

UTAH STATE BULLETIN

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

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 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, 4120 State Office Building, Salt Lake City, Utah 84114, 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.

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Commerce Occupational and Professional Licensing

Public Notice of Intent to Request Certification From the U.S. Department of Justice

This is public notice of intent to request certification from the U.S. Department of Justice, Civil Rights Division, Disability Rights Section, that the Building Codes adopted by the State of Utah under authority of Utah Code Annotated Section 58-56-4 (2004) meet or exceed the minimum requirements of Title III of the American With Disabilities Act (ADA) for accessibility and usability of facilities.

This is public notice that a public hearing on this matter will be held on January 21, 2005, at 9:00 a.m. in room 4112 of the State Office Building, Salt Lake City, UT 84114. The public is invited to attend and comment on the proposed request.

This is public notice that the proposed request and supporting materials are made available for public inspection and copying at The Division of Occupational and Professional Licensing, Heber Wells Building, 160 E 300 S, Salt Lake City, UT 84114. Copies are also available on the Division's internet site at the following internet address:
http://www.dopl.utah.gov/licensing/ubc_commission.html

Copies of the Building Codes and all amendments to the building codes are made available for public inspection and copying at the office of The Division of Occupational and Professional Licensing, Heber Wells Building, 160 E 300 S, Salt Lake City, UT 84114.

In addition, copies of the 2003 edition of the International Building Code published by the International Code Council (ICC) are available for purchase from ICC at 455 E 500 S, Salt Lake City, UT 84111; or may be purchased on line at: www.iccsafe.org

In addition, copies of amendments to the 2003 edition the International Building Code adopted by the State of Utah are also available at no charge on the Division's internet site at the following internet address:
http://www.dopl.utah.gov/licensing/ubc_commission.html

Interested person may also submit written comments on or before the date of the hearing to Dan S. Jones, Bureau Manager, The Division of Occupational and Professional Licensing, Heber Wells Building, 160 E 300 S, Salt Lake City, UT 84111.

The following document is the request for certification that is proposed to be submitted to the U.S. Department of Justice.

Proposed Request (Letter Dated 12/06/2004)

The State of Utah hereby requests certification from the U.S. Department of Justice, Civil Rights Division, Disability Rights Section, that the Building codes adopted by the State of Utah under authority of Utah Code Annotated 58-56-4 (2004) meet or exceed the minimum requirements of Title III of the Americans With Disabilities Act (ADA) for accessibility and usability of facilities.

The State of Utah, Division of Occupational and Professional Licensing in cooperation with the Utah Uniform Building Code Commission has authority under Utah Code Annotated 58-56-4 (2004) to adopt building codes for the State of Utah. A copy of the Utah Uniform Building Standards Act is attached hereto. Pursuant to that authority, the State of Utah has adopted the 2003 edition of the International Building Code published by the International Code Council. In addition, the State of Utah has adopted amendments to the 2003 International Building Code.

This adoption of the 2003 International Building Code and amendments thereto have been adopted pursuant to the rulemaking authority authorized under the above statute and are published at Utah Administrative Code Section R156-56 et seq. The specific sections adopting the building codes start at section R156-56-701 with amendments following in the sections immediately thereafter. A copy of the Utah Uniform Building Standards Act Rules is attached hereto. Complete copies of the 2003 International Building Code and the Utah amendments are being provided with this request to the U.S. Department of Justice, Civil Rights Division, Disability Rights Section with this request.

SPECIAL NOTICES

We understand that Chapter 11 of the 2003 edition of the International Building Code published by the International Code Council is the most pertinent part of the International Building Code that addresses accessibility standards. We have made two minor Utah State amendments to chapter 11 of the 2003 edition of the International Building Code published by the International Code Council. We believe that both of these amendments exceed and enhance the ADA accessibility requirements and what is required in the 2003 International Building Code, in that they require operation of platform lifts without a key and that such lifts must have standby power to operate when the lifts serve as part of the accessible means of egress. See section R156-56-704(27) in the attached Utah Uniform Building Standard Act Rules.

The State of Utah has, pursuant to public notice, held a public hearing on this matter on the 21st day of January 2005 and has attached a copy the notice of public hearing, copies of all written public comments and a copy of the tape, transcript or minutes of the public hearing.

It is our belief that the 2003 International Building Code together with our state amendments meet or exceed the minimum requirements of Title III of the ADA Act for accessibility and usability of facilities. Therefore, we are requesting certification.

End of the Special Notices Section

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 November 16, 2004, 12:00 a.m., and December 1, 2004, 11:59 p.m. are included in this, the December 15, 2004, 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 January 14, 2005. 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 April 14, 2005, 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.

Administrative Services, Debt Collection

R21-3-12

Injured Spouse Relief

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27572

FILED: 12/01/2004, 16:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment establishes procedures to be followed when a state agency intends to apply to a debt the tax overpayment received from a joint tax return.

SUMMARY OF THE RULE OR CHANGE: The rule requires that written notice be given by an agency to the joint taxpayers whose state tax overpayment is subject to attachment by the agency, that the agency intends to apply the tax overpayment to the debt, and that the non-debtor spouse may be entitled to "injured spouse relief". The rule requires the notice to identify the debt, to state the taxpayer's right to a hearing to determine whether the taxpayer is entitled to injured spouse relief, to state the requirements for injured spouse relief, and to state that the taxpayer has 30 days to file a request for hearing. The rule also requires the taxpayer to timely file a written request for hearing or be deemed to have waived the right to claim the relief.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63A-8-201(3)(a), (b), (c), (d), and (k); and 59-10-529(1)(b); and Sections 63A-3-303, 63A-3-304, 63A-3-305, and 63A-3-306

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** When a tax overpayment is made on a joint tax return and an agency intends to apply the overpayment to a debt owed by one of the joint taxpayers, the agency's current practice is to give notice to the taxpayers that their tax overpayment is subject to offset. The proposed rule requires that the agency's notice be in writing and that it contain specific information regarding "injured spouse relief" and the time limits for requesting such relief. Because the rule requires an agency to give specific information in a written notice, the agency may be required to modify a form that it currently is using. The procedures, however, will save the agency in administrative efficiencies. Both the costs and savings are not readily measurable. However, the savings appears to outweigh the costs.

❖ **LOCAL GOVERNMENTS:** Because the rule applies only to state agencies, there is no cost or savings to local government.

❖ **OTHER PERSONS:** Because the rule does not require anything of the taxpayer, the rule does not impose direct costs or savings on individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the rule does not require anything of the taxpayer, the rule does not impose direct costs or savings on individuals.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule applies to state agencies and individuals. Therefore, there is no fiscal impact on businesses.

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

ADMINISTRATIVE SERVICES
DEBT COLLECTION
Room 5100 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:

Kevin V. Olsen at the above address, by phone at 801-366-0547, by FAX at 801-366-0268, or by Internet E-mail at kvolsen@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 01/17/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/20/2005

AUTHORIZED BY: Gwen Anderson, Director

R21. Administrative Services, Debt Collection.

R21-3. Debt Collection Through Administrative Offset.

R21-3-12. Injured Spouse Relief.

(1) When there is an administrative offset match on a joint tax return, the agency shall send written notice to both taxpayers that it intends to apply the tax overpayment to the account receivable and that if either taxpayer qualifies as an injured spouse, that taxpayer may not be required to have his or her tax overpayments applied to the debt. The notice shall be mailed to the taxpayers at their current address on file with the Tax Commission.

(2) The notice shall state:

(a) the date, the amount of the account receivable, the name of the original creditor and the name of the debtor associated with the account receivable;

(b) a statement of the taxpayer's right to a hearing to determine whether the taxpayer is entitled to "injured spouse relief";

(c) a statement of what is required to qualify for "injured spouse relief"; and

(d) a statement of the time limits for filing a written request for hearing.

(3) Before "injured spouse relief" can be obtained, the taxpayer must timely file with the agency a request for hearing to determine whether the taxpayer is entitled to such relief. The taxpayer's request for hearing must be filed within thirty (30) days of the date of the notice. If a written request is not timely filed with the agency who sent the notice, the taxpayer shall be deemed to have waived the right to request "injured spouse relief" and the agency shall apply the tax overpayment to the account receivable.

KEY: accounts receivable administrative offset
~~August 13, 2002~~ 2005
 Notice of Continuation May 3, 2002
 63A-8-204(6)



Agriculture and Food, Animal Industry
R58-1
Admission and Inspection of Livestock,
Poultry, and Other Animals

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 27570
 FILED: 11/30/2004, 16:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes clarify the requirements for swine and sheep being imported into Utah.

SUMMARY OF THE RULE OR CHANGE: The changes are made to clarify the requirements to eliminate or reduce the spread of diseases among swine and sheep entering Utah. It also updates 9 CFR 78 to the January 1, 2002, edition incorporated into this rule. There are no significant changes made to this edition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 4 Chapter 31; and Subsections 4-2-2(1)(c)(i) and 4-2-2(1)(j)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 9 CFR 78 (January 1, 2002)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The changes clarify the requirements for the movement of swine and sheep entering Utah to eliminate the spread of diseases.
- ❖ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. The changes clarify the requirements for the movement of swine and sheep entering Utah.
- ❖ **OTHER PERSONS:** There will be no increase in costs to Utah producers. The out-of-state shipper will be required to obtain a test for Porcine Reproductive and Respiratory Syndrome (PRRS). The other tests and the Certificate of Veterinary Inspection are already existing requirements and the cost again is paid by the shipper. If livestock enters the State of Utah illegally, there is a fine of \$200 plus \$2 per head.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no increase in costs to Utah producers. The out-of-state shipper will be required to obtain a test for PRRS. The other tests and the Certificate of Veterinary Inspection are already existing requirements and the cost again is paid by the shipper. If

livestock enters the State of Utah illegally, there is a fine of \$200 plus \$2 per head.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The cost would be to the livestock owner for a permit or Certificate of Veterinary Inspection.

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

AGRICULTURE AND FOOD
 ANIMAL INDUSTRY
 350 N REDWOOD RD
 SALT LAKE CITY UT 84116-3087, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Marolyn Leetham, Earl Rogers, or Mike Marshall at the above address, by phone at 801-538-7114, 801-538-7162, or 801-538-7160, by FAX at 801-538-7126, 801-538-7169, or 801-538-7169, or by Internet E-mail at mleetham@utah.gov, erogers@utah.gov, or mmarshall@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Cary G. Peterson, Commissioner

R58. Agriculture and Food, Animal Industry.

R58-1. Admission and Inspection of Livestock, Poultry, and Other Animals.

R58-1-2. Definitions.

A. "Approved Livestock Market" - A livestock market which meets the requirements as outlined in 9 CFR 78, January 1, ~~2000~~ 2002 edition, Title 4, Chapter 30, and Rule R58-7.

B. "Livestock Market Veterinarian" - A Utah licensed and accredited veterinarian appointed by the Department of Agriculture and Food to work in livestock markets in livestock health and movement matters.

C. "Official Random Sample Test, 95/10" - A sampling procedure utilizing official pseudorabies serologic tests which provides a 95 percent probability of detecting infection in a herd in which at least 10 percent of the swine are seropositive for pseudorabies. Each segregated group of swine on an individual premises must be considered a separate herd and sampled as follows:

- Less than 100 head -- Test 25
- 100 - 200 head ----- Test 27
- 201 - 999 head ----- Test 28
- 1,000 and over ----- Test 29

D. "Official Random Sample Test, 95/5" - A sampling procedure utilizing official pseudorabies serologic tests which provides a 95 percent probability of detecting infection in a herd in which at least five percent of the swine are seropositive for pseudorabies. Each segregated group of swine on an individual premises must be considered a separate herd and sampled as follows:

- Less than 100 head -- Test 45
 100 - 200 head ----- Test 51
 201 - 999 head ----- Test 57
 1,000 and over ----- Test 59

E. "Qualified Feedlot" - A feedlot approved by the Utah Department of Agriculture and Food to handle INTRASTATE heifers, cows or bulls which originate from Utah herds. These animals shall be confined to a drylot area which is used to upgrade or finish feeding animals going only to slaughter.

F. "Reportable Disease List" - A list of diseases and conditions developed by the state veterinarian that may affect the health and welfare of the animal industry of the state, reportable to the state veterinarian.

G. "Test Eligible Cattle and Bison" - All cattle or bison six months of age or older, except:

1. Steers, spayed heifers;
2. Official calfhood vaccinates of dairy breeds under 20 months of age and beef breeds under 24 months of age which are not parturient, springers, or post parturient;
3. Official calfhood vaccinates, dairy or beef breeds of any age, which are Utah Native origin.
4. Utah Native Bulls from non-infected herds.

H. "Official Calfhood Vaccinate" - Female cattle of a dairy breed or beef breed vaccinated by a USDA Veterinary Services representative, State certified technician, or accredited Veterinarian with an approved dose of RB51 Vaccine or other USDA approved agent while from 4 to 12 months of age in accordance with its labeling. These cattle must be properly identified by official tattoos and ear tag or registration tattoo and be reported on an official vaccination certificate (VS Form 4-24) within 30 days to the State Veterinarian.

I. "Exposed Animal", "Reactor", "Suspect", as defined in the United States Department of Agriculture; Animal and Plant Health Inspection Service and Veterinary Services Brucellosis Eradication Uniform Methods and Rules and 9 CFR 78.

R58-1-7. Swine.

A. Stocking, Feeding, and Breeding swine. Swine for stocking, breeding, feeding or exhibition may be shipped into the state if the following requirements are met:

1. Import Permit and Certificate of Veterinary Inspection - All swine must be accompanied by an approved Certificate of Veterinary Inspection stating they are clinically free from infectious or contagious disease or exposure and have not been fed raw garbage. The Certificate of Veterinary Inspection must show individual identification, ear tags, tattoos, registration numbers, micro chips or other permanent means. An import permit issued by the Department of Agriculture and Food must accompany all hogs, including feeder hogs imported into the state.

2. Test Status. The Certificate of Veterinary Inspection must list the brucellosis, and pseudorabies test status of the animals.

3. Quarantine - All swine shipped into the state for feeding or breeding purposes are subject to an 18 day quarantine beginning with the date of arrival at destination. The department shall be notified by the owner of date of arrival. Release from quarantine shall be given by the department only when satisfied that health conditions are satisfactory.

4. Brucellosis - All breeding and exhibition swine over the age of three months shipped into Utah must pass a negative test for brucellosis within 30 days prior to movement into the state or originate from a validated brucellosis free herd. A validated

brucellosis free herd number and date of last test is required to be listed on the Certificate of Veterinary Inspection.

5. Pseudorabies - All breeding, feeding and exhibition swine must pass a negative pseudorabies test within the last thirty days unless they originate from a recognized qualified pseudorabies free herd. However, feeder swine may come into the state from a herd of origin in a Stage III, IV, or V state as classified by the Official Pseudorabies Eradication Program Standards 6-19-91. A 30 day retest is required on all breeding and exhibition swine brought into the state. Swine which are infected or exposed to pseudorabies may not enter the state, except swine consigned to a slaughterhouse for immediate slaughter and must be moved in compliance with 9 CFR 1-71.

6. Erysipelas - Purebred and breeding swine shall be immunized with erysipelas bacterin not less than 15 days prior to importation.

7. Leptospirosis - All breeding and exhibition swine over four months of age shall have passed a negative leptospirosis test within 30 days of entry, or be part of an entire negative herd test within the previous 12 months or be vaccinated for leptospirosis at least 15 days prior to entry. Herd and vaccination status must be stated on the Certificate of Veterinary Inspection.

8. PRRS -- All breeding and exhibition swine 3 months of age and over must be tested negative for Porcine Reproductive and Respiratory Syndrome (PRRS) virus within 30 days prior to entry to Utah.

B. Immediate Slaughter

Swine shipped into Utah for immediate slaughter must not have been fed raw garbage, must be shipped in for immediate slaughter with no diversions, and must be free from any infectious or contagious disease in compliance with 9 CFR 71.

Exhibition swine that have attended livestock shows in Utah should not be returned to Utah farms but should go directly to slaughter.

C. Prohibition of Non-domestic and Non-native Suidae and Tayassuidae.

Javelina or Peccary, and feral or wild hogs such as Eurasian or Russian wild hogs (Sus scrofa) are considered invasive species in Utah, capable of establishing wild reservoirs of disease such as brucellosis and pseudorabies. They are prohibited from entry to Utah except when approved by special application only for purposes of exhibition and after meeting the above vaccination and testing requirements.

R58-1-8. Sheep.

A. All sheep imported must be accompanied by a Certificate of Veterinary Inspection certifying the sheep are free of communicable diseases or exposure.

1. Blue Tongue. No sheep infected with or exposed to blue tongue may enter Utah. No sheep from an area under quarantine because of blue tongue may be transported into Utah without obtaining an import permit and a Certificate of Veterinary Inspection certifying that the sheep have originated from a flock free of blue tongue and have been vaccinated against blue tongue at least 30 days prior to entry.

2. Foot Rot. Sheep must be thoroughly examined for evidence of foot rot. The Certificate of Veterinary Inspection must certify that the sheep were examined and are free from foot rot.

3. A prior entry permit must be obtained by calling the Utah Department of Agriculture and Food, 801-538-7164.

4. Scrapie. Sheep entering Utah must comply with federal Scrapie identification requirements as listed in CFR 9 Part 79, January 1, 2002 edition. Sheep from Scrapie infected, exposed, quarantined or source flocks may not be permitted to enter the state unless a flock eradication and control plan, approved by the State Veterinarian in Utah, has been implemented.

KEY: disease control

~~August 2, 2000~~2005

Notice of Continuation February 13, 2002

4-31

4-2-2(1)(j)



Agriculture and Food, Regulatory Services

R70-540-14

Exemptions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27569

FILED: 11/30/2004, 14:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment changes the rule in response to comments received from the industry regarding the exemption of fees from facilities that distribute food without monetary exchange.

SUMMARY OF THE RULE OR CHANGE: This rule change establishes the guidelines for the exemption of fees for the inspection of food establishments that distribute food without monetary exchange. They will be required to register with the Utah Department of Agriculture and Food (UDAF) annually.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-5-9(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There will be an anticipated loss of approximately \$5,000 to the state budget.
- ❖ **LOCAL GOVERNMENTS:** The changes to this rule will not affect local government. Therefore, there are no cost or savings to local government.
- ❖ **OTHER PERSONS:** Food establishments that distribute food provisions directly to consumers without monetary exchange will be exempt from registration fees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance cost associated with this rule change. No fees will be required for food establishments distributing food provisions to consumers without monetary exchange.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The exempt food establishments will be required to register with UDAF

annually. Inspections will be conducted by UDAF to ensure food safety.

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

AGRICULTURE AND FOOD
REGULATORY SERVICES

350 N REDWOOD RD

SALT LAKE CITY UT 84116-3087, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Marolyn Leetham, Becky Shreeve, or Chris Crnich at the above address, by phone at 801-538-7114, 801-538-7149, or 801-538-7150, by FAX at 801-538-7126, 801-538-7126, or 801-538-4949, or by Internet E-mail at mleetham@utah.gov, bshreeve@utah.gov, or ccnich@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Cary G. Peterson, Commissioner

R70. Agriculture and Food, Regulatory Services.

R70-540. Food Establishment Registration.

R70-540-14. Exemptions.

For the purpose of granting registration fee exemptions the following applies:

(1) Food establishments that distribute food provisions directly to consumers without monetary consideration exchange will be exempt from food registration fees.

(a) These facilities may not conduct any type of food processing or reconditioning.

(b) Inspections will be conducted by UDAF to ensure food safety and the food establishments will be required to register annually with UDAF.

(2) Warehouses whose sole purpose is to distribute directly to food establishments that distribute food provisions directly to consumers without monetary consideration exchange may be exempt from registration fees.

KEY: food inspection

~~2004~~2005

4-5-9(1)(a)



Commerce, Occupational and Professional Licensing

R156-47b

Massage Therapy Practice Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27548

FILED: 11/16/2004, 11:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division, in collaboration with the Utah Board of Massage Therapy, is proposing changes to the massage school curriculum standards and apprenticeship standards for supervisors after further review by the Division and the Board.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-47b-302a(1)(b) amendments are made to add the minimum number of hours required in each outlined area. Also, professional standards and business practices was added to the ethics curriculum requirement in Subsection R156-47b-302a(1)(b)(iii). Also added that in addition to the curriculum requirements outlined in Subsection R156-47b-302a(1)(b), new massage school curriculums shall meet the standards of the National Certification Board of Therapeutic Massage and Bodywork (NCBTMB), and the National Certification Examination Content Outline, published July 2003, which is adopted and incorporated by reference. In Section R156-47b-302c, amendments are made to require if an apprentice being supervised fails the Massage Theory examination three times, the supervisor shall meet with the Board at the next appropriate Board meeting, explain to the Board why the apprentice is not able to pass the examination and provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination. Upon the successful completion of this additional review by the supervisor and apprentice, the apprentice shall again be eligible to take the Massage Theory examination again. Also added to this section is the requirement that the supervisor submit a curriculum content outline with the apprentice application including a list of the resource materials to be used. In addition, the final amendment made in this section requires that massage client services required in Subsection R156-47b-302c(5)(b) only be performed on the public and that all other hands on practice must be performed by the apprentice on another apprentice or supervisor.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-47b-101, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Adds the National Certification Board of Therapeutic Massage and Bodywork, National Certification Examination Content Outline, published July 2003

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division will incur minimal costs, approximately \$50, 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:** Proposed amendments do not apply to local governments. Therefore, there are no anticipated cost or savings to local government.

❖ **OTHER PERSONS:** There may be some additional costs to supervisors of massage apprenticeships in that their curriculum content outline must now be documented and submitted in conjunction with an apprentice application. Supervisors of massage apprenticeships may also incur some additional costs if their massage apprentice being supervised does not successfully pass the Massage Theory examination after three attempts in that the supervisor will now be required to complete additional training with the apprentice in order for the apprentice to again be eligible to retake the Massage Theory examination. The Division is unable to determine an exact amount of the costs anticipated since the amounts could vary among different supervisors.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some additional costs to supervisors of massage apprenticeships in that their curriculum content outline must now be documented and submitted in conjunction with an apprentice application. Supervisors of massage apprenticeships may also incur some additional costs if their massage apprentice being supervised does not successfully pass the Massage Theory examination after three attempts in that the supervisor will now be required to complete additional training with the apprentice in order for the apprentice to again be eligible to retake the Massage Theory examination. The Division is unable to determine an exact amount of the costs anticipated since the amounts could vary among different supervisors.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing clarifies existing requirements for massage therapy school curricula. Therefore, there is no fiscal impact to businesses as a result of this change. The rule filing also establishes certain standards for apprenticeships, including a requirement that an apprenticeship supervisor provide a curriculum outline with the apprentice application and a requirement for additional training when an apprentice fails to pass the Massage Theory examination after three attempts. These amendments could pose a potential fiscal impact to supervisors who must now submit an outline and provide further training if necessary. That impact should be minimal, however, because it is presumed that a supervisor already has a determined curriculum that must now be documented. If additional training is necessary, the cost to the supervisor will vary depending on the supervisor, apprentice and training previously provided. Klarice A. Bachman, 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:

Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@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 01/14/2005

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 12/17/2004 at 9:00 AM, 160 East 300 South - Conference Room 210 (2nd floor) - Salt Lake City, Utah.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.

R156-47b. Massage Therapy Practice Act Rules.

R156-47b-302a. Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards - Equivalent Education and Training.

(1) In accordance with Subsection 58-47b-302(2)(e)(i)(A), an applicant must graduate from a school of massage with a curriculum, which at the time of graduation, meets the following standards:

(a) [e]Curriculums must be registered with the Utah Department of Commerce, Division of Consumer Protection or an accrediting agency recognized by the United States Department of Education.

(b) Curriculums shall be a minimum of [not less than] 600 hours and shall include [including] the following:

(i) anatomy, physiology and pathology - 150 hours;

(ii) massage theory including the five basic strokes - 300 hours;

(iii) professional standards, ethics and business practices - 35 hours;

(iv) safety and sanitation - 15 hours;

(v) clinic or practicum - 100 hours; and

(vi) other related massage subjects as approved by the Division in collaboration with the Board.

(c) In addition to the curriculum requirements of Subsection R156-47b-302a(1)(b), new curriculums shall meet the standards of the National Certification Board of Therapeutic Massage and Bodywork (NCBTMB), National Certification Examination Content Outline, published July 2003, which is adopted and incorporated by reference.

(2) In accordance with Subsection 58-47b-302(2)(e)(i)(B), an applicant who completes equivalent education and training must document that the education and training was approved by NCBTMB as evidenced by current NCBTMB certification.

R156-47b-302c. Apprenticeship Standards for a Supervisor.

In accordance with Subsection 58-47b-302(2)(e)(ii), an apprentice supervisor shall:

(1) not begin an apprenticeship program until:

(a) the apprentice is licensed; and

(b) the supervisor is approved by the division;

(2) not begin a new apprenticeship program until:

(a) the apprentice being supervised passes the Massage Theory examination and becomes licensed as a massage therapist, unless otherwise approved by the division in collaboration with the board; and

(b) the supervisor complies with subsection (1);

(3) if an apprentice being supervised fails the Massage Theory examination three times:

(a) meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination;

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination; and

(d) upon successful completion of the review as provided in Subsection (3)(c), the apprentice shall again be eligible to take the Massage Theory examination;

(4) supervise not more than two apprentices at one time, unless otherwise approved by the division in collaboration with the board;

(5) train the massage apprentice in the areas of:

(a) massage theory - 50 hours;

(b) massage client service - 300 hours;

(c) hands on instruction - 325 hours;

(d) massage techniques - 120 hours;

(e) anatomy, physiology and pathology - 150 hours;

(f) business practices - 25 hours;

(g) ethics - 15 hours; and

(h) safety and sanitation - 15 hours[-];

(6) submit a curriculum content outline with the apprentice application, including a list of the resource materials to be used;

(7) display a conspicuous sign near the work station of the apprentice stating "Apprentice in Training";

(8) keep a daily record which shall include the hours of instruction and training completed, the hours of client services performed, and the number of hours of training completed;

(9) make available to the division upon request, the apprentice's training records;

(10) verify the completion of the apprenticeship program on forms available from the division;

(11) notify the division within ten working days if the apprenticeship program is terminated;[-and]

(12) must not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any apprenticeship program; and

(13) ensure that the massage client services required in Subsection (5)(b) only be performed on the public; all other hands on practice must be performed by an apprentice on an apprentice or supervisor.

KEY: licensing, massage therapy

[June 7, 2004]2005

Notice of Continuation February 26, 2001

58-1-106(1)(a)

58-1-202(1)(a)

58-47b-101

Health, Administration

R380-40

Local Health Department Minimum
Performance Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27571

FILED: 12/01/2004, 11:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment updates the rule that sets the minimum qualifications for a local health officer.

SUMMARY OF THE RULE OR CHANGE: This amendment proposes modified qualifications that a local health officer must possess. Urban health districts, as well as rural, will have the option of hiring a non-physician health officer, supported by a qualified contract or employee physician. Waiver authority is granted to the Executive Director and existing employees are deemed to meet the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26A-1-106(1)(c)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Any costs imposed by the waiver authority granted to the Executive Director can be met within existing budgets.
- ❖ LOCAL GOVERNMENTS: Local governments fund local health districts to a varying extent. The additional flexibility in the amendment to hire non-physician health officers provides the possibility of some savings for local governments.
- ❖ OTHER PERSONS: For the same reason that local government may enjoy some savings, other persons who pay fees to local health departments have the possibility of some savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments increase the pool of potential candidates to fill the role of local health officer without the need to apply for a waiver. Compliance costs should therefore be reduced.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Local Boards of Health, Local Health Officers and the Utah Department of Health collaborated to develop this proposed amendment. When an urban district wanted to hire a non-physician health officer, a waiver was required from the Executive Director. The need for waivers will be greatly reduced under this change, and the fiscal impact should be positive. Scott D. Williams, MD

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

HEALTH
ADMINISTRATION
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:

Doug Springmeyer at the above address, by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Scott D. Williams, Executive Director

R380. Health, Administration.**R380-40. Local Health Department Minimum Performance Standards.****R380-40-1. Authority.**

This rule is promulgated as required by Section 26A-1-106(1)(c). The minimum performance standards apply to all local health department services, regardless of funding sources.

R380-40-2. Definitions.

~~[A-]~~(1) "Department" means the Utah Department of Health.

~~[B-]~~(2) "Local health department" means a city/county or district health department.

~~[C-]~~(3) "General performance standards" means the minimum duties performed by local health departments for public health administration, personal health, environmental health, laboratory services, and health resources in addition to the powers and duties listed in Section 26A-1-114 and is equivalent to the phrase "minimum performance standards" in Section 26A-1-116(1)(c).

~~[D-]~~(4) "Specific level of performance" means the measurable level of each general performance standard.

R380-40-3. Negotiation.

The local health department and the department shall jointly negotiate specific measurable levels of performance, not inconsistent with corresponding general performance standards, and record them in a negotiated standards document. The department and the local health department shall take into account in the negotiation process availability of local technical and financial resources, availability of department technical and financial assistance, and past practices between the department and local health departments in providing the programs under consideration.

R380-40-4. Compliance.

The local health department and the department shall monitor compliance with general performance standards and specific levels of performance.

R380-40-5. Corrective Action.

If the department finds that a local health department is out of compliance with general performance standards and specific levels of performance then the local health department shall submit a plan of corrective action to the department that is satisfactory to the department. The corrective action plan shall include but not be limited to: local health department name; the specific program under consideration; the general performance standard(s) and specific levels of performance in question; date of report; corrective actions; responsible individual; date of plan implementation.

R380-40-6. General Performance Standards For Local Health Department Administration.

~~[A-](1)~~ Local health departments shall exercise the powers and duties as outlined in Section 26A-1-114.

~~[B-](2)~~ The local board of health shall:

~~[1-](a)~~ establish local health department policies;

~~[2-](b)~~ adopt an annual budget;

~~[3-](c)~~ monitor expenditures;

~~[4-](d)~~ oversee compliance with general and specific performance standards;

~~[5-](e)~~ provide for long range planning;

~~[6-](f)~~ appoint a qualified local health officer, subject to ratification by the governing bodies of the participating jurisdictions;

~~[7-](g)~~ periodically, but at least annually, evaluate the performance of the local health officer; and

~~[8-](h)~~ report at least annually to county commissioners regarding health issues.

~~[C-](3)~~ Each local health department shall have an annual financial audit. The local board of health shall appoint an independent auditor or the audit may be conducted as part of the county audit and, in any event, the local board of health shall accept the audit.

~~[D-](4)~~ ~~Local health officers shall have the qualifications of training and experience as required by the Utah Department of Health Approved Class Specifications:~~

~~— 1. District Director of Health 27, Class Code 4399, 3/7/81;~~

~~— 2. District Director of Health 29, Class Code 4400, 3/7/81;~~

~~— 3. District Director of Health 37, Class Code 4033, 3/1/72;~~

~~— 4. District Director of Health 38, Class Code 4034, 11/1/77.](a)~~

~~A local health officer who is a physician shall:~~

~~(i) be a graduate of a regularly chartered and legally constituted school of medicine or osteopathy;~~

~~(ii) be licensed to practice medicine in the state of Utah;~~

~~(iii) have successfully completed at least one year's graduate work in public health, public administration or business administration;~~

~~(iv) be board certified in preventive medicine or in a primary care specialty such as family practice, pediatrics, or internal medicine; and~~

~~(v) have at least two years of professional full-time experience in public health or preventive medicine in a senior level administrative capacity.~~

~~(b) A local health officer who is not a physician shall:~~

~~(i) have successfully completed a master's degree in public health, nursing or other health discipline related to public health, or public administration, or business administration from an accredited school and have at least five years of professional full-time public health experience, of which at least three years were in a senior level administrative capacity; or~~

~~(ii) have successfully completed a bachelor's degree in a field closely related to public health work from an accredited school and have at least 12 years of professional full-time public health experience, of which at least 10 years have been in a senior level administrative capacity.~~

~~(c) If the local health officer is not a physician, the local health department shall contract with or employ a physician that is:~~

~~(i) residing in Utah and licensed to practice medicine in the state;~~

~~(ii) competent and experienced in a primary medical care field, such as family practice, pediatrics, OB/GYN, or internal medicine;~~

~~(iii) board certified in preventive medicine or in a primary care specialty such as family practice, pediatrics, or internal medicine;~~

~~(iv) able to supervise and oversee clinical services delivered within the local health department, including the approval of all protocols and standing orders;~~

~~(v) able to play a substantial role in reviewing policies and procedures addressing human disease outbreaks of public health importance; and~~

~~(vi) able to participate in the Department's local health department physician network.~~

~~(d) Local health officers serving as of November 1, 2004, as well as the contracted or employee physician, are deemed to meet the requirements of R380-40-6(4) for the period that the individual so identified serves in those capacities. Upon the hiring of a new local health officer or employing or contracting with a new physician, the requirements of R380-40-6(4)(a), (b), and (c) must be met.~~

~~(e) The Executive Director may grant an exception to the local health officer and physician requirements upon written request from a Local Board of Health documenting the failure of serious and substantial efforts to recruit candidates who meet the requirements or how the intent of the rule can be met by a method not specified in the rule.~~

~~[E. Health districts having a population of 100,000 or greater shall hire a physician health officer. An exception would occur if a health district's population exceeds the 100,000 population threshold during the tenure of a non-physician health officer, in which case the district may retain the non-physician health officer.~~

~~F-](5) The local health officer shall:~~

~~[1-](a) promote and protect the health and wellness of the people within the jurisdiction;~~

~~[2-](b) function as the executive and administrative officer;~~

~~[3-](c) report to and receive policy direction from the board of health;~~

~~[4-](d) coordinate public health services in the district;~~

~~[5-](e) direct programs assigned by statute to the local health department, including administering and enforcing state and local health laws, regulations and standards;~~

~~[6-](f) direct the investigation and control of diseases and conditions affecting public health;~~

~~[7-](g) be responsible for hiring, terminating, supervising, and evaluating all local health department employees;~~

~~[8-](h) oversee proposed budget preparation;~~

~~[9-](i) present the budget to the board of health for review and approval;~~

~~[10-](j) develop and propose policies for board consideration;~~

~~[11-](k) implement policies of the local board of health;~~

~~[12-](l) advise the department with regard to policy development as those policies impact upon the mission, purpose, and capacity of the local health department; and~~

~~[13-](m) perform other duties as assigned by the board of health.~~

~~[G-](6) The local health officer shall ensure that an ongoing planning process is initiated and maintained that includes mission statement; community needs assessments; problem statements; goals, outcomes, and process objectives or implementation activities; evaluation; public involvement; and use of available data sources.~~

~~[H-](7) The local health officer shall ensure that fiscal management procedures are developed, implemented and~~

maintained in accordance with federal, state, and local government requirements.

[1-](8) Consistent with federal and state laws and local ordinances and policies, the local health officer shall ensure:

[1-](a) that employees are recruited, hired, terminated, classified, trained, and compensated in accordance with relevant merit principles, federal civil rights requirements, and laws of general applicability, and that their qualifications are commensurate with job responsibilities;

[2-](b) the orientation of all new employees to the local health department and its personnel policies;

[3-](c) the maintenance of a personnel system that includes an accurate, current, and complete personnel record for each local health department employee;

[4-](d) the verification of all current licensure and certification requirements;

[5-](e) continued education and training for all employees;

[6-](f) that each employee receives an annual performance evaluation, based upon a job description and written performance expectations for each employee; and

[7-](g) all training and certification programs for establishing and maintaining quality performance will be conducted as required by the Utah Department of Health and the Utah Department of Commerce.

[1-](9) A local health officer or designee who is a physician or osteopath licensed to practice medicine in Utah shall supervise and be accountable for medical practice conducted by local health department employees. If the local health officer is not a physician or osteopath licensed in Utah, he shall appoint a medical director licensed to practice medicine or osteopathy in Utah to supervise and be accountable for medical practice conducted by local health department employees.

[K-](10) Each local health department shall employ a registered nurse with education, experience, and Utah licensure consistent with the position requirements to supervise, evaluate, and be accountable for nursing practice conducted by local health department nurses in order to provide quality public health nursing service.

[L-](11) Each local health department shall employ a health educator or other qualified person with education and experience consistent with the position requirements to direct health education activities.

[M-](12) Each local health department shall employ a sanitarian registered in Utah with education and experience consistent with the position requirements to supervise, evaluate, and be accountable for environmental health activities in order to protect and promote public health and protect the environment.

[N-](13) Programs provided by local health departments shall be developed, directed, and organized in response to community needs; delivered and controlled in accordance with approved budget; and evaluated by using a management information system. The management information system, when consistent with program objectives, shall include a method to determine client satisfaction.

[1-](a) Each local health department shall collect and manage data in accordance with the needs of local health department programs, department programs, and other funding sources.

[2-](b) Each local health department shall provide all public health services in compliance with federal, state, and local (including district) laws, regulations, rules, policies and procedures; and accepted standards of public health, medical and nursing practice.

[3-](c) Each local health department shall maintain an ongoing quality assurance program for public health services designed to objectively and systematically monitor and evaluate the quality of public health services and resolve identified problems.

R380-40-7. General Performance Standards For Local Health Department Personal Health Services.

[A-](1) Each local health department shall provide health education, health promotion and risk reduction services to assist residents to:

[1-](a) obtain the necessary knowledge, skills, capacity, and opportunity to improve and maintain individual, family, and community health;

[2-](b) use preventive health services, practices, and facilities appropriately;

[3-](c) understand and participate, where feasible, in decision-making concerning their health care;

[4-](d) understand and encourage compliance with prescribed medical instructions;

[5-](e) participate in community health decision making; and

[6-](f) prevent or delay premature death, disease, injury, or disability through services that encourage the long-term adoption of healthy behavior.

[B-](2) Each local health department shall provide communicable disease control services to include: reporting, surveillance, assessment, epidemiological investigation, and appropriate control measures for vaccine-preventable diseases, sexually transmitted diseases, tuberculosis, AIDS, and other communicable diseases to attempt to prevent, control, or prevent and control epidemics, cases of vaccine-preventable diseases, and the spread of sexually transmitted diseases, AIDS, and tuberculosis.

[C-](3) Each local health department shall provide infant and child health services to help prevent illness, injury, and disability; reduce the preventable complications of illness, injury, and disability; maintain health; and foster healthy growth and development. These services shall include: periodic health assessments; screening for and early identification of health and developmental problems; and provision of appropriate treatment, education, or referral.

[D-](4) Each local health department shall ensure that families of referred cases of infant and childhood death including Sudden Infant Death Syndrome cases, are offered counseling services or referred to counseling services.

[E-](5) Each local health department shall advocate and promote preventive health services and health instruction for school-aged children.

[F-](6) Each local health department shall ensure that injury control needs are identified and programs or services are available to reduce the occurrence of injury and unintentional death.

[G-](7) Each local health department shall provide chronic disease control services which may include screening, referral, education, promotion, and preventive activities related to the prevention of cardiovascular disease, cancer, diabetes, and other chronic diseases to reduce premature morbidity and mortality associated with these diseases.

[H-](8) Each local health department shall provide family planning services including information to clients who request it and referral in accordance with State law.

[I-](9) Each local health department shall ensure that women and families have access to risk appropriate preconceptional, interconceptional, prenatal, intrapartum, and postpartum health

services with the objective of lowering the frequency of maternal and infant death, disease and disability, and promoting the development and maintenance of a healthy, nurturing family unit.

~~[7-](10)~~ Each local health department shall provide dental health services which may include dental health screening, referral, education, promotion, and preventive activities.

R380-40-8. General Performance Standards For Local Health Department Environmental Health Programs.

~~[A-](1)~~ Each local health department shall ensure that there is a program for:

~~[1-](a)~~ food service establishments to include: the maintenance of an inventory, directory, or listing of establishments; inspections including corrective actions; plan reviews; an information management system; and the dissemination of public information;

~~[2-](b)~~ public swimming pools to include: the maintenance of an inventory, directory, or listing of facilities; inspections including corrective actions; plan reviews; an information management system; and the dissemination of public information;

~~[3-](c)~~ institutions, public facilities, and indoor and outdoor facilities to include: the maintenance of an inventory, directory, or listing of facilities; inspections including corrective actions; plan reviews; an information management system; and the dissemination of public information;

~~[4-](d)~~ safe drinking water to include: the maintenance of an inventory, directory, or listing of systems; inspections including corrective actions; an information management system; and the dissemination of public information;

~~[5-](e)~~ nuisance complaints to include: inspections including corrective actions; an information management system; and the dissemination of public information;

~~[6-](f)~~ vector control to include: complaint inspections including corrective actions; an information management system; and the dissemination of public information;

~~[7-](g)~~ air quality and air pollution control to include: conducting limited inspections of visible emissions including corrective actions; an information management system; and the dissemination of public information;

~~[8-](h)~~ injury control to include: inspections including corrective actions; an information management system; and the dissemination of public information;

~~[9-](i)~~ indoor clean air to include: inspections of public facilities including corrective actions; an information management system; and the dissemination of public information;

~~[10-](j)~~ solid waste to include: an inventory, directory, or listing of locations; inspections including corrective actions; an information management system; and the dissemination of public information; and

~~[11-](k)~~ subsurface waste water systems to include: the maintenance of an inventory, directory, or listing of facilities; inspections including corrective actions; plan reviews; an information management system; and the dissemination of public information.

~~[B-](2)~~ Each local health department shall develop, implement, and maintain special programs, such as programs to respond to noise, hazardous waste, and asbestos abatement control, to meet the special or unique needs of its community as determined by local or state needs assessment.

R380-40-9. General Performance Standards For Local Health Department Laboratory Services.

All local health departments that have a laboratory are not exempt from existing state and federal laboratory requirements.

R380-40-10. General Performance Standards For Local Health Department Health Resources.

~~[A-](1)~~ Epidemiology. Each local health department shall provide for the investigation, detection, control, and development of preventive strategies of any communicable, infectious, acute, chronic, or other disease, or environmental or occupational health hazard that is considered dangerous or important or which may affect the public health. Reportable diseases shall be reported.

~~[B-](2)~~ Vital Statistics. Each local health department designated as a local registrar of vital statistics shall ensure the registration of appropriate certificates for all live births, deaths, and fetal deaths that occur in the registration area, as required by State statute.

KEY: local health departments, performance standards
[1999]2005

Notice of Continuation June 19, 2000

26A-1-106(1)(c)



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

R414-63

**Medicaid Policy for Pharmacy
Reimbursement**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27549

FILED: 11/16/2004, 16:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking eliminates the exemption of select therapeutic drug classes from review by the Utah College of Pharmacy's Drug Regimen Review Center (DRRC) in the monthly Drug Utilization Review (DUR) of Medicaid client's who use the most prescriptions. With the elimination of the drug class exemptions, all prescriptions will be subject to a complete DUR review for adverse drug events. Eliminating adverse drug events results in increased safety to patients and subsequent savings to the Department.

SUMMARY OF THE RULE OR CHANGE: Exemptions from the seven-prescription threshold for review have been eliminated.

Subsection R414-63-2(2) states that clients whose total number of prescriptions exceeds seven prescriptions per month are subject to clinical review by the Division of Health Care Financing. Subsection R414-63-2(3) states that prescribers may be subject to peer review in regard to a

patient's prescription drug profile when opportunities exist to decrease duplicative prescribing, waste, perceived abuse of the pharmacy benefit, or the likelihood of a level one adverse drug event between one or more drugs for any given patient drug profile. Subsection R414-63-2(4) states that the prescriber shall have ultimate say in what is prescribed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: An additional \$150,000 will be used to contract with the University of Utah College of Pharmacy to fund an additional 100 hours each month of drug utilization peer review with Medicaid drug prescribers. Anticipated savings will be approximately \$2,500,000.

❖ LOCAL GOVERNMENTS: No local governments are affected by this rulemaking because no local governments pay prescribers of Medicaid drugs.

❖ OTHER PERSONS: There is no way to calculate the aggregate costs and savings to prescribers of Medicaid drugs. However, the time required to participate in the peer review should be more than offset by more effective drug utilization savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no way to calculate the cost or savings to each individual prescriber of Medicaid drugs. However, the time required to participate in each peer review should be more than offset by more effective drug utilization savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is expected to increase patient safety by detecting potential adverse drug interactions as well as save tax dollars by eliminating duplicate and unnecessary prescriptions. Minimal impact on prescribing physicians is predicted. Scott L. Williams MD

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 at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at 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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Scott D. Williams, Executive Director

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

R414-63. Medicaid Policy for Pharmacy Reimbursement.

R414-63-1. Introduction and Authority.

(1) The Medicaid Policy for reimbursement of dispensing fees for pharmacy providers was achieved through negotiations with representatives of the pharmacy industry.

(2) This rule is authorized under Chapter 26-18.

R414-63-2. Pharmacy Reimbursement.

(1) For each prescription filled for a Medicaid recipient the Department may reimburse the pharmacy provider for: ~~up to seven (7) non-exempt prescriptions in any calendar month. The limit on prescriptions will not take effect until the assessment required in section (4) of this rule is completed. A single prescription that is filled multiple times in the month is one prescription. The pharmacy provider shall be reimbursed:]~~

(a) the average wholesale price for the medication minus 15%; and

(b) a dispensing fee in the amount of \$3.90 for urban providers and \$4.40 for rural providers.

~~(2) The limitation on the number of prescriptions does not apply to pregnant women or children under age 21.~~

~~(3) The following drug classes are exempt from the seven prescription limit in (1):~~

~~(a) A4A, hypotensive vasodilator, example: minoxidil (Loniten);~~

~~(b) A4B, hypotensive sympatholytic, example: guanethidine (Ismelin);~~

~~(c) A4C, hypotensives ganglionic blockers, example: trimethaphan (Arfonad);~~

~~(d) A4D, hypotensives ACE blocking type, example: captopril (Capoten);~~

~~(e) A4E, hypotensives veratrum alkaloids, example: erythramine;~~

~~(f) A4F, hypotensives angiotensin receptor antagonist, example: losartan (Cozaar);~~

~~(g) A4Y, hypotensives miscellaneous, example: nitroprusside sodium (Nitropress);~~

~~(h) A9A, calcium channel blocking agents, example: nifedipine (Procardia);~~

~~(i) C4G, insulins;~~

~~(j) C4K, hypoglycemics insulin release stimulant type, example: tolbutamide (Orinase);~~

~~(k) C4L, hypoglycemics biguanide type (non-sulfonylureas), example: metformin (Glucophage);~~

~~(l) C4M, hypoglycemics alpha-glucosidase inhib. Type (N-S), example: miglitol (Glyset);~~

~~(m) M0E, antihemophilic factor VIII;~~

~~(n) M0F, antihemophilic factor IX;~~

~~(o) M4E, lipotropics (cholesterol lowering agents), example: pravastatin (Pravachol);~~

~~(p) R1M, loop diuretics, example: furosemide (Lasix);~~

~~(q) V1A, alkylating agents, example: chlorambucil (Leukeran);~~

~~(r) V1B, antimetabolites, example: methotrexate;~~

~~(s) V1C, vinca alkaloids, example: vinblastine (Velban);~~

~~(t) V1D, antibiotic antineoplastics, example: mitomycin (Mithracin);~~

~~(u) V1E, steroid antineoplastics, example: megestrol (Megace);~~

~~— (v) VIF, antineoplastics, miscellaneous, example: tamoxifen (Nolvadex);~~
~~— (w) W5B, HIV specific, example: didanosine (Videx);~~
~~— (x) W5C, HIV specific — protease inhibitor; example: indinavir (Crixivan);~~
~~— (y) Z2E, organ transplant immunosuppressive agents, example: cyclosporine (Sandimmune);~~
~~— (z) W1A, penicillins;~~
~~— (aa) W1B, cephalosporins;~~
~~— (bb) W1C, tetracyclines;~~
~~— (cc) W1D, macrolides;~~
~~— (dd) W1E, chloramphenicol and derivatives;~~
~~— (ee) W1F, aminoglycosides;~~
~~— (ff) W1G, antitubercular antibiotics;~~
~~— (gg) W1J, vancomycin and derivatives;~~
~~— (hh) W1K, lincosamides;~~
~~— (ii) W1M, streptogramins;~~
~~— (jj) W1N, polymyxin and derivatives;~~
~~— (kk) W1O, oxazolidinones;~~
~~— (ll) W1P, antileptotics;~~
~~— (mm) W1Q, quinolones;~~
~~— (nn) W1S, thienamycins;~~
~~— (oo) W1W, cephalosporins — 1st generation;~~
~~— (pp) W1X, cephalosporins — 2nd generation;~~
~~— (qq) W1Y, cephalosporins — 3rd generation;~~
~~— (rr) W2A, absorbable sulfonamides;~~
~~— (ss) W2E, anti-mycobacterium agents;~~
~~— (tt) W2F, nitrofurantoin derivatives; and~~
~~— (uu) W2G, chemotherapeutics, antibacterial, misc.~~
~~(4) The Department may grant a medical exemption to the seven (7) prescription limit in (1), by:~~
~~— (a) Conducting an assessment for the medical exemption with input from the recipient's prescribing physicians;~~
~~— (b) Reimbursing for all medically necessary prescriptions pending agency action on the assessment;~~
~~— (c) Granting the medical exemption if a preponderance of the evidence establishes that the recipient's medical needs cannot reasonably be met unless the Department agrees to pay for more than seven (7) prescriptions in any calendar month;~~
~~— (d) Deferring to the decision of the prescribing physician, in the event of a disagreement between the Department and the prescribing physician on which prescriptions are medically necessary; and~~
~~— (e) Setting reasonable conditions on the grant of a medical exemption to assure the most cost-effective method of meeting the medical need, such as the use of generics and other factors.](2)~~
Clients whose prescription exceeds seven prescriptions per month may be subject to clinical review by the Division.
(3) Prescribers may be subject to peer review in regard to a patient's prescription drug profile when opportunities exist to decrease duplicative prescribing, waste, perceived abuse of the pharmacy benefit, or the likelihood of a level one adverse drug event between one or more drugs for any given patient drug profile.
(4) The prescriber shall have ultimate say in what is prescribed.

KEY: Medicaid, prescriptions
[2003]2005
26-18



Health, Health Care Financing, Coverage and Reimbursement Policy

R414-90

Diabetes Self-Management Training

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 27557
 FILED: 11/22/2004, 14:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to clarify program access requirements and service coverage within the diabetes self-management training program.

SUMMARY OF THE RULE OR CHANGE: In Subsections R414-90-3(2) and (3), the words "approved through" are included to indicate that qualified providers not certified or recognized by the American Association of Diabetes Educators (AADE) and licensed health care providers not recognized by the American Diabetes Association (ADA), must be approved through the Utah Department of Health. Also, "educators" is deleted and replaced with "instructors" to correctly refer to qualified providers that participate in the diabetes self-management training program. In addition, the acronym "ADA" is included in Subsection R414-90-3(3) to further clarify the American Diabetes Association as the acronym is later used in the text of the rule. Finally, in Section R414-90-4, the phrase "covering the 15 ADA core curriculum content areas" is added to specify certified training that meets all of the standards of the National Diabetes Advisory Board.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is no impact to the state budget associated with this rulemaking because the changes to this rule only clarify program access requirements and service coverage within the diabetes self-management training program.
- ❖ **LOCAL GOVERNMENTS:** There is no budget impact to local governments because the changes to this rule only clarify program access requirements and service coverage within the diabetes self-management training program.
- ❖ **OTHER PERSONS:** There is no budget impact to other persons because the changes to this rule only clarify program access requirements and service coverage within the diabetes self-management training program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the changes to this rule only clarify program access requirements and service coverage within the diabetes self-management training program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change clarifies rule language without changing how Medicaid administers this

program. There is no fiscal impact on businesses involved in this diabetes program. Scott D. Williams, MD

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Scott D. Williams, Executive Director

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

R414-90. Diabetes Self-Management Training.

R414-90-1. Introduction and Authority.

Diabetes self-management training is an educational program that teaches individuals how to successfully manage and control diabetes. Diabetes self-management training is a component of the Utah Medicaid State Plan and is authorized by 42 CFR 440.130, October 2003 ed., and Utah Code Section 26-18-3.

R414-90-2. Client Eligibility Requirements.

Diabetes self-management training is available to Traditional Medicaid clients, Non-Traditional Medicaid clients, and Primary Care Network (PCN) clients who are diabetic and receive a physician referral for services.

R414-90-3. Program Access Requirements.

(1) Diabetes self-management training is limited to services approved by a physician, under a comprehensive plan that is essential to ensure successful diabetes self management by the individual patient.

(2) Qualified providers for the diabetes self-management training program include registered nurses, registered pharmacists and certified dietitians licensed by the state. These providers are required to be certified or recognized by the American Association of Diabetes Educators (AADE) or approved through the Utah Department of Health as diabetes ~~educators~~ instructors.

(3) Diabetes self-management training services provided by a home health agency, may only be provided by a licensed health care provider who is certified by an American Diabetes Association (ADA) program or ~~recognized by~~ approved through the Utah Department of Health.

(4) Home Health Agency participation in diabetes self-management training is limited to providing services to the patient who is receiving other skilled services in the home based on physician order and plan of care, when the home is the most appropriate site for the care provided.

R414-90-4. Service Coverage.

(1) Patient assessment for the diabetes self-management program includes a review of medical history, risk factors, health status, resource utilization, knowledge and skill level, and cultural barriers to effective diabetes self-management.

(2) Diabetes self-management training is limited to a maximum of 10 hours of outpatient services.

(3) Diabetes self-management training is limited to training presented by a certified program that meets all of the standards of the National Diabetes Advisory Board covering the 15 ADA core curriculum content areas. The program must also be recognized by the American Association of Diabetes Educators or be certified by the Utah Department of Health.

(4) Diabetes self-management training includes group sessions, but must allow for direct, face to face interaction between the educator and the patient.

(5) Diabetes self-management training must be sufficient in length to meet the goals of the basic comprehensive plan of care. Individual sessions must be sufficient in number and designed to meet the individual's cultural and learning needs.

(6) A maximum of 10 sessions per year may be approved by a physician and through prior authorization.

(7) Repeating any or all of a diabetes self-management program is limited to new conditions or a change in the health status of the client that warrants the need for new training.

(8) The following services are also covered:

(a) annual eye examination that includes dilation;

(b) annual physical;

(c) glycosylated hemoglobin laboratory test with foot examination;

(d) blood sugar review; and

(e) blood pressure reading every 3 to 4 months.

(9) Diabetes self-management training does not cover charges for facility use.

R414-90-5. Reimbursement.

Medicaid payments for approved diabetes self-management training are based on the established Medicaid fee schedule, unless a lower amount is billed. The fee schedule was established after internal and external consultation with diabetes experts. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

KEY: Medicaid

~~September 16, 2004~~ January 15, 2005

26-1-5

26-18-3

Human Services, Services for People
with Disabilities
R539-1
Eligibility

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27568
FILED: 11/30/2004, 12:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment removes references to "Developmental Disability"; adds exclusions to "non-waiver brain injury services"; adds references to a rule section in the Department of Health, Section R414-61-2; and makes additional corrections to add clarity to this rule.

SUMMARY OF THE RULE OR CHANGE: This amendment removes the Developmental Disability definition and all references to Developmental Disability throughout the rule. It adds "at risk" eligibility criteria to non-waiver mental retardation and related conditions services for children under the age of seven. It adds mental illness and mental retardation as exclusions to the eligibility for non-waiver brain injury services. It also adds references to Section R414-61-2 in Sections R539-1-5, R539-1-7, and R539-1-9 to clarify references to waiver eligibility. It corrects the citation in Subsection R539-1-10(1) to be Subsections R539-1-5(2), R539-1-7(2), and R539-1-9(2).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-5-102 and 62A-5-103

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The clarifications to eligibility requirements result in cost neutrality. The Division's current processes will incorporate these changes.

❖ **LOCAL GOVERNMENTS:** No local funding is used in determining eligibility, therefore, there shall be no financial impact on local government.

❖ **OTHER PERSONS:** Provider agency staff are not involved in determining eligibility. No additional costs for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: People applying for services are required to submit paperwork and evaluations needed to determine eligibility. There may be a cost to the person in filling out the paperwork.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Eligibility is determined within the Division. There is no fiscal impact on outside businesses.

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

HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W

SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzie Totten at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at stotten@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R539. Human Services, Services for People with Disabilities.

R539-1. Eligibility.

R539-1-3. Definitions.

- (1) Terms used in this rule are defined in Section 62A-5-101.
- (2) In addition:
 - (a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;
 - (b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;
 - (c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;
 - (d) "Department" means the Department of Human Services; [
 - (e) "~~Developmental Disability" means mental retardation and related conditions;~~]
 - (~~f~~) "Division" means the Division of Services for People with Disabilities;
 - (~~g~~) "Form" means a standard document required by Division rule or other applicable law;
 - (~~h~~) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;
 - (~~i~~) "Hearing Request" means [~~an oral or~~] a written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;
 - (~~j~~) "ICF/MR" means Intermediate Care Facility for Persons with Mental Retardation;
 - (~~k~~) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;
 - (~~l~~) "Region" means one of four geographical areas of the [~~s~~] State of Utah referred to as central, eastern, northern or western;
 - (~~m~~) "Region Office" means the place Applicants apply for services and where support coordinators, supervisors and region directors are located;
 - (~~n~~) "Related Conditions" means a severe, chronic disability that meets the following conditions:
 - (i) It is attributable to:
 - (A) Cerebral palsy or epilepsy; or

(B) Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.

(ii) It is manifest before the person reaches age 22.

(iii) It is likely to continue indefinitely.

(iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care.

(B) Understanding and use of language.

(C) Learning.

(D) Mobility.

(E) Self-direction

(F) Capacity for independent living.

(~~e~~)d "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;

(~~p~~)o "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah.;

(~~e~~)p "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;

(~~r~~)q "Support Coordinator" means an employee of the Division who completes written documentation of supports and determination of eligibility and support needs;

(~~s~~)r "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and

(~~f~~)s "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the developmental disabilities and mental retardation waiver, the brain injury waiver and physical disabilities waiver.

R539-1-4. [Eligibility for] Non-Waiver [Developmental Disability] Services for People with Mental Retardation or Related Conditions.

(1) The Division will serve those Applicants who meet the definition of disabled in Subsections 62A-5-101(4)(a)(i) through (iv) and 62A-5-101(4)(b).

(2) When determining functional limitations in the areas listed below for Applicants ages 7 and older, age appropriate abilities must be considered.

(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

(c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency without the assistive device.

(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with mental retardation as per 62A-5-101(6) or related conditions [~~as per 42CFR435.1009~~].

(a) Applicants who have a [~~disability due to~~] primary diagnosis of mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance abuse or personality disorder do not qualify for services under this rule.

(4) The Applicant, parent of a minor child, or the Applicant's Guardian must be a resident of the [~~s~~] State of Utah prior to the Division's final determination of eligibility.

(5) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.

(6) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(7) The following documents are required to determine eligibility for non-waivered mental retardation or related conditions [~~developmental disabilities~~] services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff within each region office. For children under seven years of age, Eligibility for Services Form 19C, completed by the designated staff within each region office, will be accepted in lieu of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child is at risk for [~~has~~] substantial functional limitation in three areas of major life activity due to mental retardation or related conditions; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting

documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(9) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Region staff shall determine the Applicant eligible or ineligible for funding for non-waiver ~~mental retardation or related conditions~~ ~~developmental disabilities~~ services within 90 days of receiving the required documentation.

(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(11) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are met.

(12) This rule does not apply to Applicants who meet the separate eligibility criteria for physical disability and brain injury outlined in Rule 539-1-6 and Rule 539-1-8 respectively.

(13) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in non-Waiver service packages or be discharged from non-Waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-5. [~~Eligibility for~~] Medicaid Waiver for Individuals with Developmental Disabilities [~~4~~or Mental Retardation]—~~Waiver Services~~].

(1) Pursuant to R414-61-2, ~~[M]~~ matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Mental Retardation and Developmental Disabilities to provide an array of home and community-based services that an eligible individual needs.

(a) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

(2) Applicants who are found eligible for Waiver funding may choose to participate in the Medicaid Waiver. If the Applicant chooses not to participate in the Waiver, their funding will be equivalent to the State portion of the Waiver budget they would have received had they participated in the Waiver.

R539-1-6. [~~Eligibility for~~] Non-Waivered Services for People with Physical Disabilities—~~Services~~].

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

(a) Have the functional loss of two or more limbs;

(b) Be 18 years of age or older;

(c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and

(d) Be medically stable, have a physical disability and require in accordance with the Person's physician's written documentation, at least 14 hours per week of personal assistance services in order to remain in the community and prevent unwanted institutionalization.

(e) Have their physician document that the Person's qualifying disability and need for personal assistance services are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living/instrumental activities of daily living;

(f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) Be capable of managing personal financial and legal affairs; and

(h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant indicating that the intake case will be placed in inactive status.

(a) The Applicant may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

(b) determine and prioritize needs scores;

(c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for developmental disability/mental retardation and brain injury outlined in Rule 539-1-4 and Rule 539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in service packages or be discharged from services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-7. ~~[Eligibility for]~~ Medicaid Waiver for Individuals with Physical Disabilities ~~[Waiver Services]~~.

(1) Pursuant to R414-61-2, ~~[M]~~matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Physical Disabilities funding but who choose not to participate in the Home and Community-Based Waiver for People with Physical Disabilities, will receive only the state paid portion of services.

R539-1-8. ~~[Eligibility for]~~ Non-Waiver Services for People with Brain Injury ~~[Services]~~.

(1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

- (a) have a documented acquired neurological brain injury;
- (b) Be 18 years of age or older;
- (c) score between 40 and 120 on the Brain Injury Comprehensive Assessment Form 4-1.

(2) Applicants with mental illness, substance abuse or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer as a primary diagnosis are ineligible for these non-waiver services.

(3) Applicants with mental retardation or related conditions are ineligible for these non-waiver services.

~~[(3)]4~~ The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

~~[(4)]5~~ The Applicant or the Applicant's Guardian must be a resident of the ~~[s]~~State of Utah prior to the Division's final determination of eligibility.

~~[(5)]6~~ It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

~~[(6)]7~~ The intake worker will complete or compile the following documents:

- (a) Brain Injury Intake, Screening and Comprehensive Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824BI, completed or updated within one year of eligibility determination;

~~[(7)]8~~ If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant or the Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

~~[(8)]9~~ When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, region staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

~~[(9)]10~~ A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

R539-1-9. ~~[Eligibility for]~~ Medicaid Waiver for Individuals with Acquired Brain Injury ~~[Waiver Services]~~.

(1) Pursuant to R414-61-2, ~~[M]~~matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Brain Injury funding but who choose not to participate in the Home and Community-Based Waiver for People with Brain Injury, will receive only the state paid portion of services.

(3) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

R539-1-10. Graduated Fee Schedule.

(1) Pursuant to Utah Code 62A-5-105 the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements listed in the Developmental Disabilities/Mental Retardation Waiver, the Traumatic Brain Injury Waiver or the Physical Disabilities Waiver. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-~~[2]~~5(2), R539-1-7(2), and R539-1-9(2) rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who only meet the general eligibility requirements, as per R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income (using the formula: (assets + income) / by the total number of family members = available income). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver, who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the amount due. If a Person can show good cause why the fee cannot be paid, the Division Director may grant exceptions on a case-by-case basis.

KEY: human services, disability

~~August 19, 2004~~ 2005

Notice of Continuation December 18, 2002

62A-5-103

62A-5-105



Insurance, Administration **R590-147** Annual and Quarterly Statement Filing Instructions

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 27556

FILED: 11/22/2004, 12:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to consolidate three rules (current Rule R590-147 and Rules R590-163 and R590-174) into a new version of this one, Rule R590-147. (DAR NOTE: The proposed repeal of Rule R590-163 is under DAR No. 27554, and the proposed repeal of Rule R590-174 is under DAR No. 27555 in this issue.)

SUMMARY OF THE RULE OR CHANGE: Currently Rule R590-147 requires foreign and alien insurers to file annual and quarterly statements and related pages with the National Association of Insurance Commissioners (NAIC) and the Insurance Department and for domestic insurers to file two hard copies or their annual and quarterly statements and related pages with the NAIC and Utah Insurance Department. The reenacted version of this rule specifically requires insurers to follow the NAIC instruction in filing related forms and the annual and quarterly statements. All insurers are required to file their annual and quarterly statements and related forms with the NAIC. Foreign and alien insurers are no longer required to file hard copies or diskettes with the NAIC or Utah Insurance Department.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-2-202, and 31A-4-113

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The changes made in the reenacted rule will not financially impact the state's budget. It will not require the payment or elimination of fees, or require the addition or elimination of employees to manage these changes. It will reduce the time Insurance Department employees spend receiving, organizing, processing, and filing hard copies of the

annual and quarterly statements filed by approximately 1,400 foreign insurers.

❖ LOCAL GOVERNMENTS: This rule deals solely with the relationship between licensed foreign insurers and the Insurance Department and will have no impact on local government. Therefore, there are no costs or savings to local government.

❖ OTHER PERSONS: Foreign insurers will feel little impact from the reenacted version of this rule. Even though they are no longer required to file a hard copy or diskette of their annual and quarterly statements with the NAIC or Utah Insurance Department, other state insurance departments require them to file hard copies with them. At this point, the 1,400 foreign insurers licensed in Utah will save the cost of copying and mailing their annual and quarterly statements to the Utah Insurance Department and NAIC. This should have no fiscal impact on their insureds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Foreign insurers will feel little impact from the rewrite of this rule. Even though they are no longer required to file a hard copy or diskette of their annual and quarterly statements with the NAIC or Utah Insurance Department, other state insurance departments require them to file hard copies with them. At this point, the 1,400 foreign insurers licensed in Utah will save the cost of copying and mailing their annual and quarterly statements to the Utah Insurance Department and NAIC. This should have no fiscal impact on their insureds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will eliminate the requirement for 1,400 foreign and alien insurers doing business in Utah to supply the Utah Insurance Department with a hard copy of their annual or quarterly statements. The only fiscal impact will be that in savings from copying and mailing their annual and quarterly statements to the Utah Insurance Department. This is a very minor cost savings for these insurers.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/14/2005

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 1/05/2005 at 9:00 AM, State Office Building, Room 3112, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 01/17/2005

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

~~[R590-147. Annual Statement Instructions.~~

~~R590-147-1. Authority.~~

~~— This rule is promulgated pursuant to the general rulemaking authority vested in the commissioner by Section 31A-2-201, and pursuant to the specific authority of Section 31A-4-113.~~

~~R590-147-2. Scope.~~

~~— This rule applies to all insurers required to file an annual statement with the commissioner in this state.~~

~~R590-147-3. Definitions.~~

~~— (1) For the purpose of this rule "Insurer" includes all licensees who are licensed under Chapters 5, 7, 8, 9, 14 or 15 of Title 31A of the Utah Code.~~

~~— (2) For purposes of this rule "Timely Filed" means that the item being filed is postmarked on or before its due date or if the item is placed for delivery by a commercial delivery service, the delivery instructions are dated on or before the date the item is due to be filed and all required schedules, exhibits and documents are attached.~~

~~R590-147-4. Rule.~~

~~— (1) All insurers shall file their annual statement with the National Association of Insurance Commissioners ("NAIC") on the form adopted by the NAIC. The statement shall be prepared in accordance with the latest edition of the annual statement instructions, and the accounting practices and procedures manual published by the NAIC. Annual statement filings are not complete until all supplemental schedules, exhibits and documents are filed as required by the instructions or as otherwise indicated by this rule, including the following:~~

- ~~— (a) Actuarial Opinion;~~
- ~~— (b) Management's Discussion and Analysis;~~
- ~~— (c) SVO Compliance Certification; and~~
- ~~— (d) Annual Audited Financial Reports.~~

~~— (2) Domestic insurers shall also file two hard copies of all documents required by Subsection 4(1) with the department.~~

~~— (3) Foreign insurers shall NOT file a hard copy of documents required by Subsection 4(1) with the department, unless specifically requested by the commissioner.~~

~~— (4) For foreign insurers, the department will consider the annual statement filings to be filed timely with the department if they are timely filed with the NAIC. For domestic insurers, the department will consider the annual statement filings to be filed timely if they are filed timely with both the NAIC and with the department. If any items required to be filed with the NAIC or the department are not filed by the date they are due without an extension approved by the domiciliary state, or are filed after the expiration of any approved extension, the department will consider the annual statement filing to be incomplete, filed late, or not filed, and the department may impose sanctions permitted by law.~~

~~— (5) The dates by which annual statements and supplemental schedules, exhibits, documents or electronic filings are to be made shall be the date specified in the annual statement instructions and~~

department filing instructions. These instructions may be found on the department's website.

R590-147-5. Separability.

— If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

KEY: insurance

June 13, 2003

Notice of Continuation February 21, 2002

31A-2-201

31A-4-113

R590-147. Annual and Quarterly Statement Filing Instructions.

R590-147-1. Authority.

— This rule is promulgated pursuant to Subsection 31A-2-201(3), which authorizes the commissioner to establish by rule specific requirements for filing forms, rates, or reports required by the Utah Insurance Code; Section 31A-2-202, which authorizes the commissioner to require statements, reports and information to be delivered to the department or the National Association of Insurance Commissioners (NAIC) in a form specified by the commissioner; and Section 31A-4-113, which authorizes the commissioner to prescribe by rule the information to be submitted with and form of the annual statement.

R590-147-2. Purpose.

— The purpose of this rule is to provide instructions for the filing of insurer annual and quarterly statements and required supplemental schedules, exhibits, and documents.

R590-147-3. Scope.

— This rule applies to all insurers required to file annual and quarterly statements with the commissioner in this state.

R590-147-4. Definitions.

- (1) For purposes of this rule:
- (a) the commissioner adopts the definitions as particularly set forth in Section 31A-1-301; and
- (b) "Insurer" includes all licensees who are licensed under Chapters 5, 7, 8, 9, 14 or 15 of Title 31A of the Utah Code.

R590-147-5. Rule.

(1) The annual statement, quarterly statements, and required supplemental schedules, exhibits, and documents shall be prepared in accordance with the latest edition of the NAIC annual and quarterly statement instructions and the accounting practices and procedures manual published by the NAIC.

(2)(a) All insurers shall file their annual statements, quarterly statements, and required supplemental schedules, exhibits, and documents electronically with the NAIC in accordance with the NAIC annual and quarterly statement instructions. The commissioner may allow insurers that operate only in Utah to file hard copy forms with the department and exempt them from filing electronically with the NAIC.

(b) Domestic insurers ONLY shall additionally file two paper copies of all documents required by Subsection R590-147-5(1) with the department, in accordance with the deadlines established in the NAIC annual and quarterly statement instructions.

(c) Foreign and alien insurers shall NOT file paper copies of documents required by Subsection R590-147-5(1) with the department, unless specifically requested by the commissioner.

(3) Administrative penalties, authorized by 31A-2-308, may be assessed to any insurer that:

(a) Fails to file an annual statement, quarterly statements, or required supplemental schedules, exhibits, and documents by the dates specified in the NAIC and department annual and quarterly statement instructions, or by the deadline established in any filing extensions granted by the department; or

(b) Fails to file a complete annual or quarterly statement filing.

(4) NAIC and department filing instructions, including due dates, may be found at the following websites: www.naic.org and www.insurance.utah.gov.

R590-147-6. Separability.

— If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

R590-147-7. Enforcement Date.

— The commissioner will begin enforcing the revised portions of this rule 45 days from the effective date of the rule.

KEY: insurance

2005

Notice of Continuation February 21, 2002

31A-2-201

31A-2-202

31A-4-113



Insurance, Administration
R590-163
Filing Quarterly Statements

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE No.: 27554

FILED: 11/22/2004, 10:10

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being combined into Rule R590-147 along with Rule R590-174 because of similarity of topic. (DAR NOTE: The proposed repeal and reenactment of Rule R590-147 is under DAR No. 27556, and the proposed repeal of Rule R590-174 is under DAR No. 27555 in this issue.)

SUMMARY OF THE RULE OR CHANGE: This rule is being merged into Rule R590-147. The purpose and substance of this rule is being carried over into the reenacted version of Rule R590-147 with the additional requirement to file an electronic copy of the quarterly statements with the National Association of Insurance Commissioners (NAIC). As a result, the current rule, R590-163, is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-2-202

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The repeal of this rule will have no fiscal impact on the state's budget since the requirements in this rule will be continued in Subsections R590-147-5(1) and (2).
- ❖ LOCAL GOVERNMENTS: This rule does not affect local government since it only applies to the relationship between insurers and the Insurance Department. Therefore, there are no costs or savings to local government.
- ❖ OTHER PERSONS: The repeal of this rule will have no fiscal impact on the insurance industry licensed to do business in Utah and their consumers since the requirements of this rule will be continued in Rule R590-147.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of this rule will have no fiscal impact on the insurance industry licensed to do business in Utah and their consumers since the requirements of this rule will be continued in Rule R590-147.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The repeal of this rule will have no fiscal impact on businesses in Utah. The requirements of this rule will be transferred to Section R590-147-5.

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 whitby@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/17/2005

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

~~[R590-163. Filing Quarterly Statements.~~

~~R590-163-1. Authority.~~

~~— This rule is promulgated pursuant to the general rulemaking authority vested in the commissioner by Section 31A-2-201 and Section 31A-2-202.~~

~~R590-163-2. Scope.~~

~~— This rule applies to all insurers domiciled in the State of Utah.~~

~~R590-163-3. Definitions.~~

~~— For the purpose of this rule, "insurer" includes all licensees who are licensed under Title 31A, Chapters 5, 7, 8, 9, and 11 of the Utah Code.~~

~~R590-163-4. Rule.~~

~~— All domestic insurers shall file quarterly statements with the Utah Insurance Department. The statements shall be prepared in accordance with the instructions and the accounting practices and procedures manual adopted by the National Association of Insurance Commissioners.~~

~~— The first quarterly statement for the quarter ending March 31st shall be filed before May 16th. The second quarterly statement for the quarter ending June 30th shall be filed before August 16th, and the third quarterly statement for the quarter ending September 30th shall be filed before November 16th. The fourth quarterly statement is contained within the annual statement filing required under Section 31A-4-113 of the Utah Code.~~

~~— All statements shall be filed in duplicate, one may be a copy, and one statement shall be signed and verified by the oaths of at least two of the insurer's principal officers.~~

~~R590-163-5. Severability.~~

~~— If any provision of this rule or the application thereof to any person or circumstance is, for any reason, held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.~~

KEY: insurance

1994

Notice of Continuation November 25, 2003

31A-2-201

31A-2-202]



Insurance, Administration

R590-174

Diskette Filing of Annual and Quarterly Statements

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 27555

FILED: 11/22/2004, 10:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being combined into Rule R590-147 along with Rule R590-163 because of similarity of topic. (DAR NOTE: The proposed repeal and reenactment of Rule R590-147 is under DAR No. 27556, and the proposed repeal of Rule R590-163 is under DAR No. 27554 in this issue.)

SUMMARY OF THE RULE OR CHANGE: This rule is being merged into Rule R590-147. The purpose and substance of this rule is being carried over into the reenacted version of Rule R590-147 with the exception that insurers will only be required to file

an electronic copy of their annual and quarterly statements with the National Association of Insurance Commissioners (NAIC). They will no longer be required to file a diskette and hard copy. Therefore, the current rule, R590-174, is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-4-113

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The repeal of this rule will have no fiscal impact on the State's budget since the requirements will be continued in Subsection R590-147-5(2).

❖ LOCAL GOVERNMENTS: This rule does not affect local government since it only applies to the relationship between insurers and the Insurance Department. Therefore, there are no costs or savings to local government.

❖ OTHER PERSONS: The repeal of this rule will have little fiscal impact on the insurance industry licensed to sell insurance in Utah. The 1,400 Insurers licensed in Utah will no longer be required to file hard copies or diskettes of their annual or quarterly statements with the NAIC. This will save them a little money in printing and mailing costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of this rule will have little fiscal impact on the insurance industry licensed to sell insurance in Utah. The 1,400 Insurers licensed in Utah will no longer be required to file hard copies or diskettes of their annual or quarterly statements with the NAIC. This will save them a little money in printing and mailing costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The repeal of this rule will have minimal fiscal impact on businesses in Utah. There will be no additional cost, however, there will be a minimal savings in printing and mailing of annual and quarterly statements to be mailed to the NAIC.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/17/2005

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

~~[R590-174. Diskette Filing of Annual and Quarterly Statements. R590-174-1. Authority.~~

~~— This rule is promulgated pursuant to the general rulemaking authority granted the Commissioner by Utah Insurance Code Section 31A-2-201 and the specific authority granted by Section 31A-4-113.~~

~~R590-174-2. Scope.~~

~~— This rule applies to all insurers licensed under Chapters 5, 7, 8, except limited health plans, and 14 of the Utah Insurance Code.~~

~~R590-174-3. Rule.~~

~~— Insurers shall file diskette and hard copies of their annual and quarterly statements with the National Association of Insurance Commissioners. Annual filings shall be filed each year on or before March 1.~~

~~— Quarterly filings:~~

~~— 1. for the period ending each March 31, shall be filed before May 16;~~

~~— 2. for the period ending each June 30 shall be filed before August 16;~~

~~— 3. for the period ending each September 30 shall be filed before November 16;~~

~~— A quarterly filing is not required for the period ending December 31. The fourth quarter information shall be included in the annual statement filing. The Commissioner may exempt insurers that operate only in Utah from these requirements.~~

~~— Annual statement diskette copies are required to contain the same information and be in the same format as the annual statement filings required by Rule R590-147. Quarterly statement diskette copies are required to contain the same information and be in the same format as the quarterly statement filings required by Rule R590-163.~~

~~R590-174-4. Severability.~~

~~— If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons or circumstances are not affected.~~

~~KEY: insurance law~~

~~January 1, 1998~~

~~Notice of Continuation October 18, 2000~~

~~31A-4-113]~~



Insurance, Administration
R590-196
Bail Bond Surety Fee Standards,
Collateral Standards, and Disclosure
Form

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE No.: 27558
 FILED: 11/24/2004, 11:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of previous form filings received by the department that included late fees, which are currently not allowed as they are not considered an actual charge, the department decided to change the rule to allow for the charging of late fees on delinquent periodic payments.

SUMMARY OF THE RULE OR CHANGE: A change is being proposed to Section R590-196-4, which allows for a late charge on a payment plan of \$20 or 5% of the periodic payment, whichever is less. The rule also adds a new Enforcement Date section (Section R590-196-9) allowing 45 days from the effective date of this change before enforcement begins.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-35-104

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This change will create no change in the general fund. Those bail bond agencies who adopt the late fee will have to file with the department a revised disclosure form including the new information about the late fee. Since there are only 36 bail bond agencies and all may not adopt this fee, the additional work of reviewing these forms will be minimal and no additional help to do so will be needed.

❖ LOCAL GOVERNMENTS: Since the only main change deals with a late fee that is not taxed, this change should have no effect on local government.

❖ OTHER PERSONS: This change will allow bail bond agents and agencies to charge a late fee of \$20 or 5% of the periodic payment, whichever is less, on their payment plans. As a consequence, those purchasing bail bonds under a payment plan may be affected. The charge of a late fee would be considered a common practice in the business world.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change will allow bail bond agents and agencies to charge a late fee of \$20 or 5% of the periodic payment, whichever is less, on their payment plans. As a consequence, those purchasing bail bonds under a payment plan may be affected. The charge of a late fee would be considered a common practice in the business world.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The addition of a late fee to this rule will have little financial impact on the industry of 36 agencies except to help them encourage consumers to pay on time.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/17/2005

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.**R590-196. Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form.****R590-196-1. Purpose.**

This rule establishes uniform fee and collateral standards for bail bond surety business in the State of Utah.

R590-196-2. Authority.

This rule is promulgated pursuant to Section 31A-35-104 which requires the commissioner to adopt by rule standards of conduct for bail bond surety business.

R590-196-3. Scope and Applicability.

This rule applies to any person engaged in bail bond surety business.

R590-196-4. Fee Standards.

- (1) Initial bail bond fees.
- (a) Bail bond premium:
 - (i) minimum fee: none;
 - (ii) maximum fee: not to exceed 20% of bond amount.
 - (b) Document preparation fee may not exceed \$20 per set of forms pertaining to one bail bond.
 - (c) Credit card fee may not exceed 5% of the amount charged to the credit card.
 - (2) Other fees.
 - (a) These fees are limited to actual and reasonable expenses incurred by the bail bond surety because:
 - (i) the defendant fails to appear before the court at any designated dates and times;
 - (ii) the defendant fails to comply with the court order; or
 - (iii) the defendant or the co-signer fails to comply with the terms of the bail bond agreement and any promissory notes pertaining to that agreement.
 - (b) Reasonable expense fee for mileage is the Internal Revenue Service standard for business mileage.
 - (c) Apprehension expenses such as meals, lodging, commercial travel, communications, whether or not the defendant is apprehended, are limited to actual expenses incurred and must be reasonable, i.e., meals at mid-range restaurants, lodging at mid-range hotels, commercial travel in coach class, etc.
 - (d) Reasonable collateral expense fees:

- (i) actual expenses to obtain collateral; and
 - (ii) storage expenses if in a secured storage area, limited to actual expenses.
- (e) A late payment fee of \$20 or 5% of the delinquent periodic payment which ever is less.

R590-196-5. Collateral Standards.

- (1) Collateral may be provided to secure bail bond fees, the face amount of the bail bond issued, or both.
- (2) If the bail bond surety accepts the same collateral to secure the bail bond fees and the face amount of the bail bond issued, then, in the event of a failure to pay bail bond fees when due, the collateral may not be converted until the bail bond is exonerated or judgment entered against the surety and the depositor has been given no less than 15 days to pay any bond fees owing.
- (3) If the bail bond surety accepts different collateral to secure the bail bond fee and the face amount of the bail bond issued then:
- (i) the collateral securing the bail bond fees may not be converted until payment has been defaulted under the terms of the promissory note for those fees, and the depositor of the collateral has been given no less than 15 days to make the required payment;
 - (ii) the collateral securing the face amount of the bail bond issued may not be converted until the bond is exonerated or judgment entered against the surety and the depositor of the collateral has been given no less than 15 days to reimburse the bail bond surety for any amounts owed to the bail bond surety.
- (4) The bail bond surety, its agents taking possession of collateral, or both, will hold said collateral as a fiduciary until such time as ownership of the collateral passes to the bail bond surety.
- (5) Collateral held as a fiduciary may not be used by the bail bond surety or its agents without the specific written permission of the depositor of the collateral.
- (6) Should proceeds from converted collateral exceed the outstanding balance due, the bail bond surety will return the excess to the depositor of the collateral.
- (7) Notice under the rule shall be deemed proper if it is sent via first class mail to the address provided by the depositor of the collateral.

R590-196-6. Disclosure Form.

The bail bond surety and its agents will use the following disclosure form or a form that contains similar language.

TABLE

XYZ Bail Bonds Disclosure Form
1234 South 1234 East, Salt Lake City, UT 84444:
801-123-4567 fax: 801-098-7654

Defendant.....	Co-Signer.....	
Court.....	Charge.....	
Bond amount \$.....	Bond number.....	
Initial Fees, non-refundable.		
....bond premium, maximum: no more than 20%;		
minimum: none.		\$.....
....document preparation, not to exceed \$20		
per set of bond forms.		\$.....
....credit card fee, not to exceed 5% of amount		
charged to credit card		\$.....
	total initial fees	\$.....

Additional Fees.
Limited to actual and reasonable expenses required because the defendant fails to appear before the court at any designated times, or fails to comply with the court order, or fails to comply with the terms of the bail bond agreement or any promissory notes pertaining to that agreement. The following are some reasonable expense fees:

- (1) reasonable expense fee for mileage is IRS mileage reimbursement standard for business miles;
 - (2) reasonable apprehension expense fees include meals at mid-range restaurants, lodging at mid-range hotels, transportation at no more than coach fares; and
 - (3) reasonable collateral expense fees: actual expenses to obtain collateral and, actual storage expenses, if collateral is in a secured storage area.
- (4) A late payment fee of \$20 or 5% of the delinquent periodic payment which ever is less.

Grounds for revocation of bond.

Should the defendant violate any of the following, the defendant shall be subject to immediate bond revocation and the defendant, or the co-signer, or both, shall be subject to all the costs incurred to return the defendant to the court. Grounds for revocation include the following:

- (a) the defendant or co-signer providing materially false information on bail bond application;
- (b) the court's increasing the amount of bail beyond sound underwriting criteria employed by the bail bond agent or bail bond surety;
- (c) a material and detrimental change in the collateral posted by the defendant or one acting on defendant's behalf;
- (d) the defendant changes their address or telephone number or employer without giving reasonable notice to the bail bond agent or bail bond surety;
- (e) the defendant is arrested for another crime, other than a minor traffic violation, while on bail;
- (f) the defendant is back in jail in any jurisdiction and revocations can be served prior to the defendant being released;
- (g) failure by the defendant to appear in court at any appointed times;
- (h) finding of guilt against the defendant by a court of competent jurisdiction;
- (i) a request by the co-signer based on reasons (a) through (h) above. Items (a) through (h) pertain to the defendant; items (a), (c), (e) (g) and (i) pertain to co-signers, if any.

Collateral.

The following has been given as collateral to guarantee all court appearances of the defendant until the bond is exonerated:

.....
.....

The following has been given as collateral to guarantee payment of bond fees:

.....

In the event judgment is entered against the surety or the bonding fee is not paid according to the terms of the bail bond agreement and its promissory note, if any, following written notice to the undersigned of such judgment or non-payment, the undersigned authorize XYZ Bail Bonds to convert the appropriate collateral to collect the judgment or the unpaid bond fees. Should proceeds from the sale of the appropriate collateral be insufficient to cover the outstanding balance due, the defendant, the co-signer, or both, agree to be personally liable for the difference. Should proceeds from the sale exceed the outstanding balance, the difference will be returned to the depositor of the collateral. The depositor's signature below constitutes acknowledgment of a Bill of Sale for the collateral. The depositor accepts this agreement as a bill of sale for the collateral.

By signing below I certify that I have read and understand this disclosure form, the bail bond agreement and its attached promissory note, if any. I certify under penalty of perjury that all information given to XYZ Bail Bonds verbally and in writing on all documents relevant to this bond are true and accurate. The co-signer agrees that should the co-signer request XYZ Bail Bonds to revoke the defendant's bond, with or without probable cause, the co-signer will be responsible to pay XYZ Bail Bonds and their agents for the time returning the defendant to jail at the rates stated above in additional fees. If requested by the co-signer to revoke the bond without probable cause, the co-signer will be responsible to reimburse the defendant his bond fees.

Date.....Defendant.....
Date.....Co-signer.....
Date.....Depositor.....

I,....., agent of XYZ Bail Bonds, certify that I have given a copy of all documents pertaining to this bail bond agreement to the defendant, the co-signer, the depositor, or any of the above, at the time and date said bail bond agreement was executed.
Date.....Bail Bond Agent.....

R590-196-7. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

R590-196-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this and the provisions of this rule are declared to be severable.

R590-196-9. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date.

KEY: insurance
[June 8, 2000]2005
31A-35-104



Natural Resources, Parks and
Recreation
R651-202
Boating Advisory Council

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27560
FILED: 11/27/2004, 10:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update the current rule as to the members serving on the Boating Advisory Council (BAC), and adding an additional name to represent the youth.

SUMMARY OF THE RULE OR CHANGE: The current rule states there are five, but there has been a representative for personal watercraft users serving on the board that has not been reflected in the current rule, and there needs to be a youth member added, bringing the total number of BAC members to seven. Those now represented are the U.S. Coast Guard Auxiliary, sailing or nonpowered water craft users, wildlife and outdoor recreation associations, marine dealers, personal water craft users, and then adding the youth member to represent the younger population of water craft users in the State of Utah.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-18-3.5

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Since membership on the council is voluntary, no cost or savings is anticipated for the state budget.
- ❖ LOCAL GOVERNMENTS: This is a state advisory council, there are no anticipated costs or savings to local government.
- ❖ OTHER PERSONS: By adding a youth member, a broader group of people will have knowledge of the boating laws and safety. There is no cost or savings associated with this change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs for affected persons since this is just changing the number of representatives on the BAC.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this simply changes the number of voluntary BAC members, the Department anticipates no fiscal impact to businesses.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Mary Tullius, Interim Director



R651. Natural Resources, Parks and Recreation.

R651-202. Boating Advisory Council.

R651-202-1. Boating Advisory Council.

A Boating Advisory Council, consisting of ~~five~~seven members, has been appointed by the board to represent boaters and others in boating matters. There is one member from each of the following interests: United States Coast Guard Auxiliary, sailing or non-powered craft users, wildlife and outdoor recreation associations, marine dealers, personal watercraft users,~~and~~ river runners and a youth member.

KEY: boating
[1987]January 15, 2005
Notice of Continuation November 13, 2001
73-18-3.5



**Natural Resources, Parks and
Recreation
R651-205-7
Palisade Lake**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE No.: 27559
FILED: 11/27/2004, 10:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed change allows trolling motors on Palisade State Park lake to increase visitation and access by those not able to row or paddle.

SUMMARY OF THE RULE OR CHANGE: A survey was conducted this past summer by the park staff with a very positive response to the possibility of allowing electric trolling motors on the lake at Palisade State Park. It is believed this change will increase visitation by giving those who cannot paddle or row a chance to enjoy this state park.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-4 (1)(c)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Entry to the park remains the same as reflected in the fee schedule. Use of the lake is included in that fee. Visitors will provide their own trolling motors so there will be no cost to the state, and the increase in visitation cannot be estimated until there is a base to use.
- ❖ LOCAL GOVERNMENTS: This change is for a state park lake and does not affect costs or savings for local government.
- ❖ OTHER PERSONS: No extra charge is made for use of the lake at Palisade State Park. Visitors pay an entry fee and that is already in place in Rule R651-611.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance would be to observe the safety of others while trolling, be observant, and enjoy the waters in the state. There is not estimated cost to a visitor other than the current park entrance fee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because the use of trolling motors may be viewed negatively by those wanting a quiet or "row boat only" experience at the park, there may be some decrease in use of the park by these particular users. Such a decline might be felt by those businesses that currently provide services to these users. However, it is likely that any decline in use would be offset by the increase in use by those using trolling motors. In addition, it is likely that many self-powered boat users would continue to use the facility. Therefore, it is unlikely overall, that the proposed change would have a negative fiscal impact to businesses. Indeed, there may be a small positive net effect on business activity.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Mary Tullius, Interim Director

**R651. Natural Resources, Parks and Recreation.
R651-205. Zoned Waters.
R651-205-7. Palisade Lake.**

The use of motors, except electric trolling motors, is prohibited.

KEY: boating

~~March 20, 2001~~ **January 15, 2005**

**Notice of Continuation November 13, 2001
73-18-4(1)(c)**



**Natural Resources, Parks and
Recreation
R651-206
Carrying Passengers for Hire**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE No.: 27561
FILED: 11/27/2004, 10:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment provides a greater variety of reputable cardiopulmonary resuscitation (CPR) course providers and better consistency between first aid courses, both at "standard" and "advanced" levels. It will also provide better uniformity of First Aid and CPR course cards or certificates and a similarity of text between Vessel Operator and River Guide Permits.

SUMMARY OF THE RULE OR CHANGE: This rule change will update the variety of CPR course providers and consistency between first aid courses. "Standard" and "Advanced" first aid courses will have better consistency and there will be better uniformity of first aid and CPR course cards and certificates, as well as more similar text between Vessel Operator and River Guide permits.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-4(4)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** These changes are for conformity and clarity in our current rule and there is no anticipated cost or savings to the State budget.
- ❖ **LOCAL GOVERNMENTS:** The conformity and consistency of these amendment changes will not affect local government. Therefore, no cost or savings is anticipated for local government.
- ❖ **OTHER PERSONS:** These changes will identify, in a clear way, issues dealing with the Vessel Operator Permit, and River Guide Permit for state waters. Those who hold valid Vessel Operator Permits or River Guide Permits will have a better guide. There are no anticipated cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since these amendment changes deal with allowing a greater variety of reputable CPR courses and providing greater consistency between first aid courses, there are no measurable costs or savings to those who use a Vessel Operator Permit or River Guide Permit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because these changes are for conformity and clarity in our current rule, the Department anticipates no fiscal impact to businesses.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Mary Tullius, Interim Director

R651. Natural Resources, Parks and Recreation.

R651-206. Carrying Passengers for Hire.

R651-206-1. Vessel Operator Permit.

(1) As used in this rule: "Operator Permit" means a valid Utah Vessel Operator Permit issued by the division or a valid Coast Guard Motorboat Operator License. The operator permit must be accompanied by a current and original [~~Standard American Red Cross~~]First Aid Card or [~~equivalent~~]certificate and a current and original [~~American Red Cross or American Heart Association~~]CPR["] card or certificate.

(a) The first aid card or certificate must be issued for an American Red Cross "Standard" or "Basic" first aid course or an equivalent course from a reputable provider.

(b) The CPR card or certificate must be issued for an American Red Cross, American Heart Association, American Safety & Health Institute, National Safety Council CPR course, or an equivalent course from a reputable provider who teaches in accordance with the Guidelines 2000 for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care.

(c) First aid and CPR cards or certificates must include, but not be limited to the following information: name or title of the course; course provider and contact information; length of certification; name and signature of person certified; and signature of the course instructor.

(2) No person shall operate a vessel engaged in carrying passengers for hire on any lake or reservoir of this state unless the individual has in his possession an Operator Permit or is operating under Section R651-206-2.

(3) To obtain a Utah Vessel Operator Permit, the applicant must be at least 18 years old, complete the prescribed form, possess the required first aid and CPR certification, successfully complete a written examination, pay a \$60 fee, and have 80 hours of experience in vessel operation, 20 hours of which was obtained operating an equivalent type and size of vessel which will be used for carriage of passengers. If the applicant fails to pass the written examination, there is a 7-day waiting period and a \$15 retest fee per attempt.

(4) A Utah Vessel Operator Permit is valid for three years from date of issue, unless suspended or revoked.

(5) A Utah Vessel Operator Permit may be renewed up to six months prior to expiration, upon completion of the prescribed form, presentation of required first aid and CPR certification, and payment of a \$45 fee. The renewed permit shall have the same month and day expiration date as the original permit.

(6) A Utah Vessel Operator Permit which has expired shall not be renewed but is required to obtain a new permit as outlined above.

(7) In the event a Utah Vessel Operator Permit is lost or stolen, a duplicate permit may be issued with the same expiration date as the original permit upon completion of the prescribed form, payment of a \$25 fee. An application for a duplicate permit must have original signatures and be accompanied by original documentation of required first aid and CPR certification.

(8) Current Utah Vessel Operator Permit holders shall notify the Division, within 30 days, of any change of address.

(9) A Utah Vessel Operator Permit may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:

(a) the permit holder is convicted of boating under the influence of alcohol or any drug, or refuses to submit to any chemical test which determines blood or breath alcohol content;

(b) the permit holder's negligence causes personal injury or death as determined by due process of the law;

(c) the permit holder is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a three-year period; or

(d) the division determines that the permit holder intentionally provided false or fictitious statements or qualifications to obtain the permit.

(10) A person shall not operate an unfamiliar vessel carrying passengers for hire or operate on unfamiliar water unless there is an operator permit holder aboard who is familiar with the vessel and the water area.

(11) A valid Coast Guard Motorboat Operator License must be possessed if engaging in carrying passengers for hire on Bear Lake, Flaming Gorge, or Lake Powell, or a Vessel Operator Permit if leading persons for hire.

R651-206-2. River Guide Permit.

(1) As used in this rule: "Guide Permit" means a valid Guide 1, 2, 3 or 4 permit issued by the division for carrying or leading passengers for hire. The Guide Permit must be accompanied by a current and appropriate level first aid card or certificate and a current CPR card or certificate. A photocopy of both sides of the first aid and CPR cards or certificates is allowed for river guides when boating on rivers.

(a) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying a river guide's experience.

(b) "Certifying experience" means river running experience obtained within ten years of the date of application for the guide permit.

(c) "Guide 1" means a nonrestrictive river guide permit.

(d) "Guide 2" means a restricted river guide permit, which is valid only on other rivers.

(e) "Guide 3" means an apprentice river guide permit, which is valid only when the holder is accompanied on the white[-]water river by a qualified Guide 1 permit holder. A Guide 3 permit is also valid on other rivers, but must be accompanied by either a Guide 1 or 2 permit holder.

(f) "Guide 4" means a restricted apprentice river guide permit, which is valid only on other rivers when the holder is accompanied on the trip by a qualified Guide 1 or 2 permit holder.

(g) ~~["Guide permit" means a valid Guide 1, 2, 3, or 4 permit issued by the division for carrying passengers for hire. For a Guide 1 or 2 permit to be valid they must be accompanied by a current "Emergency Response" American Red Cross First Aid Card or equivalent and an American Heart Association or an American Red Cross "CPR" Card. For a Guide 3 or 4 permit to be valid they must be accompanied by a current "Standard" American Red Cross First Aid Card or equivalent and an American Heart Association or an American Red Cross "CPR" Card. A photocopy of both sides of the required first aid and CPR certification cards is allowed.]~~First Aid and CPR Course Requirements for Guide Permits:

(i) For Guide 1 and 2 Permits, the first aid card or certificate must be issued for an American Red Cross "Emergency Response" course or an equivalent course from a reputable provider who teaches in accordance with the USDOT First Responder Guidelines or the Wilderness Medical Society Guidelines for Wilderness First Responder.

(ii) For Guide 3 and 4 Permits, the first aid card or certificate must be issued for an American Red Cross "Standard" or "Basic" first aid course, or an equivalent course from a reputable provider.

(iii) The CPR card or certificate must be issued for an American Red Cross, American Heart Association, American Safety & Health Institute, National Safety Council CPR course, or an equivalent course from a reputable provider who teaches in accordance with the Guidelines 2000 for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care.

(iv) First aid and CPR cards or certificates must include, but not be limited to, the following information: name or title of the course; course provider and contact information; length of certification; name and signature of the person certified; and signature of the course instructor.

(h) "Low capacity vessel" means a vessel with a carrying capacity of three or fewer occupants (e.g. canoe, kayak, inflatable kayak or similar vessel).

(i) "Other rivers" means all rivers, river sections, or both in Utah not defined in Subsection R651-202-2(1) as a whitewater river.

(j) "Whitewater river" means the following river sections: the Green and Yampa rivers within Dinosaur National Monument, the Green River in Desolation-Gray Canyon (Mile 96 to Mile 20), the Colorado River in Westwater Canyon, the Colorado River in Cataract Canyon, or other division recognized whitewater rivers in other states.

(2) No person shall operate a vessel engaged in carrying passengers for hire on any river of this state unless that person has in his possession the appropriate valid river guide permit. For low capacity vessels not operated by but led by a guide permit holder, there shall be at least one qualified guide permit holder for every four low capacity vessels being led in the group.

(3) To qualify for a Guide 1 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, successfully complete a written examination, pay a \$30 fee and have operated a vessel on at least nine whitewater river sections. If the applicant fails to pass the written examination, there is a 7-day waiting period and a \$15 retest fee per attempt.

(4) To qualify for a Guide 2 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, successfully complete a written examination, pay a \$30 fee and have operated a vessel on at least six river sections. If the applicant fails to pass the written examination, there is a 7-day waiting period and a \$15 retest fee per attempt.

(5) To qualify for a Guide 3 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, pay a \$20 fee and have operated a vessel on at least three whitewater river sections.

(6) To qualify for a Guide 4 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, pay a \$20 fee and have operated a vessel on at least three river sections.

(7) Any person applying for a duplicate, renewal, or a new guide permit shall be employed by or be a prospective employee of an outfitting company currently registered with the division. The applicant shall be sponsored by that outfitting company, or be currently employed and sponsored by a federal, state or county agency. Permit applications must have original signatures and be accompanied by original documentation of required first aid and CPR certification.

(8) Guide 3 and 4 permits shall expire annually on December 31. Guide 1 and 2 permits shall expire three years from date of issuance.

(9) Guide 1 or 2 permits may be renewed up to six months prior to expiration upon completion of the prescribed form, presentation of current guide permit, required first aid and CPR certification, and payment of a \$30 fee. The renewed permit shall have the same month and day expiration date as the original permit. Any Guide 1 or 2 permit holder whose permit has expired shall be required to obtain a new Guide 1 or 2 permit as outlined above.

(10) In the event a guide permit is lost or stolen a duplicate guide permit may be issued with the same expiration date as the original permit upon completion of the prescribed form, furnishing the required information as described in (7) above and payment of the required fee. The fee shall be \$15 for a Guide 1 or 2 permit, and \$15 for a Guide 3 or 4 permit.

(11) All boatman permits issued by the division are expired.

(12) Current Guide Permit holders shall notify the Division, within 30 days, of any change of address.

(13) A guide permit holder shall not carry passengers for hire on his first trip on an unfamiliar river unless there is a qualified Guide 1 or 2 permit holder aboard who has operated a similar vessel on that river segment.

(14) A guide permit may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:

(a) the guide permit holder is convicted of boating under the influence of alcohol or any drug, or refuses to submit to any chemical test which determines blood or breath alcohol content;

(b) the guide permit holder's negligence causes personal injury or death as determined by due process of the law;

(c) the guide permit holder is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a three-year period;

(d) the division determines that the guide permit holder intentionally provided false or fictitious statements or qualifications to obtain the guide permit; or

(e) a guide permit holder has utilized a private river trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation.

(15) Every outfitting company carrying passengers for hire on any river of this state shall register with the division annually prior to commencement of operation. The registration requires the completion of the prescribed form and providing the following: evidence of registration with the Department of Commerce, evidence of river trip authorization from the appropriate controlling state or federal agency, and payment of a \$200 fee.

(16) The agent shall certify and guarantee that each river guide sponsored by the outfitting company that he represents has obtained the necessary experience, as required above, depending on the type of guide permit applied for.

(17) An outfitting company's division registration may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:

(a) the outfitting company's or agent's negligence caused personal injury or death as determined by due process of the law;

(b) the outfitting company or agent is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a calendar year period;

(c) false or fictitious statements were certified or false qualifications were used to qualify a person to obtain a guide permit for an employee or others;

(d) the division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the division;

(e) an outfitting company has utilized a private river trip permit for carrying passengers for hire and have been prosecuted by the issuing agency and found guilty of the violation; or

(f) the outfitting company used a guide without a valid guide permit or without the appropriate guide permit while engaging in carrying passengers for hire.

KEY: boating

~~August 15, 2002~~ **January 15, 2005**

Notice of Continuation August 7, 2001

73-18-4(4)

▼ ————— ▼

**Natural Resources, Parks and
Recreation
R651-209
Registration Expiration**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 27562

FILED: 11/27/2004, 10:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed repeal eliminates Rule R651-209 because statute, Subsection 73-18-7(11), now requires a monthly registration expiration. Therefore, this rule no longer applies. (DAR NOTE: Section 73-18-7 was last amended by S.B. 209 (2003) which is found at UT L 2003 Ch 317, and was effective 01/01/2004.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety because its provisions are now found in statute and the rule is not needed any longer.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-7(12)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no aggregate anticipated cost or savings to the state budget as this amendment removes a rule no longer needed.

❖ LOCAL GOVERNMENTS: No anticipated cost or savings to local government as this is a repeal of an out-dated rule that is now covered in statute.

❖ OTHER PERSONS: Anyone who has dealt with this rule will now have the statute to review and obey. There are no costs associated with this rule for other persons, as it is being repealed because a statute covering the topic, is in effect, thus making a duplication with this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs or savings to any organization or individual by the deletion of this rule. The rule is being repealed, because the content of the rule is already in statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this rule is no longer necessary, as it is covered by statute, the Department anticipates no fiscal impact to businesses from the deletion of Rule R651-209.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Mary Tullius, Interim Director

R651. Natural Resources, Parks and Recreation.

~~[R651-209. Registration Expiration.~~

~~R651-209-1.~~

~~— The registration decals and cards shall expire annually on the last day of April.~~

~~KEY: boating~~

~~1987~~

~~Notice of Continuation November 13, 2001~~

~~73-18-7(12)]~~

Natural Resources, Parks and
Recreation

R651-211

Assigned Numbers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27563

FILED: 11/27/2004, 10:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division of Motor Vehicles (DMV) has been issuing suffix numbers randomly. This change will reflect the same wording as the DMV uses to be consistent with their numbers. It also allows the Parks and Recreation Boating Program to have a bow number reserved for use in their education and law enforcement programs and be consistent with each program.

SUMMARY OF THE RULE OR CHANGE: This change adds the definition of the suffix letters and their assignments, and adds "UT 2628 BP" as an assigned number for the Division of Parks and Recreation to use in their boating education and law enforcement training, and the number will not be assigned to any vessel.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-7(18)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This is a refining and update to the assigned numbers used by the Division of Parks and Recreation Boating program. There is no aggregate anticipated cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: Local government will not have any affect to their cost or savings as this amendment pertains to state assigned numbers only.

❖ OTHER PERSONS: The DMV has been issuing these suffixes randomly for years. This will update all the number processing and should not have any cost or savings to the current programs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs in this amendment as it is assigning numbers and being consistent with the DMV.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this change is being made primarily for the purpose of consistency, as well as Division purposes, the Department anticipates no fiscal impact to businesses.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Mary Tullius, Interim Director

R651. Natural Resources, Parks and Recreation.

R651-211. Assigned Numbers.

R651-211-1. Assigned Numbers.

The assigned number will consist of the prefix letters, "UT", to designate the State of Utah, one to four numerals, and two suffix letters ~~[to] that may designate [county or other information.] a certain type of vessel.~~ The suffix letters that designate a certain type of vessel are: AB - Airboat; ~~[BV - Beaver; BE - Box Elder; CA - Cache; CC and CN - Carbon; DG - Daggett; DA, DB, and DC - Davis;] DL - marine dealer or manufacturer; [DU - Duchesne; EM - Emery;] EX - Exempt (for official government business only); ~~[GA - Garfield; GR - Grand; RN - Iron; JU - Juab; KA - Kane; MD - Millard; MN - Morgan; PT - Piute; RH - Rich; SA, SB, SC, SD, SG, SH, SL and ST - Salt Lake; SJ - San Juan; SP - San Pete; SE and SF - Sevier; SU - Summit; TE - Tooele; UN - Uintah; UA, UB and UT - Utah; WA - Wasatch; WN - Washington; WE and WY - Wayne; WB, WC and WD - Weber.]~~ All other suffixes shall be randomly assigned.~~

R651-211-2. Assigned Number Reserved for the Division.

"UT 2628 BP" shall be the assigned number reserved for Division use in boating education and law enforcement training, and shall not be assigned to any vessel.

KEY: boating

[1987] January 15, 2005

Notice of Continuation November 13, 2001

73-18-7(18)(a)

Natural Resources, Parks and Recreation

R651-212

Display of Yearly Registration Decals and Month of Expiration Decals

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27564

FILED: 11/27/2004, 10:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Legislature, by Subsection 73-18-7(11), assigned a monthly expiration system for vessels that supercedes the rule as it is written. This change will include the month of expiration decal. Also, there has been no rule regarding the new month of expiration decal, only printed instructions from the Division and the Division of Motor Vehicles (DMV). So Section R651-212-2 has been added to put that decal in the rule. (DAR

NOTE: Section 73-18-7 was amended by S.B. 209 (2003) which is found at UT L 2003 Ch 317, and was effective 01/01/2004.)

SUMMARY OF THE RULE OR CHANGE: The word "yearly" has been added to Registration Decals and "Month of Expiration decals" have been added to this rule to conform with Subsection 73-18-7(11).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-7(18)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These changes are to put the decals out when they should be issued and will conform to the existing statute. There are no anticipated costs or savings to the State budget.

❖ LOCAL GOVERNMENTS: Since this rule only affects state agencies, no cost or savings are anticipated for local government.

❖ OTHER PERSONS: Persons applying for Registration or Month-Of-Registration decals will know when they are to get the decals and where to place them. The person(s) who utilize the off-highway vehicle (OHV) recreational vehicles, already purchase the decals, and since these changes simply make this rule conform to existing statute, there are no anticipated costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs expected for affected persons since this amendment deals with the decals and time when they are due, and there are no costs associated at this time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this rule change simply changes the time period associated with registration stickers from yearly to month-of-expiration, the Department anticipates no fiscal impact to businesses from the proposed changes.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Mary Tullius, Interim Director

R651. Natural Resources, Parks and Recreation.
R651-212. Display of Yearly Registration Decals and Month of Expiration Decals.

R651-212-1. Display of Registration Decals.

A yearly registration decal shall be displayed three inches aft of the assigned number on each side of the vessel. On documented vessels, a yearly registration decal[s] shall be displayed on each side of the forward half of the vessel. Only current-year registration decals may be displayed.

R651-212-2. Month of Expiration Decal.

A month of expiration decal shall be displayed immediately aft of the yearly registration decal.

KEY: boating

[1987]January 15, 2005

Notice of Continuation November 19, 2001

73-18-7(18)(b)



**Natural Resources, Parks and
Recreation**

R651-215

Personal Flotation Devices

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27565

FILED: 11/27/2004, 10:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment serves several purposes: changes language to be similar to what the U.S. Coast Guard uses to describe Personal Flotation Device (PFD) types; provides more clarity and consistency with text the U.S. Coast Guard uses to reference specific conditions or restrictions found on a PFD approval label, the same for Type V PFD's; clarifies the term, "carrying passengers for hire" PFD requirements on rivers; allows an exception for the type of PFD required for carriage for a hard-hulled kayak or sea-kayak operator; and changes language to be similar to what the Coast Guard uses with regards to information on PFD approval labels.

SUMMARY OF THE RULE OR CHANGE: The changes update and clarify language, consistency, and the text of this rule to more clearly reflect the U.S. Coast Guard language and instructions for PFD's.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-18-8

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: All these rule sections are in force, and this amendment just defines and clarifies the language used throughout the amendment to be consistent with the U.S. Coast Guard's language and direction. Therefore, there are no anticipated costs or savings to the State budget.

❖ LOCAL GOVERNMENTS: These changes may provide good information for any other bodies of water not governed under the State, but as a reference point only. Local government is not affected. Therefore, there are no costs or savings.

❖ OTHER PERSONS: There are no anticipated cost or savings to other persons at this time. PFD's are purchased by the public at their discretion, and that has not changed. Everyone is required to have a PFD while on the waters of the State of Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs for affected persons as the rule amendment changes types and defines words only.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this rule would simply clarify language regarding existing floatation device usage and requirements, the Department anticipates no fiscal impact to businesses from the proposed changes.

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

NATURAL RESOURCES
 PARKS AND RECREATION
 Room 116
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Mary Tullius, Interim Director

R651. Natural Resources, Parks and Recreation.

R651-215. Personal Flotation Devices.

R651-215-1. Definitions.

- (1) "PFD" means personal flotation device.
- (2) "Vessel length" is the measurement of the permanent part of the hull, from bow to stern, across the deck down the centerline, excluding sheer.
- (3) "Wear" means to have the PFD properly worn with all fasteners connected.

(4) "White[-]water canoe" means a one or two person capacity hard hulled canoe designed for white water activities and is equipped with: flotation (e.g., factory end chambers or float bags) and thigh straps or retention devices to hold the operator(s) in the vessel if it rolls.

R651-215-2. PFD Requirements for Vessels Less than 16 Feet in Length.

No person shall operate or give permission for the operation of a vessel less than 16 feet in length unless there is at least one Type I, II, or III PFD for each person on board.

R651-215-3. PFD Requirements for Vessels 16 Feet or More in Length.

No person shall operate or give permission for the operation of a vessel 16 feet or more in length unless there is at least one Type I, II, or III PFD for each person on board. In addition to the total number of PFD's, there shall also be one Type IV PFD on board.

R651-215-4. Types of Personal Flotation Devices.

Type I - [~~Life Preserver~~ has 22 pounds of flotation and will turn an unconscious person face up. ~~Acceptable for use on all vessels.~~] Off-shore Life Jacket - provides the most buoyancy of any type of PFD. Designed to turn the most unconscious wearers to a face-up position in the water. Effective for all waters, especially open, rough or remote waters where rescue may be delayed. Acceptable for use on all vessels.

Type II - ~~Near Shore~~ [~~Buoyant~~] Buoyancy Vest - [has 15.5 pounds of flotation and will turn most unconscious persons face up.] is designed to turn some unconscious wearers to a face-up position in the water. Intended for calm, inland waters where there is a good chance of quick rescue.

Type III - [~~Special Purpose~~ has 15.5 pounds of buoyancy. There are many special designs for water sports.] Flotation Aid - Good for conscious users in calm, inland waters where there is good chance of quick rescue. Designed so conscious wearers can place themselves in a face up position in the water. The wearer may have to tilt their head back to avoid turning face-down in he water.

Type IV - Throwable Device - [has 16.5 pounds of flotation and is designed to be thrown, not worn. Must have as an additional device on class 1, 2, or 3 vessels.] Designed to be thrown to a person in the water and grasped and held by the user until rescued. Not designed to be worn.

Type V - [~~Restricted Special Purpose Devices~~ approved only for the activities listed on the label.] Special Use Device - Intended for specific activities and may be carried instead of another PFD if used according to the approval conditions on its label.

R651-215-5. Immediately Available and Readily Accessible.

Type IV PFDs shall be immediately available; all other types of PFD shall be readily accessible, unless wearing is required.

R651-215-6. Type V PFD Carried in Lieu.

A Type V PFD may be carried or worn in lieu of [~~any~~] another required PFD, but only if [the Type V PFD is approved for the activity in which the vessel is being used] it is used according to the approval conditions on its label.

R651-215-7. Whitewater River PFD Requirements.

On whitewater rivers, as defined in Subsection R651-206-2 (1), Type I or Type III PFDs, [~~if approved on the label for the activity,~~

~~are required] are required and shall be used according to the approval conditions on their labels.~~

R651-215-8. Carrying Passengers for Hire PFD Requirements on Rivers.

(1) On rivers, if carrying passengers for hire, Type I PFDs are required[~~].~~ [~~except hard hulled kayak or white water canoe operators or a working river guide may wear a Type III PFD, if approved on the label for this activity. The required Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.~~] Type I PFDs or Type V PFDs used in lieu of the Type I PFD must be listed for commercial use on the label.

(2) The required Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.

(3) Hard hulled kayak or white water canoe operators or a working river guide may wear a Type III PFD in lieu of the Type I PFD.

R651-215-9. River Throw Bag in Lieu of Type IV PFD.

On rivers, in lieu of the Type IV PFD requirement, a throw bag with a minimum of 40 feet of line may be carried.

R651-215-10. [~~Passengers for Hire PFD Requirement~~] Carrying Passengers for Hire PFD Requirements on Lakes and Reservoirs.

(1) When carrying passengers for hire, [~~except on rivers,~~] Type I PFDs are required. [~~The required Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.] Type I PFDs, or Type V PFDs used in lieu of the Type I PFD, must be listed for commercial use on the label.~~

(2) The required Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.

(3) For all hard-hulled kayak or sea-kayak operators, a Type III PFD may be carried or worn in lieu of the required Type I PFD.

R651-215-11. Required Wearing of PFDs.

(1) An inflatable PFD may not be used to meet the requirements of this Section.

(2) All persons on board a personal watercraft or a sailboard shall wear a PFD.

(3) The operator of a vessel under 19 feet in length shall require each passenger 12 years of age or younger to wear a PFD. This rule is also applicable to vessels 19 feet or more in length, except when the child is inside the cabin area.

(4) On rivers, every person on board a vessel shall wear a PFD, except PFDs may be loosened or removed by persons 13 years of age or older on designated flat water areas as listed in Section R651-215-12. When carrying passengers for hire, the river guide is responsible for the passengers on his vessel to be in compliance with this Subsection.

R651-215-12. River Flat Water Areas.

(1) On the Green River:

(a) from Red Creek Camp below Red Creek Rapids to the Indian Crossing Boat Ramp;

(b) from 100 yards below Taylor Flats Bridge to the Utah/Colorado state line in Browns Park;

(c) within Dinosaur National Monument, from the mouth of Whirlpool Canyon to the head of Split Mountain Gorge;

(d) from the mouth of Split Mountain to Jack Creek in Desolation Canyon; and

(e) from the Green River Diversion Dam below Gray Canyon to the confluence with the Colorado River.

(2) On the Colorado River:

(a) from the Colorado/Utah state line to the Westwater Ranger Station;

(b) from Big Hole Canyon in Westwater Canyon to Onion Creek;

(c) from Drinks Canyon, mile 70, to the confluence with the Green River; and

(d) after the last active rapid in Cataract Canyon.

(3) On the San Juan River, after the last active rapid prior to Lake Powell.

R651-215-13. PFDs.

All Personal Flotation Devices (PFDs) must be used according to the conditions or restrictions listed on the U.S. Coast Guard Approval Label.

KEY: boating

[~~August 15, 2002~~], January 15, 2005

**Notice of Continuation August 7, 2001
73-18-8**



**Natural Resources, Parks and
Recreation
R651-401
Off-Highway Vehicle and Registration
Stickers**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27566

FILED: 11/27/2004, 10:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 166 (2004 General Session) passed the Utah Legislature and was signed into law by Governor Walker, requiring the Motor Vehicle Division to assign an off-highway vehicle (OHV) registration number to each off-highway vehicle registered in Utah beginning January 1 2005. This number is similar to the bow number assigned to boats. S.B. 166 further requires that the Board adopt rules specifying placement position, size, and color of the registration number. Current plans call for the OHV registration number to consist of three letters and two numeric digits. (DAR NOTE: S.B. 166 is found at UT L 2004 Ch 159, and will be effective 01/01/2005.)

SUMMARY OF THE RULE OR CHANGE: Currently, no rule for the placement of the registration number is in effect. It is necessary to add a new provision, Section R651-401-2, to the rule to bring the Division into compliance with the provisions of S.B. 166.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 41-22-3(4)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The placement of the stickers will not change the cost or increase expenses for consumers. Therefore, there will be no anticipated cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: These OHV machine stickers are used by the state and therefore there is no impact on Local government.

❖ OTHER PERSONS: This is a placement issue of stickers already required by the DMV so there is no anticipated cost to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs, other than if they don't have their stickers, they would be questioned as to registration of the vehicle in the state.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department anticipates no fiscal impact to businesses from the proposed change since stickers are already required by the DMV and the new provision governing sticker placement will not change the charges associated with vehicle use.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Mary Tullius, Interim Director

R651. Natural Resources, Parks and Recreation.

R651-401. Off-Highway Vehicle and Registration Stickers.

R651-401-1. Stickers.

Upon receipt of the application in the approved form, the Division of Motor Vehicles shall issue annual registration stickers which shall be displayed as follows: on snowmobiles, a sticker shall be mounted on both sides of the hood, tunnel or pan; on motorcycles, a sticker shall be mounted on both sides of the fork; and on all-terrain type I and type II vehicles, stickers shall be mounted on the front and the rear of the vehicle. Vehicle types are defined in 41-22-2. In all instances, sticker shall be mounted in a visible location.

R651-401-2. Display of OHV Registration Numbers.

(1) The owner of an off-highway vehicle shall display the registration number assigned under 41-22-3.1 as follows: (a) on snowmobiles, the number shall be displayed on the left side of the hood, tunnel or pan; (b) on motorcycles, the number shall be displayed on the left fork, or on the left body plastic; and c) on all-terrain type I and type II vehicles, the number shall be displayed on the rear of the vehicle. (d) In all instances, the number shall be displayed in such a location as to be plainly visible from a distance of fifty feet during daylight.

(2) Letters and digits used in displaying the number assigned under 41-22-3.1 shall meet the following minimum standards: (a) The assigned number shall be displayed in upper case block letters and digits. Scripted or stylized lettering shall not be allowed. (b) Individual letters and digits shall be a minimum of one-inch high, and shall be of a color that contrasts with the color of the surface to which they are affixed.

KEY: off-highway vehicles

~~November 1, 2003~~ **January 15, 2005**

Notice of Continuation November 13, 2001
41-22-3(4)



Natural Resources, Wildlife Resources

R657-5

Taking Big Game

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27550

FILED: 11/18/2004, 14:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the big game bucks, bulls, and once-in-a-lifetime limited entry hunts and drawing as approved by the Wildlife Board.

SUMMARY OF THE RULE OR CHANGE: Section R657-5-2 is being amended to add definitions for "limited entry hunt," "limited entry permit," "once-in-a-lifetime hunt," "once-in-a-lifetime permit," and "valid application." Sections R657-5-24, R657-5-27, R657-5-31, R657-5-37, and R657-5-47 are being amended to provide a bull elk premium limited entry hunt opportunity. Sections R657-5-41, R657-5-47, R657-5-49, R657-5-52, R657-5-53, R657-5-54, and R657-5-55 are being amended to clarify the provisions that a person who has obtained a permit under these sections must report hunt information within 30 days after the end of the respective hunting seasons, whether successful or unsuccessful in harvesting a big game animal. Other provisions are being amended to provide 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: These amendments clarify requirements for: 1) reporting hunt information for limited entry big game species; and 2) clarify specific areas, methods of take, requirements and other administrative details. 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: These amendments clarify requirements for: 1) reporting hunt information for limited entry big game species; and 2) clarify specific areas, methods of take, requirements and other administrative details. 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 clarify requirements for: 1) reporting hunt information for limited entry big game species; and 2) clarify specific areas, methods of take, requirements and other administrative details. DWR determines that there are no additional compliance costs associated with these amendments.

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 Merrill at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiemerrill@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Miles Moretti, Acting Director

R657. Natural Resources, Wildlife Resources.

R657-5. Taking Big Game.

R657-5-2. Definitions.

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

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

(l) "Hunter's choice" means either sex may be taken.

(m) "Limited entry hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(n) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(o) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(p) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

~~(r)~~(r)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

~~(s)~~(s) "Spike bull" means a bull elk which has at least one antler having no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

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

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

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

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

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

R657-5-13. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not:

(a) hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon;

(b) hunt big game or discharge a shotgun or archery equipment within 600 feet of a road, house, or any other building; or

(c) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader within one mile of a cabin, house, or other building regularly occupied by people, except west of I-15 a muzzleloader may not be discharged within one-half mile of a cabin, house[,] or other building regularly occupied by people.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the proclamation of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Matheson Wetlands.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-24. Application Process for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and Application Process for General Buck Deer, General Muzzleloader Elk, and Youth General Any Bull Elk Permits.

(1)(a) A person may obtain only one permit per species of big game, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(c) A person must notify the division of any change of mailing address, residency, telephone number, and physical description.

(2) Applications are available from license agents, division offices, and through the division's Internet address.

(3) A resident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - premium limited entry, limited entry and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit; and

(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits, except as provided in Section R657-5-64(2)(b).

(4) A nonresident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry and limited entry; ~~or~~

(ii) bull elk - premium limited entry and limited entry; or

(iii) buck pronghorn - limited entry; and

(b) only one once-in-a-lifetime permit.

(5) A resident or nonresident may apply in the big game drawing for:

(a)(i) a statewide general archery buck deer permit;

(ii) by region for general season buck deer; or

(iii) by region for general muzzleloader buck deer.

(b) A youth may apply in the drawing as provided in Subsection (a), and for youth general any bull elk pursuant to Section R657-5-46.

(6) A person may not submit more than one application per species as provided in Subsections (3) and (4), and Subsection (5) in the big game drawing.

(7)(a) Applications must be mailed by the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation may be rejected.

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

(8)(a) Late applications, received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation, 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 preprinted 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]~~ nonrefundable 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 Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

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

(10) 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 Subsections R657-5-27(4).

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

(13) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-25. Fees for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1) Each premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime application must include:

(a) the highest permit fee of any permits applied for;

(b) a ~~[\$5]~~ nonrefundable handling fee for one of the following permits:

(i) buck deer;

(ii) bull elk; or

(iii) buck pronghorn; and

(c) ~~[a \$5]~~ the nonrefundable handling fee for a once-in-a-lifetime permit; and

(d) the ~~[\$5]~~ nonrefundable handling fee, if applying only for a bonus point.

(2) Each general buck deer and general muzzleloader elk application must include:

(a) the permit fee, which includes the [~~\$5~~]nonrefundable handling fee; or

(b) the [~~\$5~~]nonrefundable handling fee per species, if applying only for a preference point.

R657-5-27. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Drawings.

(1)(a) Big game drawing results may be 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 Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) Applicants shall be notified by mail of draw results by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits for the big game drawing shall be drawn in the following order:

(a) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(b) premium limited entry, limited entry and cooperative wildlife management unit bull elk;

(c) limited entry and cooperative wildlife management unit buck pronghorn;

(d) once-in-a-lifetime;

(e) youth general buck deer;

(f) general buck deer; and

(g) youth general any bull elk.

(3) ~~(a)~~ Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(a) a premium limited entry, limited entry or Cooperative Wildlife Management unit buck deer;

(b) a premium limited entry, limited entry, or Cooperative Wildlife Management unit elk; or

(c) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(4)(a) Fifteen percent of the general buck deer permits in each region are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(c) Youth hunters who wish to participate in the youth drawing must:

(i) submit an application in accordance with Section R657-5-24; and

(ii) not apply as a group.

(d) Youth applicants who apply for a general buck deer permit as provided in Subsection (c), will automatically be considered in the youth drawing based upon their birth date.

(e) Preference points shall be used when applying.

(f) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

~~(4) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:~~

~~(a) a premium limited entry, limited entry or cooperative wildlife management unit buck deer;~~

~~(b) a limited entry, or cooperative wildlife management unit bull elk; or~~

~~(c) a limited entry or cooperative wildlife management unit buck pronghorn.~~

~~(4)~~(5) If any permits listed in Subsection (2)(a) through (2)(d) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-31. Waiting Periods for Elk.

(1) A person who obtained a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit through the big game drawing process during the preceding four years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit through the big game drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) general archery, general season, general muzzleloader, antlerless elk, cooperative wildlife management unit spike bull elk, conservation, sportsman and poaching-reported reward elk permits; or

(b) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

R657-5-37. Bonus Point System and Preference Point System.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for permits in the big game drawing; or

(ii) each valid application when applying for bonus points in the big game drawing.

(b) Bonus points are awarded by species.

(c) Bonus points are awarded for:

(i) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(ii) premium limited entry, limited entry and cooperative wildlife management unit bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn; and

(iv) all once-in-a-lifetime species.

(3) A person may apply for a bonus point for:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and ~~[Cooperative Wildlife Management]~~cooperative wildlife management unit;

(ii) bull elk - limited entry and ~~[Cooperative Wildlife Management]~~cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and ~~[Cooperative Wildlife Management]~~cooperative wildlife management unit; and

(b) only one once-in-a-lifetime, including once-in-a-lifetime ~~[Cooperative Wildlife Management]~~cooperative wildlife management unit.

(4)(a) A person may not apply in the drawing for both a premium limited entry or limited entry bonus point and a premium limited entry or limited entry permit.

(b) A person may not apply in the drawing for a once-in-a-lifetime bonus point and a once-in-a-lifetime permit.

(c) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(d) A person may only apply for bonus points in the big game drawing.

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

(5)(a) Fifty percent of the permits for each hunt unit and species 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 for each species.

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

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

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

(6)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(7) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species as provided in Subsection (2)(c), including any permit obtained after the drawing.

(8) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(9) Bonus points are not transferable.

(10) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(11)(a) Bonus points are tracked using social security numbers or division-issued hunter identification numbers.

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

(c) The Division shall retain electronic copies of applications from 1996 to the current big game drawing for the purpose of researching bonus point records.

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

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

(f) The Division may eliminate any bonus points earned that are obtained by fraud or misrepresentation.

(12) Preference points are used in the big game drawing for general buck deer permits to ensure that applicants who are unsuccessful in the drawing for general buck deer permits, will have first preference in the next year's drawing.

(13) A preference point is awarded for:

(a) each valid unsuccessful application when applying for a general buck deer permit; or

(b) each valid application when applying only for a preference point in the big game drawing.

(14)(a) A person may not apply in the drawing for both a general buck deer preference point and a general buck deer permit.

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

(c) Preference points shall not be used when obtaining remaining permits after the big game drawing.

(15) Preference points are forfeited if a person obtains a general buck deer permit through the drawing.

(16)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the big game drawing.

(17) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(18)(a) Preference points are tracked using social security numbers or division-issued hunter identification numbers.

(b) The Division shall retain paper copies of applications for three years prior to the current big game drawing for the purpose of researching preference point records.

(c) The Division shall retain electronic copies of applications from 2000 to the current big game drawing for the purpose of researching preference point records.

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

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

(f) The Division may eliminate any preference points earned that are obtained by fraud or misrepresentation.

R657-5-41. Limited Entry Buck Deer Hunts.

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck, general season buck, or general muzzleloader buck hunting, except as specified in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a [~~limited entry~~] premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders [~~will receive information on reporting the hunt information with the permit.~~] must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or [~~Cooperative Wildlife Management Unit~~] cooperative wildlife management unit permit or bonus points in the following year.

(4) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

R657-5-47. Limited Entry Bull Elk Hunt.

(1) To hunt in a premium limited entry or limited entry bull elk area, a hunter must obtain ~~[a]the respective premium limited entry or limited entry elk permit.~~

(2)(a) A premium limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and to hunt all seasons specified in the hunt tables, published in the proclamation of the Wildlife Board for taking big game, for the area specified on the permit, except elk cooperative wildlife management units located within a premium limited entry unit. Spike bull elk restrictions do not apply to premium limited entry elk permittees.

(b) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) A person who has obtained a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.

(b) Limited entry and cooperative wildlife management unit bull elk permit holders ~~[will receive information on reporting the hunt information with the permit.]~~must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or ~~[Cooperative Wildlife Management Unit]~~cooperative wildlife management unit permit or bonus points in the following year.

(4) A person who has obtained a premium limited entry or limited entry bull elk permit may not hunt during any other elk permit or obtain any other elk permit, except as provided in Subsections (4)(a) and R657-5-48(3).

R657-5-49. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders ~~[will receive information on reporting the hunt information with the permit.]~~must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or ~~[Cooperative Wildlife Management Unit]~~cooperative wildlife management unit permit or bonus points in the following year.

(4) A buck pronghorn permit allows a person using any legal weapon to take one buck pronghorn within the area and season specified on the permit, except during the buck pronghorn archery hunt, only archery equipment may be used.

R657-5-52. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, except in bull moose cooperative wildlife management units located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders ~~[will receive information on reporting the hunt information with the permit.]~~must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or ~~[Cooperative Wildlife Management Unit]~~cooperative wildlife management unit permit or bonus points in the following year.

R657-5-53. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) An orientation course is required for bison hunters who draw Henry Mountain cow bison permits. Hunters will be notified of the orientation date, time and location.

(6)(a) A person who has obtained a bison permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders ~~[will receive information on reporting the hunt information with the permit.]~~must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or ~~[Cooperative Wildlife Management Unit]~~cooperative wildlife management unit permit or bonus points in the following year.

R657-5-54. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(8)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders ~~[will receive information on reporting the hunt information with the permit.]~~ must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or ~~[Cooperative Wildlife Management Unit]~~ cooperative wildlife management unit permit or bonus points in the following year.

R657-5-55. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) Any goat may be legally taken on a hunter's choice permit, however, permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) An orientation course is required for Rocky Mountain goat hunters who draw female only goat permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders ~~[will receive information on reporting the hunt information with the permit.]~~ must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or ~~[Cooperative Wildlife Management Unit]~~ cooperative wildlife management unit permit or bonus points in the following year.

R657-5-57. Antlerless Application - Deadlines.

(1) Applications are available from license agents, division offices, and through the division's Internet address.

(2) Residents may apply for, and draw the following permits, except as provided in Subsection (4):

- (a) antlerless deer;
- (b) antlerless elk;
- (c) doe pronghorn; and
- (d) antlerless moose.

(3) Nonresidents may apply in the drawing for, and draw the following permits, except as provided in Subsection (4):

- (a) antlerless deer;
- (b) antlerless elk;
- (c) doe pronghorn; and
- (d) antlerless moose, if permits are available during the current year.

(4) Any person who has obtained a pronghorn permit, or a moose permit may not apply for a doe pronghorn permit or antlerless moose permit, respectively, except as provided in Section R657-5-61.

(5) A person may not submit more than one application in the antlerless drawing per each species as provided in Subsections (2) and (3).

(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 Subsection R657-5-59(3) and Section R657-5-61.

(7)(a) Applications must be mailed by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected.

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

(8)(a) Late applications, received by the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation, will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw data base to provide:

- (i) future preprinted 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]~~ nonrefundable 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 Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

(9) 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.

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

(11) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-62. Application Withdrawal or Amendment.

(1)(a) An applicant may withdraw their application for premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing by requesting such in writing by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the ~~Salt Lake Division office.~~ address published in the proclamation of the Wildlife Board for taking big game.

(c) Handling fees will not be refunded.

(2)(a) An applicant may amend their application for the premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing by requesting such in writing by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

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

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

(d) Handling fees will not be refunded.

(e) An amendment may cause rejection if the amendment causes an error on the application.

R657-5-65. Fees for Special Hunt Applications.

(1) Each application must include:

(a) the permit fee for the species applied for; and

(b) a ~~[\$5]~~ nonrefundable handling fee.

(2)(a) Personal checks, money orders, cashier's checks and credit or debit cards are accepted from residents.

(b) Money orders, cashier's checks and credit or debit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit or debit cards must be valid at least 30 days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit or debit card.

(c) Handling fees are charged to the credit or debit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit or debit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

KEY: wildlife, game laws, big game seasons

~~July 2, 2004~~ **2005**

Notice of Continuation November 30, 2000

23-14-18

23-14-19

23-16-5

23-16-6



Natural Resources, Wildlife Resources **R657-37** Cooperative Wildlife Management Units for Big Game

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27551

FILED: 11/18/2004, 14:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the Cooperative Wildlife Management Unit (CWMU) program for big game.

SUMMARY OF THE RULE OR CHANGE: Subsection R657-37-6(4)(c) is being amended to delete a duplication in the rule. Section R657-37-7 is being amended to add that reciprocal hunting agreements may be approved to raise funds to aid in essential management practices for the benefit of the Cooperative Wildlife Management Unit (CWMU). Other changes are made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-23-3

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The amendments to this rule are for the purpose of clarification for both the CWMU operators and the Division of Wildlife Resources (DWR). The 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:** The amendments to this rule are for the purpose of clarification for both the CWMU operators and DWR. DWR determines that these amendments do not create a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule are for the purpose of clarification for both the CWMU operators and DWR. DWR determines that there are no additional compliance costs associated with these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule are for the purpose of clarification for both the CWMU operators and DWR. DWR determines that there are no compliance costs associated with this amendment.

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 Merrill at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiemerrill@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Miles Moretti, Acting Director

R657. Natural Resources, Wildlife Resources.

R657-37. Cooperative Wildlife Management Units for Big Game.

R657-37-6. Renewal of a Certificate of Registration.

(1)(a) A CWMU Certificate of Registration must be renewed annually and may be approved by the division, except as provided in Subsections (b) and (c).

(b) If any changes occur in the activities or information authorized in the current certificate of registration or CWMU Management Plan, the renewal must be considered for approval by the Wildlife Board.

(c)(i) A CWMU Certificate of Registration shall not be renewed if:

(A) a CWMU Certificate of Registration has not been issued for sixty-six percent or more of the private land included within a CWMU;

(B) a previous CWMU Certificate of Registration has not been issued in the past year or longer for sixty-six percent or more of the private land identified in the application; or

(C) sixty-six percent or more of the private land within the CWMU is under new ownership.

(ii) If a CWMU Certificate of Registration is not renewable under this Subsection, an application for a new CWMU Certificate of Registration must be completed as provided in Section R657-37-5.

(2)(a) An application for renewal of a certificate of registration must be completed and returned to the regional division office where the CWMU is established no later than September 1, 2003, for renewal of a CWMU certificate of registration for 2004.

(b) An application for renewal of a certificate of registration after 2003, must be completed and returned to the regional division office where the CWMU is established no later than August 1.

(3) The renewal application must identify all changes from the previous years CWMU Certificate of Registration or CWMU Management Plan.

(4) The renewal application must be accompanied by:

(a) the CWMU Management Plan~~[-including all maps]~~ as described in Section R657-37-4(3), if the plan has expired or is being amended; and

(b) all maps as described in Section R657-37-4(3) if the CWMU boundaries have changed; or

~~[(c) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or~~

~~—(b)(i)](c)(i) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or~~

(ii) a copy of a legal contract or agreement identifying:

(A) the private land;

(B) the duration of the contract or agreement; and

(C) the names and signatures of landowners conveying the hunting rights to the CWMU agent or landowner association operator;

~~[(d)](d) the name of the designated landowner association operator; and~~

~~[(e)](e) the nonrefundable handling fee.~~

(5) The division may reject any application that is incomplete or completed incorrectly.

(6) The division shall consider:

(a) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator when reviewing renewal of the certificate of registration; and

(b) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

(7) The division shall:

(a) approve the renewal Certificate of Registration and forward the permit recommendations to the Regional Advisory Councils and Wildlife Board; or

(b) deny the renewal Certificate of Registration and state the reasons for denial in writing to the applicant; and

(i) forward the application, reason for denial and recommendation to the Regional Advisory Councils and Wildlife Board; and

(iii) provide the applicant with information for seeking Wildlife Board review of the denial.

(8) Upon receiving the division's recommendation as provided in Subsection (b)(i), the Wildlife Board may consider:

(a) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator when reviewing renewal of the certificate of registration; and

(b) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

(9) A CWMU Certificate of Registration for renewal is authorized annually and shall expire on January 31, providing the certificate of registration is not revoked or suspended prior to the expiration date.

R657-37-7. Operation by Landowner Association.

(1)(a) A CWMU must be operated by a landowner association member who owns land within the CWMU or a landowner association operator who leases or otherwise controls hunting on land within the CWMU.

(b) A landowner association member or landowner association operator may appoint CWMU agents to protect private property within the CWMU; however, the landowner association member or landowner association operator must assume ultimate responsibility for the operation of the CWMU.

(2)(a) A landowner association member or landowner association operator may enter into reciprocal agreements with other landowner association members or landowner association operators to allow hunters who have obtained a CWMU permit to hunt within each other's CWMUs as provided in Subsections R657-37-5(6)(b) and R657-37-7(2)(b).

(b) Reciprocal hunting agreements may be approved only to:

(i) raise funds to address joint habitat improvement projects; [or]

(ii) address emergency situations limiting hunting opportunity on a CWMU; or

(iii) raise funds to aid in essential management practices for the benefit of CWMU species, including obtaining age or species population data as recommended by regional division personnel and approved by the division's wildlife section chief.

(c) If a person is authorized to hunt in one or more CWMUs as provided in Subsection (a), written permission from the landowner association member or landowner association operator and written authorization from the division must be in the person's possession while hunting.

(3)(a) A landowner association member or landowner association operator must provide any person who has obtained a permit, including general public permittees, a comparable hunting opportunity in terms of hunting area and number of days to hunt big game.

(b) A person who has obtained a CWMU permit may hunt only in the CWMU for which the permit is issued, except as provided under Subsection (2).

(4)(a) Each landowner association member or landowner association operator must:

(i) clearly post all boundaries with signs that are 8 1/2 by 11 inches on a bright yellow background with black lettering, and that contain the language provided in Subsection (b); and

(ii) clearly display signs on the CWMU at all corners, fishing streams crossing property lines, road, gates, and rights-of-way entering the land.

(b) A CWMU is created under an agreement between private landowners and the division, and approved by the Wildlife Board. Only persons with a valid CWMU permit for the CWMU may hunt moose, deer, elk or pronghorn within the boundaries of the CWMU.

The general public may use accessible public land portions of the CWMU for all legal purposes, except hunting for moose, deer, elk or pronghorn.

(5) A landowner association member or landowner association operator must provide a written copy of its guidelines used to regulate a permit holder's conduct as a guest on the CWMU to each permit holder.

(6)(a) A CWMU and the division shall cooperatively address the needs of landowners who are negatively impacted by big game animals associated with the CWMU.

(b) The CWMU and the division shall cooperatively seek methods to prevent or mitigate agricultural depredation caused by big game animals associated with the CWMU.

R657-37-9. Permit Allocation.

(1) The division shall issue CWMU permits for hunting big game to permittees:

(a) qualifying through a drawing conducted for the general public [drawing] as defined in Subsection R657-37-2(2)(c); or

(b) named by the landowner association member or landowner association operator.

(2) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.

(3) The division and the landowner association member must, in accordance with the tables provided in Subsection (4), jointly determine:

(a) the total number of permits to be issued for the CWMU; and

(b) the number of permits that may be offered by the landowner association member to the general public as defined in Subsection R657-37-2(c).

(4)(a) Permits may be allocated using an option from:

(i) table one for moose and pronghorn; or

(ii) table two for elk and deer.

(b) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.

(c) Permits shall not be issued for spike bull elk.

TABLE 1

MOOSE AND PRONGHORN		
Cooperative Wildlife Management Option	Bucks/Bulls	Unit's Share Antlerless
1	60%	0%
2	60%	40%
Public's Share		
Option	Bucks/Bulls	Antlerless
1	40%	0%
2	40%	60%

TABLE 2

ELK AND DEER		
Cooperative Wildlife Management Unit's Share		
Option	Bucks/Bulls	Antlerless
1	90%	0%
2	85%	25%
3	80%	40%
4	75%	50%

Public's Share		
Option	Bucks/Bulls	Antlerless
1	10%	100%
2	15%	75%
3	20%	60%
4	25%	50%

(5) Antlerless permits must be allocated to the CWMU proportional to the ratio of numbers of big game species using the CWMU compared to the total herd population of the respective big game species on the herd management unit.

(6) A landowner association member or landowner association operator must provide access free of charge to any person who has received a CWMU permit through the general public big game drawings, except as provided in Section 23-23-11.

(7) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated for a species or sex of big game, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game herds, including available forage, depredation, and other mitigating factors.

(8) A CWMU permit entitles the holder to hunt the species and sex of big game specified on the permit and only in accordance with the certificate of registration and the rules and proclamations of the Wildlife Board.

(9) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.

(11)(a) A complete list of the current CWMUs, big game hunts, and the date, time, and number of permits available for public drawing shall be published in the proclamation of the Wildlife Board for taking big game.

(b) The division reserves the exclusive right to list approved CWMUs in the proclamation of the Wildlife Board for taking big game. The division may unilaterally decline to list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability or willingness to allow a meaningful hunting opportunity to all the public permit holders that would otherwise draw out on the public permits.

KEY: wildlife, cooperative wildlife management unit
~~July 2, 2003~~ **2005**
 Notice of Continuation May 14, 2003
 23-23-3



Natural Resources, Wildlife Resources
R657-38
Dedicated Hunter Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27552

FILED: 11/18/2004, 14:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's Dedicated Hunter Program.

SUMMARY OF THE RULE OR CHANGE: Section R657-38-2(2)(g) is being amended to clarify the definition of "program requirements" by including returning the unused Dedicated Hunter Permit and attached tag. Section R657-38-3 is being amended to: 1) change the Certificate of Registration application deadline from April 1 to January 31; 2) add that the program requirement of returning the unused Dedicated Hunter Permit and attached tag, for participants who are members of the United States Armed Forces or public health or public safety organizations and who is mobilized or deployed on order in the interest of national defense or emergency, to request that this program requirement may be extended due to the mobilization or deployment; and 3) delete Subsection R657-38-3(11), which is no longer needed since participants must complete program requirements before obtaining the second permit. Section R657-38-4 is being amended to: 1) address participant's residency, if after joining the program, their residency changes; 2) simplify the process for how the Dedicated Hunter permits are issued; and 3) rearrangement of this section in logical order based on occurrence. Sections R657-38-5 and R657-38-6 are being amended to clarify the specific program requirements for the wildlife conservation course and wildlife conservation projects. Section R657-38-8 is being amended to: 1) delete the requirement that participants must complete program requirements to use a limited entry permit or be credited with a program harvest when using a limited entry permit, eliminating the limited entry permits from being tied into the program; and 2) rearrangement of this section for consistency and clarity. Section R657-38-9 is being amended to change the reporting requirement deadline from January 15 to January 31. Section R657-38-10 is being amended to provide that program requirements be completed by June 1 to participate in the Limited Entry Dedicated Hunter Program drawing. Other provisions are being amended to for consistency and clarity, particularly rearrangement of the provisions in a logical order based upon occurrence.

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 applicable to participants in the Dedicated Hunter Program. 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: The amendments provide clarification of procedures and requirements applicable to participants in the Dedicated Hunter Program, 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 requirements and procedures for participants in the Dedicated Hunter Program. 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 Merrill at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiemerrill@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Miles Moretti, Acting Director

R657. Natural Resources, Wildlife Resources.

R657-38. Dedicated Hunter Program.

R657-38-2. Definitions.

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

(2) In addition:

(a) "Dedicated Hunter Permit" means a general buck deer permit issued to a dedicated hunter participant in the Dedicated Hunter Program, which authorizes the participant to hunt general archery, general season and general muzzleloader in the region specified on the permit.

(b) "Hunt area" means an area prescribed by the Wildlife Board where general archery, general season or general muzzleloader deer hunting is open to permit holders for taking deer.

(c) "Limited Entry Dedicated Hunter Permit" means a limited entry deer permit or limited entry elk permit, for use in an area selected by the Division, which shall be offered through the Dedicated Hunter Program Drawing.

(d) "Participant" means a person who has remitted the appropriate fee and has been issued a certificate of registration for the Dedicated Hunter Program.

(e) "Program" means the Dedicated Hunter Program, a program administered by the division as provided in this rule.

(f) "Program harvest" means tagging a deer with a Dedicated Hunter Permit or Limited Entry Dedicated Hunter Deer Permit, or failing to return the Dedicated Hunter Permit or Limited Entry Dedicated Hunter Deer Permit with an attached, unused tag, while enrolled in the program.

(g) "Program requirements" mean the Wildlife Conservation Course as provided in Section R657-38-5, the Wildlife Conservation Project as provided in Section R657-38-6, ~~and~~ the Regional Advisory Council meeting as provided in Section R657-38-7, and returning an unused Dedicated Hunter Permit and attached tag as provided in Subsection R657-38-9(1).

(h) "Wildlife conservation course" means a course of instruction provided by the division on hunter ethics and wildlife conservation philosophies and strategies.

(i) "Wildlife conservation project" means a project designed by the division, or any other individual or entity and pre-approved by the division, that provides wildlife habitat protection or enhancement on public or private lands, improves hunting or fishing access, or other conservation projects or activities that benefit wildlife or directly benefits the division.

(j) "Wildlife conservation project manager" means an employee of the division, or person approved by the division, responsible for supervising a wildlife conservation project and maintaining and reporting records of service hours to the division.

R657-38-3. Certificate of Registration Required.

(1) A person may not participate in the program if that person has been convicted of or entered a plea in abeyance to any of the following classes of violations of Title 23, Wildlife Resources Code, or any rule or proclamation of the Wildlife Board, or is currently on wildlife license suspension:

(a) felony;

(b) Class A misdemeanor in the last five years; or

(c) three or more Class B or Class C misdemeanors in the past five years.

(2)(a) To participate in the program a person must obtain and sign a certificate of registration from the division.

(b) No more than ten thousand certificates of registration for the program may be in effect at any given time.

(c) Certificates of registration are issued on a first-come, first-served basis at division offices.

(d) Each prospective participant must provide evidence of having completed a wildlife conservation course before the division may issue the certificate of registration for the program.

(e) A certificate of registration to participate in the program shall only be issued January 1 through ~~April 1 annually.~~ January 31 annually, unless January 1 or January 31 is a Saturday, Sunday, or holiday, in which case the date shall be extended to the following business day.

(3) Each certificate of registration is valid for three consecutive general deer hunting seasons.

(4)(a) Any person who is 14 years of age or older may obtain a certificate of registration. A person 13 years of age may obtain a certificate of registration if the date of that person's 14th birthday is before the end of the calendar year in which the certificate of registration is issued.

(b) Any person who is 17 years of age or younger before the beginning date of the annual general archery deer hunt shall pay the youth participant fees.

(c) Any person who is 18 years of age or older on or before the beginning date of the annual general archery deer hunt shall pay the adult participant fees.

(5) A certificate of registration authorizes the participant an opportunity to receive annually a Dedicated Hunter Permit to hunt during the general archery, general season and general muzzleloader deer hunts. The Dedicated Hunter Permit may be used during the dates and within the hunt area boundaries established by the Wildlife Board.

(6)(a) Except as provided in Subsections (b), and R657-38-8(7), a participant ~~[entering the program]~~ using a Dedicated Hunter Permit may take two deer within three years of enrollment, ~~[but]~~ and only one deer in any one year as provided in Rule R657-5.

(b) Participants entering or re-entering the Dedicated Hunter Program shall be subject to any changes subsequently made in this rule during the three-year term of enrollment.

(c) The harvest of an antlerless deer using a Dedicated Hunter Permit, as authorized under specific hunt choice areas during the general archery deer hunt, shall be considered a program harvest.

(7) The certificate of registration must be signed by the participant. The certificate of registration is not valid without the required signature.

(8) The participant and holder of the certificate of registration must have a valid Dedicated Hunter Permit in possession while hunting. A participant is not required to have the Dedicated Hunter Certificate of Registration in possession while hunting.

(9) The division may issue a duplicate Dedicated Hunter Certificate of Registration pursuant to Section 23-19-10.

(10) Certificates of registration are not transferable and shall expire at the end of a participant's third general deer hunting season.

~~(11)(a) Certificates of registration shall not be issued to any person who previously obtained a certificate of registration if that person failed to complete program requirements or provide fees until the prior program requirements are met or the fees are remitted.~~

~~(b) A participant who failed to comply with program requirements or pay fees may not apply for, or obtain a Dedicated Hunter Certificate of Registration until prior program requirements are met or the fees are remitted.~~

~~(12)(a)~~ The program requirements set forth in Sections R657-38-5, R657-38-6, and R657-38-7 may be waived annually if the participant provides evidence of leaving the state for a minimum period of one year during the enrollment period for the Dedicated Hunter Certificate of Registration for religious or educational purposes.

(b) If the participant requests that the ~~[annual]~~ program requirements be waived in accordance with Subsection (a), and the request is granted, the participant shall not receive a Dedicated Hunter Permit for the year in which the program requirements were waived.

~~(13)(a)~~ (12)(a) A participant who is a member of the United States Armed Forces or public health or public safety organization and who is mobilized or deployed on order in the interest of national defense or emergency may request that the requirements set forth in Sections R657-38-5 ~~[and]~~, R657-38-7, and R657-38-9 be extended, and the requirement in ~~[Subsection]~~ Section R657-38-6 be satisfied as provided in Subsections (b) through (e).

(b) The program requirement set forth in Section R657-38-5 may be extended to the second or third year of the program.

(c) The program requirement set forth in Section R657-38-6 may be considered satisfied by a participant that is prevented from completing the requirement due to the mobilization or deployment.

(d) The program requirement set forth in Section R657-38-7 may be:

(i) extended to the third year in the program if the participant is currently in the second year of the program; and

(ii) waived in the third year of the program if the participant remains mobilized or deployed and is unable to reasonably meet the requirement.

(e) A participant must provide evidence of the mobilization or deployment.

~~(14)~~ (13) A refund for the Dedicated Hunter Certificate of Registration may not be issued pursuant to Section 23-19-38, except as provided in Section 23-19-38.2.

R657-38-4. Dedicated Hunter Permits.

(1)(a) Participants may hunt during the general archery, general season and general muzzleloader deer hunts within the hunt area and during the season dates prescribed in the proclamation of the Wildlife Board for taking big game.

(b) The division may exclude multiple season opportunities on specific units due to extenuating circumstances on that specific unit.

(2)(a) Participants must designate a regional hunt choice upon joining the program.

(b) The regional hunt choice shall remain in effect unless otherwise changed in writing by the participant by January ~~[15 annually]~~ 31 annually, unless January 31 is a Saturday, Sunday, or holiday, in which case the date shall be extended to the following business day, or as modified or rescinded by the Wildlife Board.

(3)(a) Participants must notify the division of any change of mailing address in order to receive a Dedicated Hunter Permit by mail.

~~(4)(a) Lifetime license holders may participate in the program.~~ (b) A participant who enters the program as a resident and becomes a nonresident, or claims residency outside of Utah shall be issued a nonresident permit at no additional charge.

(b) Upon signing the certificate of registration, the lifetime license holder agrees to forego any rights to receive a buck deer permit for the general archery, general season or general muzzleloader deer hunts as provided in Section 23-19-17.5. (c) A participant who enters the program as a nonresident and becomes a resident, or claims residency in Utah, shall be issued a resident permit with no reimbursement of the higher nonresident fee.

~~(e) A refund or credit is not issued for the general archery, general season or general muzzleloader permit.~~

~~(5)(a) A participant may exchange or surrender a Dedicated Hunter Permit in accordance with Rule R657-42.~~

~~(b) A participant may not exchange or surrender a Dedicated Hunter Permit for any other buck deer permit once the Dedicated Hunter Permit is issued and~~ (4)(a) Dedicated hunter permits may be issued through the mail by June 1 of each year and again two weeks prior to the beginning of the general archery deer hunt [has begun.

~~(6)(a) Dedicated hunter permits may be issued through the mail no sooner than June 1 of each year], and only upon evidence that all [annual] program requirements have been completed by the participant.~~

(b)(i) Participants completing ~~[annual]~~ program requirements ~~[later than two weeks prior to the beginning of the general archery deer hunt must]~~ after June 1 may obtain their Dedicated Hunter Permit over-the-counter from any division office.

~~[(ii) Over the counter dedicated hunter permits shall not be issued sooner than two weeks prior to the beginning of the general archery deer hunt, and only upon evidence that all annual program requirements have been completed by the participant.]~~

~~—(7)(a)(5)(a) The division may issue a duplicate Dedicated Hunter Permit pursuant to Section 23-19-10.~~

(b) If a participant's unused permit and tag is destroyed, lost, or stolen a participant may complete an affidavit verifying the permit was destroyed, lost, or stolen in order to obtain a duplicate.

(c) A duplicate permit shall not be issued after the closing date of the general season buck deer hunt, however, a participant may complete an affidavit and submit a copy of the affidavit for program reporting purposes as required in Section R657-38-9(3). 9(1).

(6)(a) A participant may exchange or surrender a Dedicated Hunter Permit in accordance with Rule R657-42 provided program requirements are met by June 1 annually.

(b) A participant may not exchange or surrender a Dedicated Hunter Permit for any other buck deer permit once the Dedicated Hunter Permit is issued and the general archery deer hunt has begun.

(7)(a) Lifetime license holders may participate in the program.

(b) Upon signing the certificate of registration, the lifetime license holder agrees to forego any rights to receive a buck deer permit for the general archery, general season or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general season or general muzzleloader permit.

R657-38-5. Wildlife Conservation Course.

(1)(a) The division shall provide an annual wildlife conservation course.

(b) Prior to entering or re-entering the program, and obtaining a certificate of registration, a prospective participant must complete the wildlife conservation course within the current year in which the prospective participant is entering or re-entering the program.

(2) The wildlife conservation course shall explain the program to give a prospective participant a reasonable understanding of the program as well as hunter ethics, the division's Regional Advisory Council and Wildlife Board processes, and wildlife conservation philosophies and strategies.

(3) The wildlife conservation course is available through the division's Internet site, and a limited number of classroom courses ~~[are]~~ may be available, as scheduled by division offices.

(4)(a) Evidence of completion of the wildlife conservation course shall be provided to the prospective participant upon completion of the wildlife conservation course.

(b) Certificates of registration shall not be issued without verification of the prospective participant having completed the wildlife conservation course.

(c) The division shall keep a record of all participants who complete the wildlife conservation course.

R657-38-6. Wildlife Conservation Projects.

(1) Each participant in the program shall provide a total of 24 hours of service as a volunteer on a wildlife conservation project as provided in Subsections (a) and (b), or pay the approved fee for each hour not completed as provided in Subsection (c).

(a) A participant must provide no fewer than eight hours of service ~~[during]~~ before obtaining the first ~~[year of enrollment]~~ Dedicated Hunter Permit.

(b) A participant must provide the remaining balance of service hours prior to receiving the second Dedicated Hunter Permit.

(c) Residents may not ~~[substitute]~~ purchase more than 16 of the 24 total required service hours. Nonresidents may ~~[substitute]~~ purchase all of the 24 total required service hours.

(d) The division may, upon request, approve a person who is physically unable to provide service by working on a wildlife conservation project to provide other forms of service.

(e) Goods or services provided to the division for wildlife conservation projects by a participant may be, at the discretion of the wildlife conservation project manager, substituted for service hours based upon current market values for the goods or services, and using the approved hourly service buyout rate when applying the credit.

(2) Wildlife conservation projects shall be designed by the division, or any other individual or entity and shall be pre-approved by the division.

(3)(a) Wildlife conservation projects may occur anytime during the year as determined by the division.

(b) The division shall publicize the dates, times, locations and description of approved wildlife conservation projects and activities at division offices.

(4)(a) Service hours completed in any given year may be carried over to the following years, however excess service hours shall not be carried over to any year outside of the three-year enrollment period.

(b) Dedicated hunter permits issued to participants who fail to make the deadline, two weeks prior to the opening date of the general archery deer hunt annually, shall be issued only as an over-the-counter transaction at division offices.

(5) A participant must request a receipt from the wildlife conservation project manager for service hours worked at the completion of the project, or upon showing evidence that the service hours worked are completed.

(6)(a) If a participant fails to fulfill the ~~[annual]~~ wildlife conservation project service requirement in any year of participation, as required under Subsection (4), the participant shall not be issued a Dedicated Hunter Permit for that year.

(b) The participant may obtain a Dedicated Hunter Permit for subsequent years upon completion of the wildlife conservation project program requirements due or payment of the fee in lieu thereof.

(7) The wildlife conservation project manager shall keep a record of all participants who attend the wildlife conservation project and the number of hours worked.

R657-38-8. Obtaining Other Permits.

(1)(a) ~~Participants may apply for or obtain premium limited entry, limited entry, cooperative wildlife management unit, limited entry landowner or conservation buck deer permits as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.~~

~~(b) Participants may apply for or obtain a Dedicated Hunter Limited Entry Permit as provided under Section R657-38-10.~~

~~(c) If the participant obtains a premium limited entry, limited entry, cooperative wildlife management unit, limited entry landowner, conservation, Dedicated Hunter Limited Entry buck deer permit, the Dedicated Hunter Permit becomes invalid and the~~

participant must surrender the Dedicated Hunter Permit prior to the opening day of the general archery deer hunt. A refund may not be issued pursuant to Section 23-19-38.

~~—(d) If the participant obtains a limited entry archery, limited entry any weapon, limited entry muzzleloader, limited entry landowner or conservation buck deer permit, or a Dedicated Hunter Limited Entry Permit, the participant, upon completion of annual program requirements, may use the permit only in the prescribed area during the season dates listed on the permit.~~

~~—(e) Participants who obtain a cooperative wildlife management unit permit may hunt only within those areas identified on the permit and only during the dates determined by the cooperative wildlife management unit landowner or operator.~~

~~—(2)(a) Participants may not apply for or obtain general buck deer permits issued by the division through the big game drawing, license agents, over-the-counter sales, or the Internet during the three-year period of enrollment in the program.~~

(b) In the initial sign-up year for the program, if the participant previously applied for a general buck deer permit through the big game drawing, a participant must withdraw that permit application prior to the application withdrawal date as published in the proclamation of the Wildlife Board for taking big game.

(i) The general buck deer permit fee may be refunded by the division in May, but the handling fee shall not be refunded.

(ii) If the participant fails to withdraw the general buck deer application and the permit is drawn, the general deer permit obtained through the drawing becomes invalid and must be surrendered prior to the beginning date of the general archery deer hunt. A refund may not be issued pursuant to Section 23-19-38.

~~[(3)](2) Participants may not apply for or obtain general landowner buck deer permits as provided under Rule R657-43.~~

~~[(4) The division may exclude multiple season opportunities on specific units due to extenuating circumstances on that specific unit.](3)(a) Participants may apply for or obtain any other buck deer permit as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.~~

~~[(5)](b) Participants may apply for or obtain a Dedicated Hunter Limited Entry Permit as provided under Section R657-38-10.~~

~~(c) If the participant obtains any other buck deer permit, or Dedicated Hunter Limited Entry buck deer permit, the Dedicated Hunter Permit becomes invalid and the participant must surrender the Dedicated Hunter Permit prior to the opening day of the general archery deer hunt. A refund may not be issued pursuant to Section 23-19-38.~~

~~(d) If the participant obtains any other buck deer permit, or a Dedicated Hunter Limited Entry Permit, the participant may use the permit only in the prescribed area during the season dates listed on the permit.~~

~~(e) Participants who obtain a cooperative wildlife management unit permit may hunt only within those areas identified on the permit and only during the dates determined by the cooperative wildlife management unit landowner or operator.~~

~~(4) The permit must be on the person while hunting.~~

~~[(6)(a) Obtaining a premium limited entry, limited entry, cooperative wildlife management unit, limited entry landowner or conservation](5) Obtaining any other buck deer permit does not authorize a participant to take an additional deer.~~

~~[(b) Any deer harvested by a participant using a premium limited entry, limited entry, cooperative wildlife management unit, limited entry landowner, or conservation buck deer permit shall be considered a program harvest.~~

~~—(7)(a)](6)(a) Participants may apply for or obtain antlerless deer permits as provided in Rule R657-5 and the Antlerless Addendum to the proclamation of the Wildlife Board for taking big game.~~

~~(b) Antlerless permits do not count against the number of permits issued pursuant to this program.~~

~~(c) Antlerless harvest of a deer as provided in the Antlerless Addendum to the proclamation of the Wildlife Board for taking big game shall not be considered a program harvest.~~

R657-38-9. Reporting Requirements.

~~(1)(a) A participant must return the unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Section R657-38-4(5)(c), to a division office by January 31 annually, unless January 31 is a Saturday, Sunday, or holiday, in which case the date shall be extended to the following business day.~~

~~(b) The division shall credit any participant who fails to return the unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Section R657-38-4(5)(c), by January 31 with a program harvest.~~

~~(c)(i) An unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Subsection R657-38-4(5)(c), returned after January 31, will be accepted and the credited program harvest removed.~~

~~(ii) A participant who returns a permit after the January 31 deadline, and who is credited with a second program harvest, is only eligible to obtain a permit for an available region if permits remain after the big game drawing and must obtain the Dedicated Hunter Permit over-the-counter at a division office.~~

~~(iii) If there are no permits remaining after the big game drawing, additional Dedicated Hunter permits shall not be issued.~~

~~(2)(a) The division may contact participants to gather annual harvest information and hunting activity information.~~

~~(b) Participants are expected to provide harvest information and hunting activity information if contacted by the division.~~

~~[(2)(a)](3)(a) A participant may specify a change to their regional hunt choice for a Dedicated Hunter Permit by submitting a request in writing to the division by January [15 annually,]31 annually, unless January 31 is a Saturday, Sunday, or holiday, in which case the date shall be extended to the following business day.~~

~~(b) If a change is not specified pursuant to Subsection (a), the regional hunt choice selected initially or in the prior year shall be assigned.]~~

~~—(3)(a) A participant must return the unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Section R657-38-4(7)(c), to a division office by January 15 annually.~~

~~(b) The division shall credit any participant who fails to return the unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Section R657-38-4(7)(c), with a program harvest.]~~

R657-38-10. Limited Entry Dedicated Hunter Program Drawing.

(1) Any unfilled Dedicated Hunter Permit with an unused attached tag, returned to the Division by January [15 annually,]31 annually, unless January 31 is a Saturday, Sunday, or holiday, in which case the date shall be extended to the following business day, may qualify the participant to be entered into the Dedicated Hunter Program Drawing provided:

(a) the participant is currently enrolled in the program; and

(b) the participant has returned the Dedicated Hunter Permit and unused, attached tag, or an affidavit as provided in Section R657-38-[4(7)(e)]4(5)(c).

(2)(a) One limited entry deer permit and one limited entry elk permit shall be offered through the drawing for each 250 permits received by the Division in accordance with Subsection (1).

(b) The eligible participants and limited entry permits shall be randomly drawn.

(c) The successful participant must meet all program requirements by June 1 for the current year in which the permit is valid before the issuance of the permit.

(d) If the successful participant fails to fulfill program requirements by June 1, the permit may be issued to the next participant on the alternate drawing list as provided in Rule R657-42.

(3) The drawing results may be posted at division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(4)(a) The successful participant shall be notified by mail.

(b) The successful participant must submit the appropriate limited entry fee within ten business days of the date on the notification letter.

(c) If the successful participant fails to submit the required limited entry permit fee, the permit may be issued to the next participant, who would have drawn the permit, in accordance with Rule R657-42.

(5)(a) The Limited Entry Dedicated Hunter 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.

(e) The recipient of a limited entry deer or elk 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.

(f) Bonus points shall not be awarded or utilized when applying for or obtaining Limited Entry Dedicated Hunter permits.

(g) Any participant who obtains a Limited Entry Dedicated Hunter Permit is not subject to the waiting periods set forth in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

KEY: wildlife, hunting, recreation, wildlife conservation
[January 21, 2004]2005
Notice of Continuation November 30, 2000
23-14-18



Natural Resources, Wildlife Resources

R657-42-4

Surrenders

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27553

FILED: 11/18/2004, 14:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted annually for taking public input and reviewing Rule R657-42.

SUMMARY OF THE RULE OR CHANGE: Section R657-42-4 is being amended to allow that any person who has obtained a wildlife document may surrender the wildlife document prior to the season opening date for the purpose of reinstating the number of preference points, including a preference point for the current year; and deleting the provision that does not allow preference points to be reinstated when surrendering the applicable permits.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-19-1 and 23-19-38

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This amendment is to allow preference points to be reinstated when surrendering the applicable permit. The Division of Wildlife Resources (DWR) determines that this amendment does not create a cost or savings impact to the state budget or DWR's budget.

❖ **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 is to allow preference points to be reinstated when surrendering the applicable permit. This amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons. This amendment is to allow preference points to be reinstated when surrendering the applicable permit. DWR determines that there are no compliance costs associated with this amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment is to allow preference points to be reinstated when surrendering the applicable permit. DWR determines that there are no 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 Merrill at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiemerrill@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Miles Moretti, Acting Director

R657. Natural Resources, Wildlife Resources.**R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents.****R657-42-4. Surrenders.**

(1) Any person who has obtained a wildlife document and decides not to use it, may surrender the wildlife document to any division office.

(2)~~(a)~~ Any person who has obtained a wildlife document may surrender the wildlife document prior to the season opening date of the wildlife document for the purpose of:

~~(i)~~(a) waiving the waiting period normally assessed and reinstating the number of bonus points, including a bonus point for the current year as if a permit had not been drawn, if applicable;~~(ii)~~

(b) reinstating the number of preference points, including a preference point for the current year as if a permit had not been drawn, if applicable; or

~~(iii)~~(c) purchasing a reallocated permit or any other permit available for which the person is eligible.

~~(b) Preference points shall not be reinstated when surrendering the applicable permits.~~

~~(3)~~ A CWMU permit must be surrendered before the following dates, except as provided in Section R657-42-11:

(a) the opening date for the respective general archery season for buck deer, bull elk or spike bull elk;

(b) September 1 for pronghorn and moose;

(c) August 15 for antlerless deer and elk;

(d) prior to the applicable season date for small game and waterfowl; and

(e) prior to the applicable season date of any variance approved by the Wildlife Board in accordance with Rules R657-21 and R657-37.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season.

(5) The division may not issue a refund, except as provided in Section R657-42-5.

KEY: wildlife, permits

~~[August 3, 2004]~~**2005**

Notice of Continuation May 14, 2003

23-19-1

23-19-38

23-19-38.2

Public Safety, Fire Marshal

R710-6

Liquefied Petroleum Gas Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27573

FILED: 12/01/2004, 20:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Liquefied Petroleum Gas (LPG) Board met in a regularly scheduled Board meeting on November 19, 2004, and proposed that the LPG rule be amended. The purpose of the rule amendment is to update an incorporated reference, update reference sections to correspond to the incorporated reference, and modify the requirement for vehicular guard post installations.

SUMMARY OF THE RULE OR CHANGE: The Utah LPG Board proposes to amend Rule R710-6 as follows: 1) in Subsection R710-6-1(1.1), the Board proposes to update an incorporated reference by replacing the 2001 edition of National Fire Protection Association (NFPA) 58 with the 2004 edition of NFPA 58; 2) in Section R710-6-8, the Board proposes to make several numerical and grammatical changes to the section references to make the rule sections correspond with the newly adopted incorporated reference; and, 3) in Subsection R710-6-8(8.6.6), the Board proposes to reword the section with regard to how metal vehicular guard posts are installed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-305

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 2004 edition

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There would be an anticipated cost to the state budget of approximately \$30 per volume to purchase the 2004 edition of NFPA 58. There would be an aggregate anticipated cost to the state budget of approximately \$300 to purchase the needed volumes of the 2004 edition of NFPA 58.

❖ LOCAL GOVERNMENTS: There would be an anticipated cost to local government of approximately \$30 per volume to purchase the 2004 edition of NFPA 58. The aggregate anticipated cost to local government is impossible to anticipate due to the unknown number of volumes of the 2004 edition of NFPA 58 that would be purchased by local government.

❖ OTHER PERSONS: There would be an anticipated cost to other persons of approximately \$30 per volume to purchase the 2004 edition of NFPA 58. The aggregate anticipated cost to other persons is impossible to anticipate due to the unknown number of volumes of the 2004 edition of NFPA 58 that would be purchased by those in the industry and other interested citizens.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be a compliance cost of approximately \$30 per volume to purchase the 2004 edition of NFPA 58.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is a fiscal impact on businesses to purchase the 2004 edition of NFPA 58 of only \$30 per volume. The industry likes to use the most current edition of the NFPA standards with regard to safety in the usage and handling of LP Gas in the State of Utah.

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-6. Liquefied Petroleum Gas Rules.

R710-6-1. Adoption, Title, Purpose and Scope.

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, [2001]2004 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 NATIONAL FIRE PROTECTION ASSOCIATION (NFPA), STANDARD 54, NATIONAL FUEL GAS CODE, 2002 EDITION, EXCEPT AS AMENDED BY PROVISIONS LISTED IN R710-6-8, ET SEQ.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 2002 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, 2003 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-6-8, et seq.

1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.6 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.7 VALIDITY.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

1.8 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-8. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

8.3.1 Those excluded from the act in UCA, Section 53-7-303.

8.3.2 Containers under federal control.

8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

8.3.4 Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 IFC Amendments:

8.5.1 IFC, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".

8.5.2 IFC, Section 3803.1 - General. After the word "Code" on line 2 insert ",NFPA 54".

8.5.3 IFC, Section 3809.12 Location of storage outside of buildings. On line three replace the number "20" with the number "10".

8.6 NFPA, Standard 58 Amendments:

8.6.1 NFPA, Standard 58, Section [2-2.1.3]5.2.1.1 is amended

to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels". All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels", Section VIII, and shall either be registered by the National Board of Boiler and Pressure Vessel Inspectors or the Manufacturer's Data Report for Pressure Vessels, Form U-1A, be provided.

8.6.2 NFPA, Standard 58, Section ~~2-2.1.3~~ 5.2.1.1 is amended to add the following section: (d) If an existing container is relocated within the State of Utah, and depending upon the container size, does not bear the required ASME construction code and/or National Board Stamping, the new owner may submit to the Division a request for "Special Classification Permit". Material specifications and calculations of the container shall be submitted to the Division by the new owner. Also, the new owner shall insure that a review of the proposed container be completed by a registered professional engineer experienced in pressure vessel container design and construction, and the new owner submit that report to the Division. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

8.6.3 NFPA, Standard 58, Section ~~2-2.1.9~~ 5.2.1.5 is ~~deleted and rewritten as follows~~ amended to add the following section: [Repair or alteration of containers shall comply with the latest edition of the National Board Inspection Code or the API Pressure Vessel Inspection Code as applicable.](a) Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA, STANDARD 58, SECTION ~~2-2.5.1~~ 6.6.3 IS AMENDED TO ADD THE FOLLOWING SECTION: 6.6.3.9 SKID MOUNTED ASME HORIZONTAL CONTAINERS GREATER THAN 2000 WATER

GALLONS, WITH NON-FIREPROOFED STEEL MOUNTED ATTACHED SUPPORTS, RESTING ON CONCRETE, PAVEMENT, GRAVEL OR FIRM PACKED EARTH, MAY BE MOUNTED ON THE ATTACHED SUPPORTS TO A MAXIMUM OF 12 INCHES FROM THE TOP OF THE SKID TO THE BOTTOM OF THE CONTAINER.

8.6.5 NFPA Standard 58, Sections ~~2-4.3(3)~~ 5.8.3.2(3)(a) and (b) are deleted and ~~amended to read~~ rewritten as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.6 NFPA, Standard 58, Section ~~3-2.4.2~~ 6.6.1.2 is ~~deleted and rewritten as follows~~ amended to add the following: [Guard posts or other approved means shall be provided for LP Gas containers, systems, bulk heads, connecting piping, valves and fittings, and dispensing cabinets that would be subject to vehicular damage.] When guard posts are installed they shall be installed meeting the following ~~listed~~ requirements:

8.6.6.1 Constructed of steel not less than four inches in diameter and filled with concrete.

8.6.6.2 Set with spacing not more than four feet apart.

8.6.6.3 BURIED THREE FEET IN THE GROUND IN CONCRETE NOT LESS THAN 15 INCHES IN DIAMETER.

8.6.6.4 SET WITH THE TOPS OF THE POSTS NOT LESS THAN THREE FEET ABOVE THE GROUND.

8.6.7 NFPA, Standard 58, Section ~~5-4.1.1~~ 8.4.1.1(1) is ~~deleted and rewritten~~ amended as follows: ~~[At least 10 feet from the doorway or opening frequented by the public.]~~ On line one remove "5ft (1.5m)" and replace it with "10 ft (3m)".

KEY: liquefied petroleum gas
~~October 4, 2004~~ January 15, 2005
Notice of Continuation July 5, 2001
53-7-305



End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (.) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends January 14, 2005. At its option, the agency may hold public hearings.

From the end of the waiting period through April 14, 2005, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Commerce, Occupational and
Professional Licensing
R156-50
Private Probation Provider Licensing
Act Rules

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27435
Filed: 11/16/2004, 09:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Following a public rule hearing, written comments received and further review by the Division and Board, additional amendments are being made to the proposed rule.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-50-502(4), added the word "potential" to conflict of interest to thus change the meaning to include not only conflicts of interest but also potential conflicts of interest. In Subsection R156-50-502(4)(a), deleted "drug, tobacco and/or alcohol" rehabilitation services and replaced it with "education and/or" rehabilitation services. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the October 15, 2004, issue of the Utah State Bulletin, on page 12. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-50-1, and Subsections 58-50-5(1), 58-50-9(5), 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The Division does not anticipate any further costs beyond those previously identified in the original rule filing affecting this rule.
- ❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments. Therefore, there are no anticipated costs or savings to local government.
- ❖ OTHER PERSONS: The proposed amendments may impact licensed private probation providers who have previously misinterpreted the statute and have conflicts of interest or potential conflicts of interest with clients, causing them to now change their procedures in performing the standards of probation supervision. For those private probation providers who in the past have been simultaneously providing mental health therapy services, education and/or rehabilitation services, or other services for which the licensee receives compensation and provides private probation services to the offender, the proposed amendments may mean a loss of revenue in the thousands of dollars.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments may impact licensed private probation providers who have previously misinterpreted the statute and have conflicts of interest or potential conflicts of interest with clients, causing them to now change their procedures in performing the standards of probation supervision. For those private probation providers who in the past have been simultaneously providing mental health therapy services, education and/or rehabilitation services, or other services for which the licensee receives compensation and provides private probation services to the offender, the proposed amendments may mean a loss of revenue in the thousands of dollars.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Other than the potential fiscal impact to the regulated industry as mentioned above, there appears to be no fiscal impact to other businesses as a result of this rule filing which clarifies existing standards as to a licensee's duty to disclose conflicts of interest. Klarice A. Bachman, 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:

Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@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 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-50. Private Probation Provider Licensing Act Rules.
R156-50-502. Unprofessional Conduct.**

"Unprofessional conduct" includes the following:

- (1) failing to comply with the continuing professional education requirement of Section R156-50-304;
- (2) failing to comply with the operating standards required for a presentence report;
- (3) failing to properly supervise the offender as set forth in the probation agreement;
- (4) failing to disclose any potential conflict of interest relating to supervision of an offender as set forth in Subsection 58-50-2(5), including, but not limited to the following circumstances:
 - (a) simultaneously providing mental health therapy services and private probation services to the same offender;

- (b) simultaneously providing education and/or[drug, tobacco and/or alcohol] rehabilitation services and private probation services to the same offender; or
- (c) while providing private probation services to an offender, also providing any other service to the offender for which the licensee receives compensation;
- (5) accepting any amount of money or gratuity from an offender other than that fee which is set forth in the probation agreement; or
- (6) failing to report any violation of the probation agreement.

KEY: licensing, probation, private probation provider
[2004]2005

Notice of Continuation April 26, 2001

58-50-1

58-1-106(1)(a)

58-1-202(1)(a)

58-50-5(1)

58-50-9(5)



**Judicial Conduct Commission,
Administration**

R595-1

General Provisions

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27330

Filed: 11/16/2004, 13:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change in proposed rule is to amend the original proposed new rule based on public comments received.

SUMMARY OF THE RULE OR CHANGE: This change makes nonsubstantive grammatical changes to the text of the rule. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the September 1, 2004, issue of the Utah State Bulletin, on page 18. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art. VIII, Sec 13; and Sections 78-8-101 through 78-1-108

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--These revisions do not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, do not result in either a cost or savings to the State.

❖ **LOCAL GOVERNMENTS:** None--The Judicial Conduct Commission operations do not affect local governments, therefore, there are no costs or savings.

❖ **OTHER PERSONS:** None--These revisions do not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, do not result in either costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--These revisions do not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, do not result in either compliance costs or compliance savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The Judicial Conduct Commission operations do not affect businesses.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Colin Winchester, Director

R595. Judicial Conduct Commission, Administration.

R595-1. General Provisions.

R595-1-1. Definitions.

In addition to terms defined in Section 78-8-101 et seq. of the Utah Code:

A. "Chair" means the chair of the [~~Judicial Conduct~~] Commission and includes the vice chair or acting chair.

B. "Confidential hearing" means a hearing at which allegations of misconduct or disability are presented to [the]a hearing panel or masters for resolution.

C. "Contract investigator" means a person with whom a contract exists for the performance of investigative services.

D. "Examiner" means [the]a lawyer designated by the Commission to present evidence at a confidential hearing.

E. "Formal charges" means the specific allegations of misconduct or disability identified by the Commission at the conclusion of a full investigation and upon which further proceedings will be conducted.

F. "Formal complaint" means the written document that formally charges a judge with misconduct or disability.

G. "Full investigation" means that portion of an investigation in which the judge is invited to respond in writing to specific allegations identified by the Commission. A full investigation may also include, but is not limited to: examination of documents, correspondence, court records, transcripts or tapes; interviews of the complainant, counsel, court staff, the judge and other witnesses; and inspection of physical facilities or objects.

H. "Hearing panel" means a panel of at least six members of the Commission designated to conduct a confidential hearing.

I. "Masters" means the special masters appointed by the Commission to conduct a confidential hearing.

J. "Misconduct" means a violation of the Utah Code of Judicial Conduct or Section 78-8-103(a), (b), (c), or (e) of the Utah Code.

K. "Preliminary investigation" means that portion of an investigation conducted upon receipt of a written complaint or upon authorization of the Commission. A preliminary investigation may include, but is not limited to: examination of documents, correspondence, court records, transcripts or tapes; interviews of the complainant, counsel, court staff and other witnesses; and inspection of physical facilities or objects.

L. "Presiding master" means the special master designated to preside over any hearing conducted by masters.

M. "Proceeding" means all steps in the Commission's discipline and disability process.

N. "Record" means all documents required by statute to be submitted to the Utah Supreme Court.

O. "Supreme Court" means the Utah Supreme Court.

R595-1-2. Jurisdiction.

A. Judges. The Commission has jurisdiction over judges in evaluating allegations that misconduct occurred before or during service as a judge and in evaluating allegations of disability during service as a judge.

B. Former judges. The Commission has continuing jurisdiction over former judges regarding allegations that misconduct occurred during the judicial appointment process or during service as a judge if a complaint is received before the judge left office.

R595-1-3. Confidentiality.

Confidentiality of Commission proceedings and records is governed by the Constitution of Utah and applicable state statute.

R595-1-4. Ex Parte Communications.

Commissioners shall not, individually or collectively, engage in ex parte communications about proceedings with complainants, witnesses, or judges.

R595-1-5. Attendance at Commission Meetings.

Commission members may attend Commission meetings in person, by telephone, by videoconference, or by other means approved in advance by the chair.

R595-1-6. Records Classification and Retention.

(Reserved.)

KEY: judicial conduct commission

[2004]2005

Art. VIII, Sec. 13

78-8-101 through 78-8-108

▼ ————— ▼

Judicial Conduct Commission, Administration **R595-2** Administration

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27331

Filed: 11/16/2004, 14:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change in proposed rule is to amend the original proposed new rule based on public comments received.

SUMMARY OF THE RULE OR CHANGE: This change makes nonsubstantive grammatical changes to the text of the rule and deletes a mistakenly duplicated paragraph. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the September 1, 2004, issue of the Utah State Bulletin, on page 23. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art. VIII, Sec 13; and Sections 78-8-101 through 78-1-108

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--These revisions do not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, do not result in either costs or savings to the State.

❖ **LOCAL GOVERNMENTS:** None--The Judicial Conduct Commission operations do not affect local governments, therefore, there are no costs or savings.

❖ **OTHER PERSONS:** None--These revisions do not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, do not result in either costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--These revisions do not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, do not result in either compliance costs or compliance savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The Judicial Conduct Commission operations do not affect businesses.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Colin Winchester, Director

R595. Judicial Conduct Commission, Administration.

R595-2. Administration.

R595-2-1. Executive Committee.

A. There is hereby established an executive committee of the Commission, comprised of the following three members of the Commission, all elected by the Commission: one legislator, one judge or member of the Utah State Bar, and one public member. The Commission chair shall serve as one of the members of, and as chair of, the executive committee.

B. The terms of committee members shall be two years. Committee members may be elected to subsequent terms.

C. The executive committee may:

1. recommend to the Commission the hiring or termination of the executive director;
2. hire and terminate the employment of other Commission staff;
3. approve the contracts of contract investigators;
4. recommend to the Commission salary increases for the executive director and other Commission staff; and
5. perform other administrative duties as assigned by the Commission.

R595-2-2. Terms of Commission Chair and Vice Chair.

The terms of the Commission chair and vice chair shall be two years. The chair and vice chair may be elected to subsequent terms.

R595-2-3. Duties of Executive Director.

A. The executive director shall:

1. receive, acknowledge receipt of, and review complaints, refer complaints as provided by statute, conduct preliminary investigations, notify complainants about the status and disposition of their complaints, make recommendations to the Commission regarding further proceedings or the disposition of complaints,

conduct full investigations or file formal charges when directed to do so by the Commission, and act as examiner;

2. maintain records of the Commission's operations and actions;

3. compile statistics to aid in the administration of the Commission's operations and actions;

4. prepare and distribute an annual report of the Commission's operations and actions;

5. prepare the Commission's budget for submission to the Commission and the Legislature, and administer the funds;

6. subject to the approval of the Commission or the executive committee, hire and terminate Commission staff and enter into contracts with contract investigators;

7. direct the operations of the Commission's office, and supervise other members of the Commission's staff and contract investigators;

8. with the Commission's approval, engage experts in connection with proceedings;

9. make available to the public, the laws, rules and procedures affecting the Commission and its operations;

10. consider requests for extensions of time periods established by ~~these rules~~ Commission rule, and may, upon a showing of good cause, grant such requests for a period of time not to exceed 60 days in the aggregate; and

11. perform other duties at the direction of the Commission.

B. Subject to the duty to direct and supervise, the executive director may delegate any of the foregoing duties to other members of the Commission's staff or contract investigators.]

~~C. Subject to the duty to direct and supervise, the executive director may delegate any of the foregoing duties to other members of the Commission's staff or contract investigators.]~~

KEY: judicial conduct commission

[2004]2005

Art. VIII, Sec. 13

78-8-101 through 78-8-108



Judicial Conduct Commission,
Administration
R595-3
Procedure

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27332

Filed: 11/16/2004, 14:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change in proposed rule is to amend the original proposed new rule based on public comments received.

SUMMARY OF THE RULE OR CHANGE: This change makes nonsubstantive grammatical changes to the text of the rule. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the September 1, 2004, issue of the Utah State

Bulletin, on page 24. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art. VIII, Sec 13; and Sections 78-8-101 through 78-1-108

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--These revisions do not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, do not result in either costs or savings to the State.

❖ LOCAL GOVERNMENTS: None--The Judicial Conduct Commission operations do not affect local governments, therefore, there are no costs or savings.

❖ OTHER PERSONS: None--These revisions do not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, do not result in either costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--These revisions do not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, do not result in either compliance costs or compliance savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The Judicial Conduct Commission operations do not affect businesses.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Colin Winchester, Director

R595. Judicial Conduct Commission, Administration.

R595-3. Procedure.

R595-3-1. Proof.

Formal charges shall be established by a preponderance of the evidence.

R595-3-2. Applicability of Other Rules.

Except as otherwise provided in ~~[these rules]~~ Commission rule, the Utah Rules of Evidence apply in all proceedings. Except as otherwise provided in ~~[these rules]~~ Commission rule, the Utah Rules of Civil Procedure do not apply in Commission proceedings.

R595-3-3. Right to Counsel.

A judge shall be entitled to retain and have the assistance of counsel at every stage of the proceedings.

R595-3-4. Service.

Service of ~~[the]~~ a formal complaint shall be made by personal service or certified mail upon the judge or judge's counsel. Service of all other papers or notices shall be made by regular mail with the envelope marked "confidential."

R595-3-5. Subpoena Power.

The issuance and service of subpoenas for Commission proceedings is governed by ~~[state statute]~~ Utah Code Ann. Section 78-8-108.

R595-3-6. Effect of Judge's Resignation or Retirement during Proceedings.

If a judge resigns or retires during the proceedings, the Commission shall determine whether to proceed or dismiss the proceedings.

R595-3-7. Investigation.

A. Preliminary Investigation.

1. The executive director shall review all written complaints, and shall, regardless of whether the allegations contained therein would constitute misconduct or disability if true, conduct a preliminary investigation.

2. When ~~[information is received indicating judicial misconduct or disability from a source other than a written complaint]~~ any other complaint is received, the executive director shall summarize and submit the ~~[information]~~ complaint in writing to the Commission, but shall not conduct a preliminary investigation unless authorized to do so by the Commission.

3. The scope of the preliminary investigation shall be determined by ~~[these rules]~~ Commission rule and the assigned investigator, subject to the direction of the executive director.

4. Upon completion of the preliminary investigation, the investigator shall recommend a full investigation if there is reasonable cause to support a finding of misconduct or disability. In all other cases, the investigator shall recommend that the proceedings be dismissed.

B. Full Investigation. Within ten days after a full investigation is authorized by the Commission, the executive director shall notify the judge that a full investigation has been authorized. The notice shall:

1. inform the judge of the allegations being investigated and the canons or statutory provisions allegedly violated;

2. inform the judge that the investigation may be expanded if appropriate;

3. invite the judge to respond to the allegations in writing within 20 days; and

4. include a copy of the complaint, the preliminary investigation report(s), and any and all other documentation reviewed by the Commission in determining whether to authorize a full investigation.

R595-3-8. Formal Charges.

The Commission may, upon reasonable cause to support a finding of misconduct or disability, direct the executive director to file a formal complaint. The formal complaint shall give fair and adequate notice of the nature of the alleged misconduct or disability. The executive director shall file the formal complaint with the Commission, cause a copy to be served upon the judge or judge's counsel, and file proof of service with the Commission.

R595-3-9. Pre-Hearing Procedures.

A. Answer. Within 20 days after service, the judge may file an answer to the formal complaint.

B. Scheduling of Confidential Hearing. After receipt of the judge's answer or after expiration of the time to answer, the hearing panel or masters shall schedule a confidential hearing and notify the judge of the date, time, and place of the confidential hearing.

C. Witnesses and Exhibits. Not later than 20 days before the confidential hearing, the examiner and the judge shall: confer and attempt to agree upon uncontroverted and refuted facts and uncontested and contested issues of law; and exchange all proposed exhibits and a list of all potential witnesses.

D. Exculpatory Evidence. The examiner shall provide the judge with exculpatory evidence relevant to the formal charges.

E. Duty of Supplementation. Both parties have a continuing duty to supplement information required to be exchanged under this rule.

F. Failure to Disclose. The hearing panel chair or presiding master may preclude either party from calling a witness at the confidential hearing if the party has not provided the opposing party with the witness's name and address, any statements taken from the witness, or summaries of any interviews with the witness.

R595-3-10. Discipline by Consent.

At any time after the filing of formal charges and before final disposition by the Commission, the judge may, with the consent of the examiner, admit to any or all of the formal charges in exchange for a stated sanction. The agreement shall be submitted to the Commission, which shall either approve or reject it.

R595-3-11. Confidential Hearing.

A. Authority of Hearing Panel Chair or Presiding Master. The hearing panel chair or presiding master shall rule on all motions and objections raised at the confidential hearing, may limit the time allowed for the presentation of evidence and arguments, may bifurcate any and all issues to be presented, and may make any and all other rulings regarding the procedure not contrary to statute or ~~these rules~~ Commission rule.

B. Hearing Procedures.

1. All testimony shall be under oath.

2. The examiner and the judge shall be permitted to present evidence and produce and cross-examine witnesses, present rebuttal

evidence and produce and cross-examine rebuttal witnesses, and summarize the evidence and legal issues.

3. ~~The confidential hearing~~ Confidential hearings shall be recorded by a certified court reporter or other means used or allowed by courts of record in this state.

4. Panel hearing members or masters may ask questions of any witness or the judge.

5. Immediately following the conclusion of the evidence and arguments, the hearing panel or masters shall deliberate and make a decision. Any such decision shall require a majority of the hearing panel or masters participating in the confidential hearing.

C. Post-Hearing Procedures if the Decision is to Dismiss the Formal Charges. The hearing panel chair or presiding master shall prepare and sign an order of dismissal, and shall serve the same upon the judge.

D. Post-Hearing Procedures if the Decision is to Impose any Level of Sanction or Involuntary Retirement.

1. Within 60 days from the conclusion of deliberations:

a. the hearing panel chair or presiding master shall prepare a memorandum decision, which must be approved by a majority of the hearing panel or masters participating in the confidential hearing, then signed by the hearing panel chair or presiding master and served on the examiner and the judge;

b. The examiner shall prepare findings of fact, conclusions of law, and an order consistent with the memorandum decision; and

c. The findings of fact, conclusions of law, and order shall be approved and signed by the hearing panel chair or presiding master, and served on the judge.

2. The judge shall have ten days, after service of the findings of fact, conclusions of law, and order, to lodge any objections with the Commission. If no objections are lodged, the executive director shall submit the record to the Supreme Court upon the expiration of the objection period. If objections are lodged, the Commission may either resolve the objections or refer them to the Supreme Court without resolution, along with the record.

3. A copy of the record shall be provided to the judge at no cost.

R595-3-12. Amendments to Formal Complaint or Answer.

At any time before the hearing panel chair or presiding master signs the findings of fact, conclusions of law, and order, the formal complaint or answer may be amended to conform to the proof or to allege additional facts. If the formal complaint is amended, the judge shall be given reasonable time to answer and present evidence in defense of the amended charges.

R595-3-13. Reinstatement of Proceedings after Dismissal.

A. Reinstatement upon Request by Complainant.

1. If the Commission dismisses the proceedings at any time prior to the commencement of a confidential hearing, the complainant may, within 30 days of the date of the letter notifying the complainant of the dismissal, file a written request that the Commission reinstate the proceedings. The request shall include the specific grounds upon which reinstatement is sought.

2. The request shall be presented to the Commission at the next available meeting of the Commission, at which time the Commission shall determine whether to reinstate the proceedings.

3. A determination not to reinstate the proceedings is not appealable.

B. Reinstatement upon Request by Executive Director.

1. If the Commission dismisses the proceedings at any time prior to the filing of formal charges, the executive director may, at any time upon the receipt of newly discovered evidence, request that the Commission reinstate the proceedings. The request shall include the specific grounds upon which reinstatement is sought.

2. The request shall be presented to the Commission at the next available meeting of the Commission, at which time the Commission shall determine whether to reinstate the proceedings.

R595-3-14. Proceedings Involving Allegations of Mental or Physical Disability.

A. Initiation of Disability Proceeding. A disability proceeding ~~can~~ may be initiated ~~by~~: by written complaint; by a claim of inability to defend in a disciplinary proceeding; by an order of involuntary commitment or adjudication of incompetency; or upon authorization by the Commission upon the receipt of ~~other information~~ an unwritten complaint as provided in ~~these rules~~ statute or Commission rule.

B. Proceedings to Determine Disability Generally. All disability proceedings shall be conducted in accordance with ~~these rules~~ Commission rule, except:

1. the purpose of disability proceedings shall be to determine whether the judge suffers from a physical or mental condition that adversely affects the judge's ability to perform judicial functions; and
2. all of the proceedings shall be confidential.

KEY: judicial conduct commission

~~2004~~**2005**

Art. VIII, Sec. 13

78-8-101 through 78-8-108

▼ ————— ▼

**Judicial Conduct Commission,
Administration
R595-4
Sanctions**

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27333
Filed: 11/16/2004, 14:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change in proposed rule is to amend the original proposed new rule based on public comments received.

SUMMARY OF THE RULE OR CHANGE: This change makes nonsubstantive grammatical changes to the text of the rule and amends the list of criteria used by Judicial Conduct Commission to determine an appropriate sanction. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the September 1, 2004, issue of the Utah State Bulletin, on page 26. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the

proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art. VIII, Sec 13; and Sections 78-8-101 through 78-1-108

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None---These revisions do not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, do not result in either costs or savings to the State.

❖ LOCAL GOVERNMENTS: None--The Judicial Conduct Commission operations do not affect local governments, therefore, there are no costs or savings.

❖ OTHER PERSONS: None--These revisions do not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, do not result in either costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--These revisions do not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, do not result in either compliance costs or compliance savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The Judicial Conduct Commission operations do not affect businesses.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2005

AUTHORIZED BY: Colin Winchester, Director

R595. Judicial Conduct Commission, Administration.

R595-4. Sanctions.

R595-4-1. Dismissals with Warning or upon Stated Conditions.

A. The Commission may dismiss a complaint or formal complaint with a warning or upon stated conditions if:

1. the judge stipulates that ~~misconduct~~ the conduct complained of has occurred;

2. the Commission finds that the ~~misconduct~~ stipulated conduct constitutes ~~[troubling but relatively minor misbehavior]~~ misconduct; and

3. the Commission finds that the misconduct is troubling but relatively minor and that no public sanction is warranted.

B. The Commission will not dismiss a complaint or formal complaint with a warning or upon stated conditions if:

1. the Commission finds that a public sanction is warranted;

2. the Commission has previously dismissed a complaint or formal complaint against the judge upon stated conditions and the current misconduct violates one or more of those conditions; or

3. the Commission finds that the current misconduct is the same or similar to misconduct established from a previous complaint or formal complaint that was dismissed with a warning or upon stated conditions.

R595-4-2. Sanctions Guidelines.

In determining an appropriate sanction for misconduct, the Commission shall consider the following non-exclusive factors:

A. the nature of the misconduct;

B. the gravity of the misconduct;

C. the extent to which the misconduct has been reported or is known among court employees, participants in the judicial system or the public, provided that the complainant or someone acting in concert with the complainant is not the source of the dissemination of information;

D. the extent to which the judge has accepted responsibility for the misconduct;

E. the extent to which the judge has made efforts to avoid repeating the same or similar misconduct;

F. the length of the judge's service on the bench;

G. the effect the misconduct has had upon the confidence of court employees, participants in the judicial system or the public in the integrity or impartiality of the judiciary;

H. the extent to which the judge profited or satisfied his or her personal desires as a result of the misconduct; and

I. the number and type of previous sanctions imposed against the judge.

KEY: judicial conduct commission

~~2004~~ 2005

Art. VIII, Sec. 13

78-8-101 through 78-8-108



End of the Notices of Changes in 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, Occupational and Professional Licensing **R156-31c** Nurse Licensure Compact Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27567
FILED: 11/29/2004, 13:19

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 31c, is the Nurse Licensure Compact. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-31c-103 provides that the Division may adopt rules necessary to implement the provisions of Chapter 31c. This rule was enacted to clarify the provisions of Title 58, Chapter 31c.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was originally enacted on January 1, 2000, it has been amended once in February 2000. In February 2000, the rule was amended to bring the rule into compliance with other states involved in the nurse licensure compact and to delete the requirement for an automatic cease and desist order when an

individual is denied licensure in a new home state. The Division received no written comments with respect to the proposed amendments nor has it received any written comments with respect to this rule since it was originally enacted.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 31c, with respect to the Nurse Licensure Compact.

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:
Laura Poe at the above address, by phone at 801-530-6789,
by FAX at 801-530-6511, or by Internet E-mail at
lpoe@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 11/29/2004



End of the Five-Year Notices of Review and Statements of Continuation 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

Fleet Operations, Surplus Property
No. 27440 (AMD): R28-1. State Surplus Property Disposal.
Published: October 15, 2004
Effective: November 17, 2004

Agriculture and Food

Regulatory Services
No. 27453 (NEW): R70-540. Food Establishment Registration.
Published: October 15, 2004
Effective: November 16, 2004

Commerce

Real Estate
No. 27349 (AMD): R162-103. Appraisal Education Requirements.
Published: September 1, 2004
Effective: November 24, 2004

No. 27350 (AMD): R162-104. Experience Requirement.
Published: September 1, 2004
Effective: November 24, 2004

Community and Economic Development

Community Development, History
No. 27359 (AMD): R212-4. Archaeological Permits.
Published: September 15, 2004
Effective: November 23, 2004

Human Services

Recovery Services
No. 27434 (AMD): R527-201. Medical Support Services.
Published: October 15, 2004
Effective: November 30, 2004

No. 27391 (AMD): R527-300. Income Withholding.
Published: September 15, 2004
Effective: November 30, 2004

Natural Resources

Parks and Recreation
No. 27442 (AMD): R651-620. Protection of Resources Park System Property.
Published: October 15, 2004
Effective: November 16, 2004

Public Safety

Fire Marshal
No. 27433 (AMD): R710-3. Assisted Living Facilities.
Published: October 15, 2004
Effective: November 16, 2004

No. 27436 (AMD): R710-8. Day Care Rules.
Published: October 15, 2004
Effective: November 16, 2004

Workforce Services

Workforce Information and Payment Services
No. 27470 (AMD): R994-201-101. General Definitions and Acronyms.
Published: October 15, 2004
Effective: November 16, 2004

No. 27469 (R&R): R994-401. Payment of Benefits.
Published: October 15, 2004
Effective: November 16, 2004

No. 27471 (R&R): R994-403. Claim for Benefits.
Published: October 15, 2004
Effective: November 16, 2004

No. 27472 (AMD): R994-405. Ineligibility for Benefits.
Published: October 15, 2004
Effective: November 16, 2004

No. 27473 (AMD): R994-406-505. Overpayments Not Set Up (NSU).
Published: October 15, 2004
Effective: November 16, 2004

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2004, including notices of effective date received through December 1, 2004, the effective dates of which are no later than December 15, 2004. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the Bulletin and related publications; we hope to have them resolved as soon as possible. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Administrative Services					
<u>Facilities Construction and Management</u>					
R23-3	Planning and Programming for Capital Projects	27313	5YR	07/28/2004	2004-16/33
R23-29	Across the Board Delegation	26991	5YR	03/10/2004	2004-7/35
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	27120	AMD	07/01/2004	2004-10/4
R25-7-6	Reimbursements for Meals	27164	AMD	07/02/2004	2004-11/4
<u>Fleet Operations, Surplus Property</u>					
R28-1	State Surplus Property Disposal	27440	AMD	11/17/2004	2004-20/7
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	26843	AMD	02/12/2004	2004-1/4

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures	27277	5YR	07/02/2004	2004-15/62
R35-1	State Records Committee Appeal Hearing Procedures (5YR EXTENSION)	26973	NSC	07/02/2004	Not Printed
R35-2	Declining Appeal Hearings	27278	5YR	07/02/2004	2004-15/62
R35-3	Prehearing Conferences	27279	5YR	07/02/2004	2004-15/63
R35-4	Compliance with State Records Committee Decisions and Orders	27280	5YR	07/02/2004	2004-15/63
R35-5	Subpoenas Issued by the Records Committee	27281	5YR	07/02/2004	2004-15/64
R35-6	Expedited Hearings	27282	5YR	07/02/2004	2004-15/64
<u>Agriculture and Food</u>					
<u>Animal Industry</u>					
R58-20	Domesticated Elk Hunting Parks	26990	5YR	03/05/2004	2004-7/35
R58-20-5	Facilities	26989	AMD	05/04/2004	2004-7/3
R58-21	Trichomoniasis	26891	AMD	03/04/2004	2004-3/4
<u>Plant Industry</u>					
R68-6	Utah Nursery Act	27320	AMD	09/15/2004	2004-16/5
R68-7-6	Categorization of Pesticide Applicators	26794	NSC	01/01/2004	Not Printed
R68-20-1	Authority	26949	AMD	04/01/2004	2004-5/2
R68-20-1	Authority	26987	NSC	05/01/2004	Not Printed
<u>Regulatory Services</u>					
R70-310	Grade A Pasteurized Milk	27149	AMD	07/02/2004	2004-11/6
R70-310	Grade A Pasteurized Milk	27286	5YR	07/09/2004	2004-15/65
R70-330	Raw Milk for Retail	27069	AMD	06/02/2004	2004-9/4
R70-440	Egg Products Inspection	27425	NEW	11/04/2004	2004-19/4
R70-540	Food Establishment Registration	27453	NEW	11/16/2004	2004-20/9
R70-630	Water Vending Machine	27291	5YR	07/13/2004	2004-15/65
R70-630	Water Vending Machine	27290	AMD	09/08/2004	2004-15/4
R70-630	Water Vending Machine	27380	NSC	11/01/2004	Not Printed
R70-960	Weights and Measures Fee Registration	27424	NEW	11/02/2004	2004-19/4
<u>Alcoholic Beverage Control</u>					
<u>Administration</u>					
R81-1-3	General Policies	27025	AMD	06/01/2004	2004-8/4
R81-1-8	Consent Calendar Procedures	27027	AMD	06/01/2004	2004-8/5
R81-1-21	Beer Advertising in Event Venues	27028	AMD	06/01/2004	2004-8/6
R81-1-21	Beer Advertising in Event Venues	27145	NSC	06/01/2004	Not Printed
R81-1-21	Beer Advertising in Event Venues	27105	NSC	06/01/2004	Not Printed
R81-1-22	Diplomatic Embassy Shipments and Purchases	27029	AMD	06/01/2004	2004-8/8
R81-1-23	Sales Restrictions on Products of Limited Availability	27030	AMD	06/01/2004	2004-8/10
R81-2-1	Special Orders of Liquor by Public	27031	AMD	06/01/2004	2004-8/11
R81-2-2	Liquor Returns, Refunds and Exchanges	27032	AMD	06/01/2004	2004-8/12
R81-2-7	Minors on Premises	27033	AMD	06/01/2004	2004-8/14
R81-2-8	Accepting Checks as Payment for Liquor	27034	AMD	06/01/2004	2004-8/14
R81-2-9	Accepting Credit Cards as Payment for Liquor	27035	AMD	06/01/2004	2004-8/16
R81-2-9	Accepting Credit Cards as Payment for Liquor	27201	AMD	08/02/2004	2004-12/3

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R81-2-10	State Store Hours	27036	AMD	06/01/2004	2004-8/17
R81-2-11	Industry Members in State Stores	27037	AMD	06/01/2004	2004-8/18
R81-3-5	Special Orders of Liquor by Public	27038	AMD	06/01/2004	2004-8/19
R81-3-6	Liquor Returns, Refunds and Exchanges	27039	AMD	06/01/2004	2004-8/20
R81-3-14	Type 5 Package Agencies	27040	AMD	06/01/2004	2004-8/22
R81-3-16	Minors on Premises	27041	AMD	06/01/2004	2004-8/23
R81-3-17	Consignment Inventory Package Agencies	27042	AMD	06/01/2004	2004-8/24
R81-3-18	Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales	27043	AMD	06/01/2004	2004-8/25
R81-3-19	Credit Cards	27044	AMD	06/01/2004	2004-8/26
R81-3-19	Credit Cards	27146	NSC	06/01/2004	Not Printed
R81-3-19	Credit Cards	27104	NSC	06/01/2004	Not Printed
R81-4D-13	On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales	27045	AMD	06/01/2004	2004-8/27
R81-6-6	Religious Wine Permits	27046	AMD	06/01/2004	2004-8/29
R81-8-2	Out of State Business	27047	AMD	06/01/2004	2004-8/30
R81-8-3	Winery Tasting Facilities	27048	AMD	06/01/2004	2004-8/31
Commerce					
<u>Administration</u>					
R151-33	Pete Suazo Utah Athletic Commission Act Rule	27312	AMD	09/15/2004	2004-16/8
<u>Consumer Protection</u>					
R152-11	Utah Consumer Sales Practices Act Rules	26945	AMD	05/20/2004	2004-5/3
R152-21	Credit Services Organizations Act Rules	27238	5YR	06/15/2004	2004-13/66
R152-34	Postsecondary Proprietary School Act Rules	26905	AMD	05/20/2004	2004-4/2
<u>Occupational and Professional Licensing</u>					
R156-1	General Rules of the Division of Occupational and Professional Licensing	26678	NSC	01/01/2004	Not Printed
R156-1	General Rules of the Division of Occupational and Professional Licensing	27358	EMR	08/24/2004	2004-18/79
R156-1	General Rules of the Division of Occupational and Professional Licensing	27377	AMD	10/18/2004	2004-18/4
R156-1-106	Division - Duties, Functions, and Responsibilities	26805	AMD	01/20/2004	2003-24/4
R156-1-302	Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition	27103	NSC	06/01/2004	Not Printed
R156-5a	Podiatric Physician Licensing Act Rules	26917	5YR	01/27/2004	2004-4/74
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	CPR	02/19/2004	2004-2/10
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	AMD	02/19/2004	2003-22/11
R156-22-503	Administrative Penalties	26859	NSC	01/01/2004	Not Printed
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	26786	AMD	01/06/2004	2003-23/7
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	27019	AMD	05/24/2004	2004-8/32
R156-31c	Nurse Licensure Compact Rules	27567	5YR	11/29/2004	2004-24/67
R156-37c	Utah Controlled Substance Precursor Act Rules	26916	5YR	01/27/2004	2004-4/74
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	26834	AMD	02/03/2004	2004-1/5
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	27020	AMD	07/26/2004	2004-8/39

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	27020	CPR	07/26/2004	2004-12/73
R156-39a	Alternative Dispute Resolution Providers Certification Act Rules	26915	5YR	01/27/2004	2004-4/75
R156-42a	Occupational Therapy Practice Act Rules	27400	5YR	09/02/2004	2004-19/48
R156-44a	Nurse Midwife Practice Act Rules	27224	5YR	06/10/2004	2004-13/66
R156-46a	Hearing Instrument Specialist Licensing Act Rules	27247	5YR	06/24/2004	2004-14/56
R156-46b	Division Utah Administrative Procedures Act Rules	27401	AMD	11/02/2004	2004-19/6
R156-47b	Massage Therapy Practice Act Rules	26937	AMD	06/07/2004	2004-5/5
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	CPR	01/20/2004	2003-24/70
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	AMD	01/20/2004	2003-18/4
R156-55a-301	License Classifications - Scope of Practice	27441	NSC	10/01/2004	Not Printed
R156-55b	Electricians Licensing Rules	27112	AMD	06/15/2004	2004-10/6
R156-55d-302f	Qualifications for Licensure - Good Moral Character - Disqualifying Convictions	27188	AMD	10/05/2004	2004-12/4
R156-55d-302f	Qualifications for Licensure - Good Moral Character - Disqualifying Convictions	27188	CPR	10/05/2004	2004-17/47
R156-56	Utah Uniform Building Standard Act Rules	26693	AMD	01/01/2004	2003-21/7
R156-56	Utah Uniform Building Standard Act Rules	26866	NSC	01/01/2004	Not Printed
R156-56	Utah Uniform Building Standard Act Rules	27101	CPR	08/17/2004	2004-14/37
R156-56	Utah Uniform Building Standard Act Rules	27101	AMD	08/17/2004	2004-9/5
R156-56-707	Statewide Amendments to the IPC	26692	AMD	01/01/2004	2003-21/34
R156-60	Mental Health Professional Practice Act Rules	27501	5YR	10/21/2004	2004-22/68
R156-60a	Social Worker Licensing Act Rules	27285	AMD	09/01/2004	2004-15/17
R156-60a	Social Worker Licensing Act Rules	27502	5YR	10/21/2004	2004-22/68
R156-60b	Marriage and Family Therapist Licensing Act Rules	27503	5YR	10/21/2004	2004-22/69
R156-61	Psychologist Licensing Act Rules	27225	5YR	06/10/2004	2004-13/67
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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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	27051	R708-10	NSC	06/01/2004	Not Printed
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	27158	R657-27	AMD	07/02/2004	2004-11/77
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Natural Resources, Wildlife Resources	26778	R657-41	AMD	01/05/2004	2003-23/61
<u>witness fees</u>					
Labor Commission, Adjudication	26772	R602-1	AMD	01/02/2004	2003-23/46
<u>wood furniture</u>					
Environmental Quality, Air Quality	27219	R307-343	5YR	06/08/2004	2004-13/69
	27144	R307-343	NSC	06/08/2004	Not Printed
<u>work-based learning programs</u>					
Education, Administration	27212	R277-916	5YR	06/01/2004	2004-12/80
<u>workers' compensation</u>					
Labor Commission, Adjudication	26773	R602-2-1	AMD	01/02/2004	2003-23/47
	27492	R602-2-4	AMD	12/02/2004	2004-21/17
Labor Commission, Industrial Accidents	26697	R612-4-2	AMD	01/01/2004	2003-21/64
	27493	R612-4-2	AMD	12/02/2004	2004-21/19
Workforce Services, Workforce Information and Payment Services	26930	R994-404	R&R	04/04/2004	2004-4/43
	27253	R994-404-101	AMD	08/18/2004	2004-14/34
	26996	R994-404-101	NSC	05/01/2004	Not Printed
<u>workforce investment act</u>					
Workforce Services, Employment Development	27393	R986-600	AMD	11/01/2004	2004-18/66
<u>working toward employment</u>					
Workforce Services, Employment Development	26706	R986-400	AMD	01/01/2004	2003-21/81
<u>youth</u>					
Human Services, Administration, Administrative Services, Licensing	26874	R501-16	NSC	05/01/2004	Not Printed
	26804	R501-16	AMD	04/12/2004	2003-24/29