Board may authorize a conservation permit to a conservation organization, other than the conservation organization recommended by the division, after considering the:

(a) division recommendation;

(b) benefit to the species;

(c) historical contribution of the organization to the conservation of wildlife in Utah; and

(d) previous performance of the conservation organization.

(13) The total of all bids for permits awarded to any one organization shall not exceed \$20,000 the first year an organization receives permits.

(14) The number of permits awarded to any one organization shall not increase by more than 100% from the previous year.

(15) If the Wildlife Board authorizes a second statewide conservation permit for a species, the conservation organization receiving the permit must meet the high bid for that permit.

~~(16)(12)~~ The division and conservation organization receiving the permits shall enter into a contract.

~~(17)(a)~~ The conservation organization receiving permits must certify that the permits are distributed by lawful means.

(b) The conservation organization must:

(i) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and

(ii) notify the division of the proposed permit recipient within 10 days of the recipient selection or the permit may be forfeited.

(c) If a person is selected by a qualified organization to receive a conservation permit and is also successful in obtaining a permit for the same species in the same year through the Bucks, Bulls and Once-In-A-Lifetime Drawing, that person may designate another person to receive the conservation permit, provided the conservation permit has not been issued by the division to the first selected person.

(d) If a person is selected by a qualified organization to receive a conservation permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:

(i) the conservation organization selects the new recipient of the permit;

(ii) the amount of money received by the division for the permit is not decreased;

(iii) the conservation organization relinquishes to the division 90% of all proceeds generated from the alternate permit transfer or uses the funds for projects authorized by the division pursuant to this rule;

(iv) the conservation organization and the initial designated recipient of the permit, must sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

(v) the permit has not been issued by the division to the first designated person.

(e) Except as otherwise provided under Subsection (c) and (d), a person designated by a conservation organization as a recipient of a conservation permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

~~(18)~~ All permits must be marketed by September 1, annually.

~~(19)~~ Within 30 days of the last event, but no later than September 1 annually, the conservation organization must submit to the division:

(a) a final report on the distribution of permits;

(b) the funds due to the division; and

(c) a report on the status of each project contained in the application.

~~(20)~~ Permits shall not be issued until funds due to the division are received. Ten percent of the auction or fund raising activity amount may be retained by the conservation organization for administrative expenses. If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization.

R657-41-5. Obtaining Sportsman Permits.

(1) One sportsman permit is offered to residents through a drawing for each of the following species:

(a) desert bighorn (ram);

(b) bison (hunter's choice);

(c) buck deer;

(d) bull elk;

(e) Rocky Mountain goat (hunter's choice)

- (f) bull moose; and
- (g) buck pronghorn.
- (2) The following information is provided in the proclamation of the Wildlife Board for taking big game:
 - (a) hunt dates;
 - (b) open units or hunt areas;
 - (c) application procedures;
 - (d) fees; and
 - (e) deadlines.

R657-41-6. Using a Conservation or Sportsman Permit.

- (1)(a) A conservation or sportsman permit allows the recipient to take only the species for which the permit is issued.
- (b) The species that may be taken shall be printed on the permit.
- (c) The species may be taken in the area and during the season specified on the permit.
- (d) The species may be taken only with the weapon specified on the permit.
- (2) The recipient of a conservation or sportsman permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.
 - (3) Bonus points shall not be awarded or utilized:
 - (a) when applying for conservation or sportsman permits; or
 - (b) in obtaining conservation or sportsman permits.
 - (4) Any person who has obtained a conservation or sportsman permit is subject to all waiting periods as provided in Rules R657-5, R657-6, R657-10 and R657-33.

KEY: wildlife, wildlife permits
~~November 15, 2001~~ **2002**
Notice of Continuation November 30, 2000
23-14-18
23-14-19



Natural Resources, Wildlife Resources
R657-51
Youth Permits

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 25168
 FILED: 08/15/2002, 20:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to provide that a series of youth permits may be issued for the 2003 hunting season.

SUMMARY OF THE RULE OR CHANGE: This amendment provides that the Division of Wildlife Resources (DWR) may issue one series of youth permits for the 2002 and 2003 hunting seasons through conservation organizations.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This amendment provides that DWR may issue one series of youth permits for the 2002 and 2003 hunting seasons through conservation organizations. DWR determines that this rule does not create a cost or savings impact to the state budget or DWR's budget.
- ❖ **LOCAL GOVERNMENTS:** None--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.
- ❖ **OTHER PERSONS:** This amendment provides that the DWR may issue one series of youth permits for the 2002 and 2003 hunting seasons through conservation organizations. The rule 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 provides that DWR may issue one series of youth permits for the 2002 and 2003 hunting seasons through conservation organizations. Conservation organizations wishing to participate in the Youth Permits program may incur a minimal cost for the promotion and advertising of this program, and the acceptance and processing of youth applications to designate the youth permit recipient. However, the actual cost is unknown and may vary for each conservation organization. DWR determines that there are no additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not create an impact on businesses.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2002

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.**R657-51. Youth Permits.****R657-51-1. Purpose and Authority.**

(1) Under the authority of Sections 23-14-18 and 23-14-19 of the Utah Code, this rule provides the standards and requirements for issuing youth permits.

(2) Youth permits are authorized by the Wildlife Board and issued by the division through conservation organizations for purposes of introducing and promoting hunting recreation among youth.

(3) This rule is intended as authorization to issue one series of youth permits for the 2002 and 2003 hunting season through conservation organizations.

R657-51-2. Definitions.

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

(2) In addition:

(a) "Conservation organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting wildlife conservation and has established tax exempt status under Internal Revenue Code, Section 501(c)(3), as amended.

(b) "Conservation organization group" means a collective of conservation organizations cooperatively working together under agreement to promote youth participation in hunting recreation and responsible for distributing opportunities to obtain youth permits.

(c) "Youth" means a person that is eligible to hunt and that person is between the ages of 14 and 19, inclusive as of August 1, 2002.

(d) "Youth Permit" means a permit, which allows a youth to hunt:

(i) a specified big game species on a specified unit during the established season for each species as authorized by the Wildlife Board;

(ii) a cougar, bear or turkey on a specified unit during the established season for each species as authorized by the Wildlife Board.

(e) "Youth Permit series" means a package of permits comprised of big game, cougar, bear or turkey as authorized by the Wildlife Board.

R657-51-3. Youth Permit Authorization.

(1) Youth permits may be authorized by the Wildlife Board only for:

- (a) buck deer;
- (b) bull elk;
- (c) buck pronghorn;
- (d) bear;
- (e) cougar; and
- (f) wild turkey.

(2) Youth permits for each species authorized by the Wildlife Board shall be issued to the successful youth applicants selected by the conservation organization group.

(3) A youth permit shall not be issued for any particular species or on any particular unit where so doing will harm the long-term health and viability of the species population on that unit or in the state as a whole.

R657-51-4. Application Process.

(1) Youth permit series are available for distribution through conservation organization groups collectively operating for the purpose of promoting youth participation in hunting recreation.

(2) Conservation organization groups may apply to distribute the opportunity for youth to obtain youth permits by sending an application to the division by February 15.

(3) The application must be submitted to the division to be considered for the year 2002 permits. Each application must include:

(a) the name, address and telephone number of the conservation organization group's representative;

(b) the name of each conservation organization participating in the conservation organization group;

(c) verification of each participating conservation organization's tax exempt status under Internal Revenue Code, Section 501(c)(3), as amended; and

(d) a copy of the agreement between the participating conservation organizations designating the conservation organization group's representative, and defining its mission statement and applicant selection process;

(e) the number of youth permits requested, broken down by species and hunting unit; and

(f) the number and type of youth permits that will be reserved exclusively for Utah residents.

(4) An application which is incomplete or completed incorrectly may be rejected.

(5) The Wildlife Board shall determine the number of youth permits, including the species, season length and hunting unit for each authorized youth permit.

R657-51-5. Allocation of Youth Permits.

(1) The conservation organization group selected to distribute the opportunity to receive youth permits:

(a) shall accept and process applications from youth desiring to obtain a youth permit;

(b) may collect from each person applying for a youth permit a reasonable application fee that does not exceed the direct per capita cost of administering the application process, and in no event shall the fee exceed five dollars;

(c) shall not assess or require any form of financial remuneration, other than the application fee described in Subsection (1)(b), as a prerequisite to submitting an application for a youth permit;

(d) shall accept no more than one youth permit application per youth;

(e) shall establish and administer an equitable and fair process for selecting applicants to receive youth permits;

(f) shall ensure that Utah resident applicants are eligible to receive any of the youth permits, and reserve at least 25% of the youth permits exclusively for Utah resident applicants.

(g) shall submit a written certification to the Division no later than July 15th:

(i) identifying a successful applicant for each youth permit authorized by the Wildlife Board, including each applicant's social security number or hunter identification number, name, address, phone number, date of birth, height, weight, hair color, eye color, gender, proof of hunter education, and drivers license number (if applicable);

(ii) signed by the conservation organization group's representative and each constituent conservation organization in the group verifying that each is satisfied with the selection process used to designate the youth permit recipients, and with the youth identified in the certification to receive youth permits; and

(h) accept applications and conduct the application selection process in accordance with all applicable state, federal and local laws.

(2) Upon receipt of the certification and collection of the appropriate permit fees for each successful applicant, the Division will issue the youth permits to each youth designated in the certification, provided each youth is eligible under Utah law to hunt the species of animal identified on the permit.

(3)(a) Youth permit fees shall be required consistent with the regular fee schedules established by the Wildlife Board and the Division for an equivalent permit had it been obtained outside the youth permit process.

(b) Nonresident permit fees shall be required of each successful applicant that is not a resident of Utah as defined in Section 23-13-2.

R657-51-6. Surrender or Transfer of Youth Permit Designation.

(1) If a successful applicant designated by the conservation organization group to receive a youth permit already possesses a Utah permit for the same species of animal that year, or is otherwise unable to participate in the hunt and utilize the youth permit, the conservation organization group may designate another youth from the pool of applicants to receive the youth permit, provided the youth permit has not been issued by the division to the first selected person, except as provided in Rule R657-42.

(2) If the youth already possess a Utah permit for the same species, the youth must surrender one of the permits in accordance with Rule R657-42.

(3) Except as otherwise provided in Subsection (1), a person designated by a conservation organization group as the recipient of a youth permit, may not sell or transfer the rights to that designation to any other person.

R657-51-7. Using a Youth Permit.

(1) A youth permit allows the recipient to:

- (a) take only the species and sex printed on the permit; and
- (b) take the species only in the area and during the season specified on the permit.

(2) The recipient of a youth permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized when applying for or obtaining youth permits.

(4) Any youth who obtains a youth permit is not subject to the waiting periods set forth in Rules R657-5, R657-6, R657-10 and R657-33.

KEY: wildlife, wildlife permits

~~February 26,~~ 2002

23-14-18

23-14-19

Pardons (Board Of), Administration **R671-305** Notification of Board Decision

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 25142

FILED: 08/05/2002, 14:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify the process.

SUMMARY OF THE RULE OR CHANGE: Vague wording has been removed or changed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-9.7

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The changes are wording changes only and have no effect on the process outcome or the cost.

❖ LOCAL GOVERNMENTS: None--The changes are wording changes only and have no effect on the process outcome or the cost.

❖ OTHER PERSONS: None--The changes are wording changes only and have no effect on the process outcome or the cost.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The changes are wording changes only and have no effect on the process outcome or the cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This is a housekeeping change with no additional fiscal impact.

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

PARDONS (BOARD OF)
ADMINISTRATION
Room 300
448 E 6400 S
SALT LAKE CITY UT 84107-8530, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2002

AUTHORIZED BY: Mike Sibbett, Chairman

R671. Pardons (Board of), Administration.

R671-305. Notification of Board Decision.

R671-305-1. Notification of Board's Decision.

The decision of the Board will be reached by a majority vote and reduced to writing, including a ~~[general statement of]~~ rationale for the decision. Copies of the written decision are ~~[given]~~ sent to the offender, the institution and Field Operations. The Board will publish written results of Board decisions.

The Board should be reasonably assured that the offender has been notified before the information ~~[has been]~~ is released ~~[for]~~ to the public ~~[dissemination]~~.

KEY: government hearings

~~[February 18, 1998]~~ 2002

Notice of Continuation March 8, 2002

77-27-9.7



Tax Commission, Motor Vehicle

R873-22M-14

**License Plates and Decals Pursuant to
Utah Code Ann. Sections 41-1a-215,
41-1a-401, 41-1a-402**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25160

FILED: 08/14/2002, 15:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In the 2002 General Session, H.B. 31 repealed statutory language in Section 41-1a-402 that required that a county decal be displayed on a vehicle's license plate. (DAR NOTE: H.B. 31 is found at UT L 2002 Ch 111, and was effective May 6, 2002.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment repeals language relating to the county decal on the license plate.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 41-1a-215, 41-1a-401, and 41-1a-402

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Costs or savings were reflected in H.B. 31.
- ❖ LOCAL GOVERNMENTS: None--Local governments do not receive revenues from state vehicle registration fees.
- ❖ OTHER PERSONS: None--Costs or savings were reflected in H.B. 31.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Individuals are no longer required to display a county decal on their vehicle license plate.

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

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

TAX COMMISSION

MOTOR VEHICLE

210 N 1950 W

SALT LAKE CITY UT 84134, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2002

AUTHORIZED BY: Pam Hendrickson, Commissioner

R873. Tax Commission, Motor Vehicle.

R873-22M. Motor Vehicle.

R873-22M-14. License Plates and Decals Pursuant to Utah Code Ann. Sections 41-1a-215, 41-1a-401, and 41-1a-402.

A. Except as provided under Section 41-1a-215(1), license plates shall be renewed on a yearly basis until new license plates are issued.

B. For all license plates, except vintage vehicle license plates, a ~~[county decal]~~ month decal and year decal shall be issued upon the first registration of the vehicle. Upon each subsequent registration, the vehicle owner shall receive only a year decal to validate renewal. The registration decals shall be applied as follows:

1. Decals displayed on license plates with black lettering on a white background shall be applied to the lower left hand corner of the rear license plate.

2. Decals displayed on centennial license plates and regular issue license plates with blue lettering on a white background shall be applied to the upper left hand corner of the rear license plate.

3. Decals displayed on special group license plates shall be applied to the upper right hand corner of the rear license plate unless there is a plate indentation on the upper left hand corner of the license plate.

4. All registration decals issued for truck tractors shall be applied to the front license plate in the position described in either Subsection B.1. or B.2.

5. All registration decals issued for motorcycles shall be applied to the upper corner of the license plate opposite the word "Utah".

C. The ~~[county]~~ month decal shall be displayed on the license plate in the left position ~~[, the month decal in the middle position]~~, and the year decal in the right position.

D. The current year decal shall be placed over the previous year decal.

E. Whenever any license plate, [~~county decal,~~] month decal, or year decal is lost or destroyed, a replacement shall be issued upon application and payment of the established fees.

KEY: taxation, motor vehicles, aircraft, license plates

~~July 4, 2001~~2002

41-1a-215

41-1a-401

41-1a-402



End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Commerce, Administration
R151-33
Pete Suazo Utah Athletic Commission
Act Rule

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 25141
FILED: 08/02/2002, 14:24

**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 Title 13, Chapter 33; and UT L 2001 Ch 9 (2nd Spec. Sess.), which enable the Commission to administer the Pete Suazo Utah Athletic Commission Act (Act); and pursuant to Title 63, Chapter 46b, the Utah Administrative Procedures Act, which requires that agencies establish appropriate procedures for conducting administrative adjudications.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments with respect to this rule. However, the rule has recently been amended to comply with statutory amendments, to add or amend boxing provisions in accordance with national boxing standards, and to reorganize, correct, clarify, and simplify the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Pete Suazo Utah Athletic Commission Act requires the Commission to administer the Act, and the rule accordingly provides procedures for that purpose and should be continued.

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

COMMERCE
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Masuda Medcalf at the above address, by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

AUTHORIZED BY: Klare Bachman, Deputy Director

EFFECTIVE: 08/02/2002

▼ ————— ▼
Environmental Quality, Environmental
Response and Remediation
R311-401
Utah Hazardous Substances Priority
List

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 25151
FILED: 08/13/2002, 10:55

**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: Utah Code Section 19-6-311 requires publication and maintenance by rule of the hazardous substances priority list.

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 since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Publication and maintenance of the hazardous substances priority list is required by Utah Code Section 19-6-311, and therefore this rule should be continued.

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

ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE AND REMEDIATION
168 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Alan Fletcher at the above address, by phone at 801-536-4118, by FAX at 801-359-8853, or by Internet E-mail at afletcher@utah.gov

AUTHORIZED BY: Brent Bradford, Deputy Director

EFFECTIVE: 08/13/2002



Insurance, Administration

R590-148

Long Term Care Insurance Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25155
FILED: 08/14/2002, 09:30

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 gives the commissioner the authority to write rules to implement the provisions of Title 31A. Section 31A-22-1404 is the specific rulemaking authority in relation to 20 different areas of long term care, including definitions, required provisions, continuation and conversion, inflation protection, filing requirements, eligibility standards, disclosure requirements, loss ratio requirements, and premium rates which are all included in this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS

IN OPPOSITION TO THE RULE, IF ANY: This rule is a major protection to the consumer and should be continued. The Insurance Department has incorporated the rate stability requirements that took the National Association of Insurance Commissioners (NAIC) four years to work through with the insurance industry. As the Utah population ages, better guidance and protections for the aging illnesses that are debilitating to any one of us will be needed. This allows better understanding of a product that is getting wide attention and is being heavily advertised. It requires certain follow-through by the producer to the consumer to create a better analysis of the suitability of the product to the individual.

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 08/14/2002



Insurance, Administration

R590-151

Records Access Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25159
FILED: 08/14/2002, 10:17

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 63-2-204(2) grants authority to write a rule specifying where and to whom requests for access shall be directed. This is specified in Subsection R590-151-3(A) of the rule. Subsection 63-2-904(2) grants authority to specify by rule at which level the requirements in this chapter dealing with archives and records services shall be undertaken.

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 department regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes fair and reasonable records management and access practices allowing the public access to public records and restricting those records that are private in an attempt to prevent abuses in regards to these records and should be continued.

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 08/14/2002



**Judicial Conduct Commission,
Administration
R595-1
Rules of Procedure**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 25150
FILED: 08/12/2002, 14:57

**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: Utah Code Ann. Subsection 78-8-107(11) requires the Conduct Commission to adopt rules

outlining its procedures and the appointment of masters.

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 from the general public are known. However, the Legislature's Administrative Rules Review Committee requested and received a rules review which resulted in significant amendments to several provisions of the rule. Those amendments became effective April 16, 2002. During that same process, recommendations were also reviewed and/or made by the Governor's Office of Planning and Budget. (DAR NOTE: The amendment to R595-1 was published in the March 15, 2002, issue of the Utah State Bulletin under DAR No. 24517).

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of the rule is necessary so that Judicial Conduct Commission can continue to receive, investigate, prosecute, and recommend the resolution of allegations of judicial misconduct. The Judicial Conduct Commission is both constitutionally authorized and constitutionally obligated to perform said functions. The rule provides details needed to accomplish those constitutional obligations.

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

JUDICIAL CONDUCT COMMISSION
ADMINISTRATION
Room 104
645 S 200 E
SALT LAKE CITY UT 84111-3837, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Colin Winchester at the above address, by phone at 801-533-3200, by FAX at 801-533-3208, or by Internet E-mail at colin.winchester@utahbar.org

AUTHORIZED BY: Colin Winchester, Director

EFFECTIVE: 08/12/2002



End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by *Utah Code* Subsection 63-46a-9(4) and (5) (1996).

Environmental Quality

Drinking Water

No. 25162 (filed 08/15/2002 at 3:28 p.m.): R309-705 (was R309-351). Financial Assistance: Federal Drinking Water Project Revolving Loan Program.

Enacted or Last Five-Year Review: 08/19/97 (No. 19430, NEW, filed 06/16/97 at 2:51 p.m., published 07/01/97)

Extended Due Date: 12/17/2002

Human Services

Administration, Administrative Services, Licensing

No. 25140 (filed 08/02/2002 at 10:52 a.m.): R501-8. Outdoor Youth Programs.

Enacted or Last Five-Year Review: 08/05/97 (No. 19751, 5YR, filed 08/05/97 at 11:26 a.m., published 09/01/97)

Extended Due Date: 12/03/2002

Natural Resources

Water Rights

No. 25144 (filed 08/05/2002 at 3:26 p.m.): R655-1. Wells Used for the Discovery and Production of Geothermal Energy in the State of Utah.

Enacted or Last Five-Year Review: 08/05/97 (No. 19758, 5YR, filed 08/05/97 at 2:32 p.m., published 09/01/97)

Extended Due Date: 12/03/2002

No. 25143 (filed 08/05/2002 at 3:23 p.m.): R655-2. Procedure for Administrative Proceedings Before the Division of Water Rights Commenced Prior to January 1, 1988.

Enacted or Last Five-Year Review: 08/05/97 (No. 19759, 5YR, filed 08/05/97 at 2:32 p.m., published 09/01/97)

Extended Due Date: 12/03/2002

No. 25145 (filed 08/05/2002 at 3:28 p.m.): R655-6. Administrative Procedures for Informal Proceedings Before the Division of Water Rights.

Enacted or Last Five-Year Review: 08/05/97 (No. 19760, 5YR, filed 08/05/97 at 2:32 p.m., published 09/01/97)

Extended Due Date: 12/03/2002

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Administrative Services

Debt Collection

No. 24811 (AMD): R21-1. Transfer of Collection Responsibility of State Agencies.
Published: June 1, 2002
Effective: August 13, 2002

No. 24810 (AMD): R21-2. Office of State Debt Collection Administrative Procedures.
Published: June 1, 2002
Effective: August 13, 2002

No. 24812 (AMD): R21-3. Debt Collection Through Administrative Offset.
Published: June 1, 2002
Effective: August 13, 2002

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Published: July 1, 2002
Effective: August 13, 2002

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Published: July 1, 2002
Effective: August 13, 2002

No. 24931 (R&R): R27-7. Safety and Loss Prevention of State Vehicles.
Published: July 1, 2002
Effective: August 13, 2002

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Published: July 1, 2002
Effective: August 13, 2002

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Published: July 1, 2002
Effective: August 26, 2002

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Published: April 15, 2002
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Published: July 1, 2002
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 Published: July 1, 2002
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 Published: July 1, 2002
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No. 24965 (AMD): R315-7. Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities.
 Published: July 1, 2002
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 Published: May 15, 2002
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 Published: July 15, 2002
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 Published: July 15, 2002
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A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	* = Text too long to print in <i>Bulletin</i> , or repealed text not printed in <i>Bulletin</i>
5YR = Five-Year Review	
EXD = Expired	

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ABBREVIATIONS

AMD = Amendment
 CPR = Change in proposed rule
 EMR = Emergency rule (120 day)
 NEW = New rule
 5YR = Five-Year Review
 EXD = Expired
 NSC = Nonsubstantive rule change
 REP = Repeal
 R&R = Repeal and reenact
 * = Text too long to print in *Bulletin*, or repealed text not printed in *Bulletin*

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	24333	R850-41-1310	AMD	02/15/2002	2002-2/33
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	24743	R307-342	5YR	04/22/2002	2002-10/66
	24491	R307-415-3	AMD	05/13/2002	2002-5/31
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