

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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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 63G-3-402.

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

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

Division of Administrative Rules, Salt Lake City 84114

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TABLE OF CONTENTS

SPECIAL NOTICES	1
Health	
Health Care Financing, Coverage and Reimbursement Policy	
Notice for October 2009 Medicaid Rate Changes.....	1
Transportation	
Program Development	
Notice of Public Hearing on Rule R909-19, Safety Regulations for Tow Truck	
Operations - Tow Truck Requirements for Equipment, Operation and Certification.....	1
EXECUTIVE DOCUMENTS	3
Governor	
Administration	
Governor's Proclamation: Calling the Fifty-Eighth Legislature into the First Extraordinary Session.....	3
Governor's Proclamation: Calling the Fifty-Eighth Legislature into the Second Extraordinary Session.....	3
Governor's Proclamation: Calling the Fifty-Eighth Legislature into the Third Extraordinary Session.....	4
NOTICES OF PROPOSED RULES	7
Alcoholic Beverage Control	
Administration	
No. 32897 (Amendment): R81-1-3 General Policies.....	8
Commerce	
Occupational and Professional Licensing	
No. 32914 (Amendment): R156-28 Veterinary Practice Act Rule.....	10
No. 32913 (Amendment): R156-60a Social Worker Licensing Act Rules.....	11
Education	
Administration	
No. 32917 (Amendment): R277-494 Charter School and Online Student Participation	
in Extracurricular or Co-curricular School Activities.....	14
No. 32918 (Amendment): R277-501 Educator Licensing Renewal and Timelines.....	17
No. 32919 (Amendment): R277-502-6 Returning Educator Relicensure.....	18
Health	
Children's Health Insurance Program	
No. 32928 (Amendment): R382-10 Eligibility.....	20
Health Care Financing, Coverage and Reimbursement Policy	
No. 32927 (Amendment): R414-301 Medicaid General Provisions.....	21
No. 32933 (Amendment): R414-304 Income and Budgeting.....	24
No. 32935 (Amendment): R414-305 Resources.....	31
No. 32925 (Amendment): R414-320 Medicaid Health Insurance Flexibility and	
Accountability Demonstration Waiver.....	36
Human Services	
Child and Family Services	
No. 32905 (Amendment): R512-51 Fee Collection for Criminal Background Screening	
for Prospective Foster and Adoptive Parents and for Employees of Other Department	
of Human Services Licensed Programs.....	41
No. 32906 (Amendment): R512-60 Children's Trust Account.....	42
No. 32907 (Amendment): R512-200 Child Protective Services, Intake Services.....	44
No. 32909 (Amendment): R512-204 Child Protective Services, New Caseworker Training.....	47
Recovery Services	
No. 32890 (Amendment): R527-258 Enforcing Child Support When the Obligor is an	
Ex-Prisoner or in a Treatment Program.....	48
Insurance	
Administration	
No. 32901 (Amendment): R590-226 Submission of Life Insurance Filings.....	49
No. 32903 (Amendment): R590-227 Submission of Annuity Filings.....	56
No. 32908 (Amendment): R590-228 Submission of Credit Life and Credit Accident and	
Health Insurance Form and Rate Filings.....	63

TABLE OF CONTENTS

Natural Resources	
Parks and Recreation	
No. 32899 (Amendment): R651-202-1 Boating Advisory Council.....	68
No. 32898 (New Rule): R651-700 Administrative Procedures for Real Property Management.....	69
Wildlife Resources	
No. 32921 (Amendment): R657-9 Taking Waterfowl, Common Snipe and Coot.....	78
No. 32922 (Amendment): R657-10 Taking Cougar.....	84
No. 32923 (Amendment): R657-11 Taking Furbearers.....	87
No. 32924 (Amendment): R657-12 Hunting and Fishing Accommodations for People With Disabilities.....	89
No. 32926 (Amendment): R657-39 Wildlife Board and Regional Advisory Councils.....	90
No. 32929 (Amendment): R657-50 Error Remedy.....	91
No. 32930 (Amendment): R657-54 Taking Wild Turkey.....	95
School and Institutional Trust Lands	
Administration	
No. 32931 (Amendment): R850-40-250 Determination of the Status of Temporary Easements and Rights-of-Entry.....	99
No. 32932 (Amendment): R850-140 Development Property.....	101
Sports Authority (Utah)	
Pete Suazo Utah Athletic Commission	
No. 32920 (Amendment): R859-1-501 Promoter's Responsibility in Arranging Contests - Permit Fee, Bond, Restrictions.....	105
Technology Services	
Administration	
No. 32891 (New Rule): R895-13 Access to the Identity Theft Reporting Information System Database.....	107
Transportation	
Program Development	
No. 32934 (New Rule): R926-12 Share the Road Bicycle Support Restricted Account.....	108
Workforce Services	
Employment Development	
No. 32910 (Amendment): R986-200-244 TANF Needy Family (TNF).....	109
NOTICES OF CHANGES IN PROPOSED RULES.....	111
Commerce	
Occupational and Professional Licensing	
No. 32711: R156-16a Optometry Practice Act Rules.....	112
No. 32717: R156-55b-302a Qualifications for Licensure - Education and Experience Requirements.....	113
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION.....	115
Commerce	
Occupational and Professional Licensing	
No. 32911: R156-60a Social Worker Licensing Act Rules.....	115
No. 32912: R156-60b Marriage and Family Therapist Licensing Act Rule.....	115
Health	
Health Care Financing, Coverage and Reimbursement Policy	
No. 32894: R414-501 Preadmission and Continued Stay Review.....	116
No. 32902: R414-502 Nursing Facility Levels of Care.....	117
No. 32895: R414-503 Preadmission Screening and Annual Resident Review.....	117
Health Systems Improvement, Licensing	
No. 32915: R432-32 Licensing Exemption for Non-Profit Volunteer End-of-Life Care.....	118
Human Services	
Services for People with Disabilities	
No. 32889: R539-2 Service Coordination.....	118
No. 32888: R539-3 Rights and Protections.....	119

NOTICES OF RULE EFFECTIVE DATES.....121

RULES INDEX.....123

SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for October 2009 Medicaid Rate Changes

Effective October 1, 2009, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. Nursing home rate changes to case mix components consistent with adopted payment methodology. It is not anticipated that these rate changes will have a substantial fiscal impact. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

Transportation Program Development

Notice of Public Hearing on Rule R909-19, Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification

Notice is hereby given that the Motor Carrier Advisory Board for the Utah Department of Transportation will meet Thursday, September 17, 2009, at 8:30 a.m. in the Calvin Rampton Building, Main Floor Conference Room, 4501 South 2700 West, Salt Lake City, Utah, and then and there during the Board meeting conduct a public hearing on proposed changes to Administrative Rule R909-19, Safety Regulations for Tow Truck Operations, Tow Truck Requirements for Equipment, Operation and Certification.

Persons wishing to provide comments on the proposed changes to Administrative Rule R909-19 will have the opportunity to do so orally and/or in writing at the Public Hearing, or by providing written comments by Thursday, September 17, 2009, at 12:00 p.m. Oral comments will be accepted during the public comment portions of the Hearing beginning at 8:30 a.m. The comments will be recorded by a court reporter.

Written statements and other exhibits may be filed in place of or in addition to oral statements made at the hearing. Written statements will be accepted at the Hearing and until the comment deadline. Written statements must be postmarked no later than Thursday, September 17, 2009, at 5:00 p.m. and addressed to Ms. Shirleen Hancock, Deputy Director, Motor Carrier Division, 4501 S. 2700 W., Box 148240 Salt Lake City, UT 84114-8240.

For further information on the Public Hearing, please contact Ms. Melissa Bechaver at 801-965-4633.

In accordance with Americans with Disabilities Act, please advise Ms. Bechaver (contact information listed above) by Tuesday, September 15, 2009 by 4:00 p.m. if you require a sign language interpreter, assistive listening system, translator, or any other accommodation(s) to facilitate your participation in the hearing.

End of the Special Notices Section

EXECUTIVE DOCUMENTS

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

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

Governor's Proclamation: Calling the Fifty-Eighth Legislature into the First Extraordinary Session

PROCLAMATION

WHEREAS, since the close of the 2009 General Session of the 58th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature in Extraordinary Session;

NOW, THEREFORE, I, JON M. HUNTSMAN, JR., Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 58th Legislature into the First Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 17th day of June, 2009, at 12:00 noon, for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2009 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 3rd day of June, 2009.

(State Seal)

Jon M. Huntsman, Jr.
Governor

Gary R. Herbert
Lieutenant Governor

2009/1/E

Governor's Proclamation: Calling the Fifty-Eighth Legislature into the Second Extraordinary Session

PROCLAMATION

WHEREAS, since the close of the 2009 General Session of the 58th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature in Extraordinary Session;

NOW, THEREFORE, I, GARY R. HERBERT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 58th Legislature into the Second Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 19th day of August, 2009, at 12:00 noon, for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2009 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 13th day of August, 2009.

(State Seal)

Gary R. Herbert
Governor

2009/2/E

Governor's Proclamation: Calling the Fifty-Eighth Legislature into the Third Extraordinary Session

P R O C L A M A T I O N

WHEREAS, since the close of the 2009 General Session of the 58th Legislature of the State of Utah, a vacancy has occurred in the office of Lieutenant Governor;

WHEREAS, Article VII, Section 10 of the Constitution of the State of Utah provides that when a vacancy occurs in the office of Lieutenant Governor, the Governor shall, with the consent of the Senate, appoint a person to serve as Lieutenant Governor; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature in Extraordinary Session,

NOW, THEREFORE, I, GARY R. HERBERT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 58th Legislature into the Third Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 1st day of September, 2009, at 2:00 p.m., for the Senate to consent to the appointment of Gregory S. Bell to the office of Lieutenant Governor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 13th day of August, 2009.

(State Seal)

Gary R. Herbert
Governor

2009/3/E

End of the Executive Documents 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 August 15, 2009, 12:00 a.m., and September 01, 2009, 11:59 p.m. are included in this, the September 15, 2009 issue of the *Utah State Bulletin*.

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

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules will include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least October 15, 2009. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through January 13, 2010, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page

**Alcoholic Beverage Control,
Administration
R81-1-3
General Policies**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 32897
FILED: 8/25/09 12:05 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsections 32A-12-212(b) and (c) authorize the Alcoholic Beverage Control Commission to assess a reasonable administrative handling fee to an individual who either moves his/her liquor or wine collection into Utah as part of a change of residence or who is a beneficiary inheriting liquor or wine located outside of the state. This rule amendment is being proposed to authorize assessment of that fee.

SUMMARY OF THE RULE OR CHANGE: Subsections 32A-12-212(b) and (c) authorize the Alcoholic Beverage Control Commission to assess a reasonable administrative handling fee to an individual who either moves his/her liquor or wine collection into Utah as part of a change of residence or who is a beneficiary inheriting liquor or wine located outside of the state. This rule amendment authorizes the department to assess a \$20 handling fee for this purpose.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 32A-1-107(1)(b) and Subsection 32A-12-212(b) and Subsection 32A-12-212(c)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The occurrence of individuals either moving to Utah with personal liquor and wine collections or inheriting liquor and wine collections is infrequent. The \$20 handling fee that is assessed to these individuals will not affect the state budget significantly.
- ◆ **LOCAL GOVERNMENTS:** The bringing of alcoholic beverages into the state of Utah is regulated by state government. Local governments are not authorized by state law to assess fees to those who want to bring their personal collections of alcohol into the state. Therefore, local government will not be fiscally affected by the passage of this proposed rule.
- ◆ **SMALL BUSINESSES:** This fee will be assessed to individual citizens under limited circumstances. It will not affect small businesses in any way.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:**

The \$20 fee will be assessed to individual citizens under limited circumstances. The fee is minimal and will be used to offset costs incurred by the Department of Alcoholic Beverage Control staff to monitor liquor and wine being brought into the state of Utah. It is impossible to determine how many citizens the fee may affect in a given year because it is assessed so infrequently.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The \$20 fee will be assessed to individual citizens under limited circumstances. The fee is minimal and will be used to offset costs incurred by the Department of Alcoholic Beverage Control staff to monitor liquor and wine being brought into the state of Utah. It is impossible to determine how many citizens the fee may affect in a given year because it is assessed so infrequently.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment will have no impact whatsoever on businesses in Utah. If a handling fee is charged, it will be charged to individual citizens and not to businesses.

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Sharon Mackay by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Dennis Kellen, Director

**R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-3. General Policies.**

(1) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(2) Manner of Paying Fees.

Payment of all fees for licenses or permits, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

(3) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of \$20 per copy, or on the department's website at <http://www.abc.utah.gov>.

(4) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Sections 15-1-1 through -4 for any debt or obligation owed to the department by a licensee, permittee, package agent, or any other person.

(5) Returned Checks.

(a) The department will assess a \$20 charge for any check payable to the department returned for the following reasons:

- (i) insufficient funds;
- (ii) refer to maker; or
- (iii) account closed.

(b) Receipt of a check payable to the department which is returned by the bank for any of the reasons listed in Subsection (6) (a) may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the department offices, 1625 South 900 West, Salt Lake City, Utah, plus the \$20 returned check charge. Failure to make good the returned check and pay the \$20 returned check charge within thirty days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(c) In addition to the remedies listed in Subsection (6)(b), the department shall require that the licensee, permittee, or package agent transact business with the department on a "cash only" basis under the following guidelines:

(i) Except as provided in Subsection (6)(c)(ii):

(A) two or more returned checks received by the department from or on behalf of a licensee, permittee, or package agent within three consecutive months shall require that the licensee, permittee, or package agent be on "cash only" status for a period of three to six consecutive months from the date the department received notice of the second returned check;

(B) one returned check received by the department from or on behalf of a licensee, permittee, or package agent within six consecutive months after the licensee, permittee, or package agent has come off "cash only" status shall require that the licensee, permittee, or package agent be returned to "cash only" status for an additional period of six to 12 consecutive months from the date the department received notice of the returned check;

(C) one returned check received by the department from or on behalf of a licensee, permittee, or package agent at any time after the licensee, permittee, or package agent has come off "cash only" status for a second time shall require that the licensee, permittee, or package agent be on "cash only" for an additional period of 12 to 24 consecutive months from the date the department received notice of the returned check;

(D) a returned check received by the department from or on behalf of an applicant for a license, permit, or package agency for either an application or initial license or permit fee shall require that the applicant be on "cash only" status for a period of three

consecutive months from the date the department received notice of the returned check;

(E) a returned check received by the department from or on behalf of a licensee or permittee for a license or permit renewal fee shall require that the licensee or permittee be on "cash only" status for a period of three consecutive months from the date the department received notice of the returned check;

(ii) a returned check received by the department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit shall require that the person or entity that applied for or held the permit be on "cash only" status for any future events requiring permits from the commission that are conducted within a period of up to 18 consecutive months from the date the department received notice of the returned check;

(iii) in instances where the department has discretion with respect to the length of time a licensee, permittee, or package agent is on "cash only" status, the department may take into account:

(A) the dollar amount of the returned check(s);

(B) the length of time required to collect the amount owed the department;

(C) the number of returned checks received by the department during the period in question; and

(D) the amount of the licensee, permittee, or package agency bond on file with the department in relation to the dollar amount of the returned check(s).

(iv) for purposes of this Subsection (6)(c), a licensee, permittee, or package agent that is on "cash only" status may make payments to the department in cash, with a cashier's check, or with a current debit card with an authorized pin number; and

(v) the department may immediately remove a licensee, permittee, or package agent from "cash only" status if it is determined that the cause of the returned check was due to bank error, and was not the fault of the person tendering the check.

(d) In addition to the remedies listed in Subsections (6) (a), (b) and (c), the department may pursue any legal remedies to effect collection of any returned check.

(6) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

(7) Administrative Handling Fees.

(a) Pursuant to 32A-12-212(1)(b) a person, on a one-time basis, who moves the person's residence to this state from outside of this state may have or possess for personal consumption and not for sale or resale, liquor previously purchased outside the state and brought into this state during the move if the person obtains department approval before moving the liquor into the state, and the person pays the department a reasonable administrative handling fee as determined by the commission.

(b) Pursuant to 32A-12-212(1)(c) a person who as a beneficiary inherits as part of an estate liquor that is located outside the state, may have or possess the liquor and transport or cause the liquor to be transported into the state if the person obtains department approval before moving the liquor into the state, the person provides sufficient documentation to the department to

establish the person's legal right to the liquor as a beneficiary, and the person pays the department a reasonable administrative handling fee as determined by the commission.

(c) The administrative handling fee to process any request for department approval referenced in subsections (1)(b) and (1)(c) is \$20.00.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: 2009

Notice of Continuation: August 31, 2006

Authorizing, and Implemented or Interpreted Law:
32A-1-106(9); 32A-1-107; 32A-1-119(5)(c); 32A-1-702; 32A-1-703; 32A-1-704; 32A-1-807; 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(1)(a); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(1)(a); 32A-4-401(1)(a); 32A-5-103(1)(a); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a); 32A-12-212(1)(b) and (c)

Commerce, Occupational and
 Professional Licensing
R156-28
 Veterinary Practice Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32914

FILED: 8/31/09 8:31 AM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Veterinary Board reviewed the rule and determined that changes need to be made to establish a minimum standard for maintenance and retention of medical records of animals treated by a veterinarian.

SUMMARY OF THE RULE OR CHANGE: In Section R156-28-303, updates rule section citations. Subsection R156-28-503(2) is added which establishes a minimum standard regarding the maintenance and retention of the medical records of an animal treated by a veterinarian. The records of a patient/animal must be maintained in such a manner that any veterinarian coming into a practice is able to proceed with the proper care and treatment of the patient. In addition, the medical records of a patient must be maintained for a minimum of five years from the date the patient was last treated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-28-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed veterinarians and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed veterinarians and applicants for licensure in that classification. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed veterinarians and applicants for licensure in that classification. Costs for licensed veterinarians may go up slightly for those licensees who are not at this point meeting the proposed minimum standard for maintenance and retention of medical records. However, the Division is not able to determine an exact cost nor does it know how many veterinarians are not currently meeting the proposed minimum standards regarding medical records.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed veterinarians and applicants for licensure in that classification. Costs for licensed veterinarians may go up slightly for those licensees who are not at this point meeting the proposed minimum standards for maintenance and retention of medical records. However, the Division is not able to determine an exact cost nor does it know how many veterinarians are not currently meeting the proposed minimum standards regarding medical records.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated in the rule summary, this filing establishes standards regarding the maintenance of patient records and could result in some costs to veterinarians who do not already meet this standard, but the cost is difficult to determine. No other fiscal impact to businesses is anticipated.

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 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 NO LATER THAN 5:00 PM ON 10/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 09/17/2009 9:00 PM, Heber Wells Bldg, 160 E 300 S, Conference Room 464 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-28. Veterinary Practice Act Rule.

R156-28-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 28 is established by rule in Section R156-1-308a(1).

(2) Renewal procedures shall be in accordance with Section R156-1-308[a]c.

(3) Applicants for renewal shall meet the continuing education requirements specified in Section R156-28-304.

R156-28-503. Minimum Standards of Practice.

In accordance with Subsection 58-28-102(14) and Section 58-28-603, a veterinarian shall comply with the following minimum standards of practice in addition to the generally recognized standards and ethics of the profession:

(1) A veterinarian shall compile and maintain records on each patient to minimally include:

(a) client's name, address and phone number, if telephone is available;

(b) patient's identification, such as name, number, tag, species, age and gender, except for herds, flocks or other large groups of animals which may be more generally defined;

(c) veterinarian's diagnosis or evaluation of the patient;

(d) treatments rendered including drugs used and dosages; and

(e) date of service.

(2) A veterinarian shall:

(a) maintain veterinary medical records under Subsection (1) above so that any veterinarian coming into a veterinary practice may, by reading the veterinary medical record of a particular animal, be able to proceed with the proper care and treatment of the animal; and

(b) maintain veterinary medical records under Subsection (1) above for a minimum of five years from the date that the animal was last treated by the veterinarian.

([2]3) A veterinarian shall maintain a sanitary environment to avoid sources and transmission of infection to

include the proper routine disposal of waste materials and proper sterilization or sanitation of all equipment used in diagnosis and treatment.

KEY: veterinary medicine, licensing, veterinarian

Date of Enactment or Last Substantive Amendment: ~~July 10, 2008~~ 2009

Notice of Continuation: February 1, 2007

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-28-101

Commerce, Occupational and
 Professional Licensing
R156-60a
 Social Worker Licensing Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32913

FILED: 8/31/09 8:27 AM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Social Worker Licensing Board reviewed the rule and determined that changes need to be made.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule the term "rules" has been replaced with "rule" where applicable. In Section R156-60a-302b, updates a statutory citation. In Subsection R156-60a-304(1), the proposed amendment changes the date of commencing the two-year period during which the continuing education requirement must be met. The date is changed from January 1st to October 1st to be consistent with the current two-year license renewal period. Also in Subsection R156-60a-304(4)(a)(v), the Division of Occupational and Professional Licensing is being added as an approved provider of continuing education. In Subsection R156-60a-502(6), rule citations are updated. In Subsection R156-60a-502(12), adds the word "even" to further clarify the intent of the language. In Subsection R156-60a-601(8), adds language which clarifies that the Division, in collaboration with the board, approves requests to supervise more than three supervisees.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-60-201 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed social worker classifications and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.
- ◆ SMALL BUSINESSES: The proposed amendments only apply to licensed social worker classifications and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed social worker classifications and applicants for licensure in those classifications. As a result of the proposed amendments, licensees will have an additional option with respect to obtaining continuing education hours. Licensees may see minimal savings in continuing education costs as a result of the Division now providing continuing education training for the profession. However, an exact amount is unable to be determined.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed social worker classifications and applicants for licensure in those classifications. As a result of the proposed amendments, licensees will have an additional option with respect to obtaining continuing education hours. Licensees may see minimal savings in continuing education costs as a result of the Division now providing continuing education training for the profession. However, an exact amount is unable to be determined.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing corrects statutory references, changes the continuing education reporting period to become consistent with license renewal dates and includes the Division as a provider of continuing education. No fiscal impact to businesses is anticipated from these changes, although licensees may see a cost savings as a result of obtaining free continuing education from the Division.

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:

- ◆ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 10/08/2009 9:00 PM, Heber Wells Bldg, 160 E 300 S, Conference Room 250 (second floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.**R156-60a. Social Worker Licensing Act Rule[s].****R156-60a-101. Title.**

~~[These rules are]~~ This rule is known as the "Social Worker Licensing Act Rule[s]".

R156-60a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or ~~[these rules]~~ this rule:

- (1) "ASWB" means the Association of Social Work Boards.
- (2) "CSW" means a licensed certified social worker.
- (3) "Clinical social work concentration and practicum", "clinical concentration and practicum" "case work", "group work", or "family treatment course sequence with a clinical practicum", "clinical practicum" or "practicum", as used in Subsections 58-60-205(1)(g) and (2)(d)(ii), means a track of professional education which is specifically established to prepare an individual to practice or engage in mental health therapy.
- (4) "LCSW" means a licensed clinical social worker.
- (5) "SSW" means a licensed social service worker.
- (6) "Supervised practice of mental health therapy by a clinical social worker", as used in Subsection 58-60-202(3)(a), means that the CSW is supervised by a LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601.

R156-60a-103. Authority - Purpose.

~~[These rules are]~~ This rule is adopted by the ~~[d]~~ Division under the authority of Subsection 58-1-106(1)(a) to enable the ~~[d]~~ Division to administer Title 58, Chapter 60.

R156-60a-302b. Experience Requirements for Licensure as a SSW.

In accordance with Subsection 58-60-205(~~[3]~~4)(d)(iii) and (iv), the 2000 hours of supervised social work activity or the one year of qualifying experience for licensure as a SSW shall:

- (1) be performed as an employee of an agency providing social work services and activities; and
- (2) be performed according to a written social work job description approved by the LCSW or CSW supervisor.

R156-60a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308a(1).

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-60a-304. Continuing Education Requirements for LCSW.

In accordance with Subsection 58-60-105(1), the continuing education requirements for LCSWs are defined, clarified and established as follows:

(1) During each two year period commencing ~~January~~ ~~October~~ 1st of each even numbered year, a LCSW shall be required to complete not less than 40 hours of continuing education.

(2) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(3) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training, and experience to provide social work continuing education; and

(c) have a method of verification of attendance.

(4) Credit for continuing education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences, or training sessions which meet the criteria listed in Subsection (3) above, and which are approved by, conducted by or under sponsorship of:

(i) the National Association of Social Workers;

(ii) community mental health agencies or entities providing mental health services under the auspices of the State of Utah;

(iii) recognized universities and colleges; ~~and~~

(iv) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of social work; and

(v) the Division of Occupational and Professional Licensing; and

(b) a maximum of ten hours per two year period may be recognized for teaching continuing education relevant to clinical social work or mental health therapy; and

(c) a maximum of ten hours per two year period may be recognized for continuing education that is provided via Internet or through home study which meets the criteria listed in Subsection (3) above.

(5) A licensee is responsible to complete relevant continuing education, to document completion of the continuing education, and to maintain the records of the continuing education completed for a period of four years after close of the two year period to which the records pertain.

(6) A licensee who documents ~~he~~ the licensee is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements

established under this section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

(7) If more than 40 hours of continuing education is completed during the two year period specified in Subsection (1), up to ten hours of the excess over 40 hours may be carried over to the next two year period. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-60a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) using the abbreviated title of LCSW unless licensed as a LCSW;

(2) using the abbreviated title of CSW unless licensed as a CSW;

(3) using the abbreviated title of SSW unless licensed as a SSW;

(4) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60a-302~~d~~c and R156-60a-601.

(5) engaging in the supervised practice of mental health therapy as a licensed CSW unless:

(a) the licensee has completed a clinical practicum as part of the Council on Social Work Education (CSWE) accredited master's degree program; and

(b) the scope of practice is otherwise within the licensee's competency, abilities and education;

(6) engaging in the supervised practice of mental health therapy when not in compliance with ~~Subsections~~ Section R156-60a-302c~~(4)~~ and Subsection R156-60a-601(7);

(7) engaging in or aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(8) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(9) failing to establish and maintain professional boundaries with a client or former client;

(10) engaging in dual or multiple relationships with a client or former client in which there is a risk of or potential harm to the client;

(11) engaging in sexual activities or sexual contact with a client with or without client consent;

(12) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services even when there is no risk of exploitation or potential harm to the client;

(13) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a personal relationship when there is a risk of exploitation or potential harm to the client;

(14) embracing, massaging, cuddling, caressing, or performing any other act of physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(15) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(16) failing to exercise professional discretion and impartial judgement required for the performance of professional activities, duties and functions;

(17) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(18) exploiting a client or former client for personal gain;

(19) exploiting a person who has a personal relationship with a client for personal gain;

(20) failing to maintain client records including records of assessment, treatment, progress notes and billing information for a period of not less than ten years from the documented termination of services to the client;

(21) failing to provide client records in a reasonable time upon written request of the client, or legal guardian;

(22) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client activities or records;

(23) failing to protect the confidences of other persons named or contained in the client records; and

(24) failing to abide by the provisions of the Code of Ethics of the National Association of Social Workers (NASW) as approved by the NASW 1996 Delegate Assembly and revised by the 1999 NASW Delegate Assembly, which is adopted and incorporated by reference.

R156-60a-601. Duties and Responsibilities of a LCSW Supervisor.

The duties and responsibilities of a LCSW supervisor, are further defined, clarified or established as follows:

(1) be professionally responsible for the acts and practices of the supervisee;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee or is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, rules, standards and ethics applicable to the practice of social work;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) supervise not more than three individuals who are lawfully engaged in mental health therapy training, unless otherwise approved by the Division in collaboration with the board;

(9) not begin supervision of a CSW until having met the requirements of Section R156-60a-302e; and

(10) in accordance with Subsections 58-60-205(1)(e) and (f), submit to the division on forms made available by the division:

(a) documentation of the training hours completed by the CSW; and

(b) an evaluation of the CSW, with respect to the quality of the work performed and the competency of the CSW to practice clinical social work and mental health therapy.

KEY: licensing, social workers

Date of Enactment or Last Substantive Amendment: ~~[September 1, 2004]~~2009

Notice of Continuation: October 21, 2004

Authorizing, and Implemented or Interpreted Law: 58-60-201; 58-1-106(1)(a); 58-1-202(1)(a)

Education, Administration
R277-494
Charter School and Online Student
Participation in Extracurricular or Co-
curricular School Activities

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32917

FILED: 9/1/09 4:41 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to change the fee schedule for charter school and online school students to participate in extracurricular or co-curricular activities. The participation fee was based on the total cost of the activity. The participation fee should be based on a formula provided in state law.

SUMMARY OF THE RULE OR CHANGE: This amendment provides new and changed definitions and removes outdated definitions, and provides revised language throughout the rule to make it accurate and consistent with state law.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-1a-519(5) and Subsection 53A-2-214(6)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Extracurricular and co-curricular school activities are administered at the school district/school level.

◆ **LOCAL GOVERNMENTS:** There may be some additional costs to school districts and some additional savings to charter and online schools due to this rule amendment. The fee that was charged to charter and online schools for student participation was changed to a flat fee of \$75 per student. The previous fee was based on the district cost for an athletic program divided by the enrollment of the school. Additional

costs and savings are too speculative to determine at this time because the number of charter school and online students who may participate is unknown.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule and the amendments apply to public schools and not to businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities because of this rule amendment. Charter and online schools will pay a flat fee of \$75/student for charter and online student participation in extracurricular and co-curricular activities. Charter and online school students will continue to pay individual extracurricular and co-curricular activity fees that are charged to all students in the secondary school to supplement school activities as assessed by the school district/school.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some additional compliance costs to school districts due to this rule amendment. The fee that was charged to charter and line schools for student participation was changed to a flat fee of \$75 a student. The previous fee was based on school district enrollment. Additional costs are too speculative to determine at this time because the number of charter school and online student participation is unknown.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-494. Charter School and Online Student Participation in Extracurricular or Co-curricular School Activities.

R277-494-1. Definitions.

A. "Activity fees" means fees that are approved by a local board and charged to all students to participate in any or all activities sponsored by or through the public school. Fees vary among districts and schools and entitle a public school student to participate in regular school activities, to try out for extracurricular or co-curricular school activities, to receive transportation to activities, and to attend regularly scheduled public school activities.

B. "Board" means the Utah State Board of Education.

C. "Charter school" means a school acknowledged as a charter school by a local board of education under Section 53A-1a-515 and R277-470 or by the Board under Section 53A-1a-505.

D. "Co-curricular activity" means ~~[an activity that includes practices or events outside the regular school day and a specific required class enrollment as a condition of participation.]~~ a school district or school activity, course or experience that includes a required regular school day component and an after school component; special programs or activities such as programs for gifted and talented students, summer programs and science and history fairs are co-curricular activities.

~~[~~ E. "District enrollment levels" means districts divided by size as outlined in the Schedule as part of this rule.

~~]~~ ~~[F]~~ E. "Extracurricular activity" means an athletic program or activity sponsored by the public school and offered, competitively or otherwise, to public school students outside of the regular school day or program.

~~[G]~~ E. "Online school" means a school:

(1) that provides the same number of classes consistent with the requirement of similar ~~[resident]~~ public schools;

(2) that delivers course work via the internet;

(3) that has designated a readily accessible contact person; and

(4) that provides the range of services to public education students required by state and federal law.

~~[H]~~ G. "Pay to play fees" means the fees charged to a student to participate in a specific school-sponsored extracurricular or co-curricular activity. All fees shall be approved annually by the local board of education.

~~[I]~~ H. "Student's boundary school" means the school the student is designated to attend according to where the student's legal guardian lives or the school where the student is enrolled under Section 53A-2-206.5 et seq.

~~[J]~~ I. "Student's school of enrollment" means the public school in which the student is enrolled consistent with Section 53A-11-101 et seq.

~~[K]~~ J. "Student fee waivers" means all expenses for an activity that are waived for student participation in the activity consistent with Section 53A-12-103 et seq. and R277-407.

~~[L]~~ K. "School participation fee" means the fee paid by the charter/online school to the ~~[traditional]~~ boundary school consistent with ~~[the fee schedule of]~~ R277-494-4 for student participation in extracurricular or co-curricular activities.

[M]L. "Student participation fee" means the fee charged to all participating charter/online and traditional school students by the [resident]boundary school for designated extracurricular or co-curricular activities consistent with R277-407.

~~_____~~ N. "Tier activities" means ~~extracurricular activities (both boys and girls, as offered) divided by type and expense to sponsoring schools/school districts as outlined in the Schedule as part of this rule. The activities that fall into each tier are as follows:~~

- ~~_____~~ (1) Tier 1 activity: football.
- ~~_____~~ (2) Tier 2 activities: baseball, softball, basketball, swimming and diving, wrestling, soccer, volleyball, and drill team.
- ~~_____~~ (3) Tier 3 activities: golf, tennis, cross-country, track, and all other extracurricular and co-curricular activities.

R277-494-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, Section 53A-1a-519(5) that directs ~~to~~the Board to make rules establishing fees for a charter school student's['] participation in extracurricular or co-curricular activities at school district schools, and Section 53A-2-214(6) which directs the Board to make rules establishing fees for ~~charter~~[an online student's['] participation in extracurricular or co-curricular activities at school district schools.

B. ~~[The purpose of this rule is to establish a Tier Activities Participation Fee Schedule and provide information to school districts, charter and online schools, and parents that fairly inform districts, schools, and parents of the Schedule and requirements integral to the Schedule.]~~The purpose of this rule is to inform school districts, charter and online schools, and parents of school participation fees and state-determined requirements for a charter school or a public online school student to participate in extracurricular athletics and activities at a student's boundary school.

R277-494-3. Requirements for Payment and Participation Integral to the Schedule.

A. A charter or online school ~~may~~shall allow student participation in activities designated under R277-494-1[F]E upon satisfaction of requirements and payments of this rule and satisfaction of school district standards and requirements.

B. ~~[The]~~A school participation fee ~~identified in the Schedule~~of \$75.00 per student shall be paid by the student's school of enrollment to the boundary school at which the student desires to participate. Upon annual payment of the school participation fee, the student may participate in all extracurricular school activities as defined in R277-494-1E during the school year for which the student is qualified and eligible.

C. The ~~[fees in this Schedule do not include]~~participation fee paid by the charter or online school is in addition to individual student participation fees ~~[or required activity fees]~~for specific extracurricular activities and the activity fees charged to all students

in the secondary school to supplement school activities as assessed by the school consistent with this rule. Student participation fees or required activity fees shall be paid to the boundary school by the participating student.

D. All fees, including school participation fees, ~~and~~ student participation fees and activity fees shall be paid prior to student participation.

E. If a participating charter or online school student qualifies for fee waivers, all waived student participation fees shall be paid to the boundary school by the student's school of enrollment prior to student participation.

~~[R277-494-4. Tier Activities Participation Fee Schedule (Schedule):~~

~~_____~~ A. Fee schedule

TABLE 1
School Fee Per Student Participation

District Enrollment	Tier 1	Tier 2	Tier 3
less than 1,000	\$600	\$300	\$150
1,001 to 6,000	\$500	\$250	\$125
6,001 to 18,000	\$400	\$200	\$100
18,000 to 45,000	\$300	\$150	\$ 75
+45,000	\$200	\$100	\$ 75

~~_____~~ B. Charter and online students participating under this rule shall meet all eligibility requirements and timelines of the receiving schools:

~~[R277-494-]~~**5]4. Additional Provisions.**

A. ~~[Neither this rule nor the Schedule applies to student participation in school activities which require student enrollment in a regularly scheduled class at the boundary school.~~

~~_____~~ B. Despite the provisions of R277-494-5A, e]Charter, online and traditional schools may negotiate to allow student participation in co-curricular activities such as debate, drama, ~~[or]~~ choral programs, specialized courses or programs offered during the regular school day, and school district-sponsored enrichment programs or activities. Participating charter/online students shall be required to meet all attendance and course requirements of all ~~[traditional]~~boundary public school students.

~~_____~~ B. A charter and online student participating under this rule shall meet all eligibility requirements and timelines of the boundary school.]

~~_____~~ C. This rule shall be effective beginning with the 2008-09 school year.]

KEY: extracurricular, co-curricular, activities, student participation

Date of Enactment or Last Substantive Amendment: ~~[October 8, 2008]~~2009

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1a-519(5); 53A-2-214(6)

Education, Administration
R277-501
Educator Licensing Renewal and
Timelines

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32918

FILED: 9/1/09 4:43 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to address concerns regarding background check offenses for licensed and nonlicensed public education employees. The changes to this rule address licensed public education employees. A new rule is also now in place that addresses nonlicensed public education employee background check concerns.

SUMMARY OF THE RULE OR CHANGE: The rule provides a new section that requires all licensed Utah educators when renewing their Utah educator licenses to submit fingerprints for a background check to the Department of Public Safety (DPS). The new section also requires the Utah State Office of Education (USOE) to provide DPS with a list of all licensed Utah educators and identifying information to be maintained in a database developed by DPS in consultation with the USOE.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** To the best of the Utah State Office of Education's knowledge, DPS is increasing the cost of background checks of all education employees by \$5/licensed educator to partially cover the cost of this increased number of background checks. For the time being, the Utah State Board of Education (USBE) will absorb the increased cost assessed by DPS for licensed educators. It is uncertain the cost and the number of individuals subject to background checks and how long the USBE will absorb the increased \$5/licensed educator cost fee for background checks. Therefore, cumulative costs are too speculative to estimate.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government resulting from this amendment. The USBE will absorb the additional cost for the time being.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. The rule and amendment apply to public schools and do not involve small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. An increased \$5/licensed educator for a background check will, for the time being, be absorbed by the USBE.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. An increased \$5/licensed educator for a background check will, for the time being, be absorbed by the USBE.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-501. Educator Licensing Renewal and Timelines.

R277-501-6. Background Checks Required for Renewal.

A. A background check shall be required for the renewal of any Utah educator license beginning July 1, 2009 consistent with Section 53A-6-401. No license may be renewed until the completion of the background check and receipt and review of the report by the USOE.

B. Beginning no later than July 1, 2009, applicants for Utah educator license renewal shall submit fingerprints to the Utah Department of Public Safety consistent with procedures and scheduling developed and disseminated by the USOE in consultation with the Utah Department of Public Safety.

C. No later than July 1, 2009, the USOE shall provide to the Utah Department of Public Safety a list of licensed Utah educators including dates of birth, social security numbers, and other necessary demographic information to be determined between the USOE and the Utah Department of Public Safety.

R277-501-[6]7. Miscellaneous Renewal Information.

A. A licensed educator shall develop and maintain a professional development plan. The plan:

- (1) shall be based on the educator's professional goals and current or anticipated assignment,
- (2) shall take into account the goals and priorities of the school/district,
- (3) shall be consistent with federal and state laws and district policies, and
- (4) may be adjusted as circumstances change.
- (5) shall be reviewed and signed by the educator's supervisor or a professional colleague designated by the building administrator.

B. If an educator is not employed in a Utah public or accredited private school at the renewal date, the educator shall review the plan and documentation with a professional colleague who may sign the professional development plan and USOE verification form. The verification form signed by the professional colleague shall be provided to the USOE between January 1 and June 30 of the renewal year.

C. Each Utah license holder shall be responsible for maintaining a professional development plan.

(1) It is the educator's responsibility to retain copies of complete documentation of professional development activities with appropriate signatures.

(2) The professional development documentation shall be retained by the educator for a minimum of two renewal cycles.

D. The "Verification for License Renewal" form shall be submitted to the USOE Licensing Section, 250 East 500 South, P.O. Box 144200, Salt Lake City, Utah 84114-4200 between January 1 and June 30 of the educator's assigned renewal year.

(1) Forms submitted by mail that are not complete or do not bear original signatures shall not be processed.

(2) Failure to submit the verification form consistent with deadlines shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

(3) The USOE may, at its own discretion, review or audit verification for license renewal forms or educator license renewal folders or records.

E. License holders may begin to acquire professional development points under this rule on the date identified on the license as the date of licensure.

F. This rule does not explain criteria or provide credit standards for state approved inservice programs. That information is provided in R277-519.

G. Credit for district lane changes or other purposes is determined by a school district and is awarded at a school district's discretion. Professional development points should not be assumed to be credit for school district purposes, such as salary or lane change credit.

H. A renewal fee set by the USOE shall be charged to educators who seek renewal from an inactive status or to make level changes. Educators with active licenses shall be charged a renewal fee consistent with R277-502.

I. The USOE may make exceptions to the provisions of this rule for unique and compelling circumstances.

(1) Exceptions may only be made consistent with the purposes of this rule and the authorizing statutes.

(2) Requests for exceptions shall be made in writing at least 30 days prior to the license holder's renewal date to the Coordinator of Educator Licensing, USOE.

(3) Approval or disapproval shall be made in a timely manner.

J. Licenses awarded under R277-521, Professional Specialist Licensing, are subject to renewal requirements under this rule.

(1) Specialists shall be considered licensed as of September 15, 1999 or at their official employment date, whichever is later.

(2) All specialists shall be considered Level 1, 2 or 3 license holders consistent with R277-521-3, 4 and 5.

(3) Years of work experience beginning September 15, 1999 count toward levels of licensure.

K. Consistent with Section 53A-6-104(2) and (4), an educator may comply with the professional development requirements of this rule by:

(1) satisfactory completion of the educator's employing school district's district-specific professional development plan; and

(2) submission by the employing school district of the names of educators who completed district-specific professional development plans; and

(3) submission of professional development information in a timely manner consistent with the educator's license renewal cycle; failure of timely notification by districts to the USOE may result in expiration of licenses and additional time and costs for relicensure.

L. Completion of relicensure requirements by an educator under R277-501-4 or R277-501-6K, may not satisfy HOUSSE requirements for highly qualified status under No Child Left Behind, as defined in R277-520.

M. Educators are individually responsible for tracking their renewal cycles and completing professional development in a timely manner.

KEY: educational program evaluations, educator license renewal

Date of Enactment or Last Substantive Amendment: [~~March 6, 2006~~2009]

Notice of Continuation: February 23, 2005

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-104; 53A-1-401(3)

Education, Administration
R277-502-6
 Returning Educator Relicensure

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 32919
 FILED: 9/1/09 4:44 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to clarify time lines for application and completion of plans for educators to return to teaching while renewing their licenses through individual professional development plans.

SUMMARY OF THE RULE OR CHANGE: The changes provide specific time lines for filing professional development plans when educators return to teaching while renewing their licenses.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-6-104 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The clarification of time lines will merely streamline the process for application and completion of the professional development plan.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The clarification of timelines will merely streamline the process for application and completion of the professional development plan.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to the state budget. The program for returning educator relicensure affects public schools and not small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The clarification of time lines will merely streamline the process for application and completion of the professional development plan.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for individuals. Specific time lines have merely been provided.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at

801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.**R277-502. Educator Licensing and Data Retention.****R277-502-6. Returning Educator Relicensure.**

A. A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(1) Completion of criminal background check including review of any criminal offenses and approval by the Utah Professional Practices Advisory Commission;

(2) Employment by a school district/charter school;

(3) A professional development plan developed jointly by the school principal or charter school director and the returning educator that considers the following:

(a) previous successful public school teaching experience;

(b) formal educational preparation;

(c) period of time between last public teaching experience and the present;

(d) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(e) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(f) completion of additional necessary professional development for the educator, as determined jointly by the principal/school ~~[district]~~ and educator.

(4) Filing of [F]the professional development plan[~~filed with the USOE~~] within 30 days of hire;

(5) Successful completion of required Board-approved exams for licensure;

(6) Satisfactory experience as determined by the school district/charter school with a trained mentor; and

(7) ~~[Work with a trained mentor]~~ Submission to the USOE of the completed and signed Return to Original License Level Application, available on the USOE Educator Quality and Licensing website.

B. Returning educators who previously held a Level 2 or Level 3 license shall be issued a Level 1 license during the first year of employment. Upon completion of the requirements listed in R277-502-6A and a satisfactory school district/charter school evaluation, if available, the employing LEA may recommend reinstatement of licensure at a Level 2 or 3. ~~[This license shall be valid for five years.]~~

C. Returning educators who taught less than three consecutive years in a public or accredited private school shall

complete the Early Years Enhancement requirements before moving from Level 1 to Level 2 licensure.

KEY: professional competency, educator licensing

Date of Enactment or Last Substantive Amendment: ~~May 8,~~ 2009

Notice of Continuation: September 6, 2007

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-104; 53A-1-401(3)

Health, Children's Health Insurance Program **R382-10** Eligibility

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 32928

FILED: 9/1/09 5:05 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to make the Children's Health Insurance Program (CHIP) application procedures consistent with Medicaid application procedures.

SUMMARY OF THE RULE OR CHANGE: This amendment changes the procedure that CHIP uses to determine the date of application and allows applications to be received on a Friday. When the state moved to the four-day workweek, medical eligibility offices closed on Fridays and applicants could not submit their applications on that day. This change requires CHIP to date applications as received on a Friday when they are delivered or sent to medical eligibility offices by the close of business on that day.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-40-103

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This change results in a limited budget cost because in most cases, applicants who submit an application on a Friday now receive three additional days of eligibility. Nevertheless, there is insufficient data to estimate this cost because there is no way to determine how many applications will be submitted on a Friday.

◆ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not determine CHIP eligibility and do not fund or provide CHIP services.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because they do not determine CHIP eligibility

and this change does not create new requirements for these entities.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are limited savings to CHIP enrollees who receive one to three more days of CHIP coverage as a result of this change. CHIP providers may also see a limited increase in revenue. Nevertheless, there is insufficient data to estimate these savings or increased revenue because there is no way to determine how many applications will be submitted on a Friday.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only creates savings and increased revenue for a CHIP enrollee and a CHIP provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change should better serve the public by making the application process easier for applicants for CHIP.

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

HEALTH

CHILDREN'S HEALTH INSURANCE PROGRAM

CANNON HEALTH BLDG

288 N 1460 W

SALT LAKE CITY, UT 84116-3231

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: David Sundwall, Executive Director

R382. Health, Children's Health Insurance Program.

R382-10. Eligibility.

R382-10-18. Effective Date of Enrollment and Renewal.

(1) The effective date of CHIP enrollment is the date a completed and signed application is received at a local office by the close of normal business ~~[on a business day]~~ hours on a weekday and not on a Saturday, Sunday, or a state or federal holiday. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after the normal close of business hours on a ~~[business weekday or on a Saturday, Sunday, or a state or federal holiday,~~ the effective date of CHIP enrollment is the next ~~[business day]~~ weekday.

(2) The effective date of CHIP enrollment for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the effective date of enrollment is the date the outreach staff receives the application.

(b) If the application is delivered on a non-business day or at a time when the outreach office is closed, the effective date of enrollment is the last business day that a staff person from the state medical eligibility agency was available to receive or pick up applications from the location.

(3) An applicant must provide the verifications needed to process an application and determine eligibility no later than the close of business on the last day of the application period. If the last day of the application processing period falls on a day of the week when the medical eligibility office is closed, then the applicant has until the close of business on the next day that the medical eligibility agency is open. An applicant may request more time to provide verifications. The request must be made by the last day of the application processing period.

([3]4) The Department may allow a grace enrollment period beginning no earlier than four days before the date a completed and signed application is received by the Department. The Department shall not pay for any services received before the effective enrollment date.

([4]5) For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or adoption if the family requests the coverage within 30 days of the birth or adoption. If the request is made more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the date of report, except as otherwise provided in R382-10-18(1).

([5]6) The effective date of enrollment for a renewal is the first day of the month after the renewal month, if the renewal process is completed by the end of the renewal month, or by the last day of the month immediately following the renewal month, and the child continues to be eligible.

([6]7) If the renewal process is not completed by the end of the renewal month, the case will be closed unless the enrollee has good cause for not completing the renewal process on time. Good cause includes a medical emergency, death of an immediate family member, or natural disaster, or other similar occurrence.

([7]8) The Department may require an interview with the parent, child, or adult who has assumed responsibility for the care or supervision of a child, or other authorized representative as part of the renewal process.

R382-10-21. Termination and Notice.

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or at renewal.

(2) The Department shall notify an enrollee in writing ten days before taking a proposed action adversely affecting the enrollee's eligibility.

(3) Notices under this section shall provide the following information:

- (a) the action to be taken;
- (b) the reason for the action;
- (c) the regulations or policy that support the action;

- (d) the applicant's or enrollee's right to a hearing;
 - (e) how an applicant or enrollee may request a hearing;
- and

(f) the applicant's or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(4) The Department need not give ten-day notice of termination if:

- (a) the child is deceased;
 - (b) the child has moved out of state and is not expected to return;
 - (c) the child has entered a public institution; or
 - (d) the child has enrolled in other health insurance coverage, in which case eligibility ends the day before the new coverage begins.
- (e) the child's whereabouts are unknown and the post office has returned mail to indicate that there is no forwarding address.

KEY: children's health benefits

Date of Enactment or Last Substantive Amendment: [~~July 1~~], 2009

Notice of Continuation: May 19, 2008

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-301
Medicaid General Provisions**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 32927
FILED: 9/1/09 5:05 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to modify fair hearings procedures for eligibility decisions.

SUMMARY OF THE RULE OR CHANGE: This change clarifies that the Department of Workforce Services (DWS) conducts fair hearings for eligibility decisions, with the exception that the Department of Health (DOH) conducts fair hearings for foster care eligibility or subsidized adoption Medicaid. It also defines the right of DOH to conduct superior agency reviews and defines the appeal rights of applicants and clients. This change also removes a provision that allowed applicants to receive benefits pending a fair hearing.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 431.220 through 431.246 and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This change does not impact the state budget because the fair hearing process was simply transferred to DWS after it assumed eligibility determination responsibilities. Funding for these types of hearings is ongoing.
- ◆ LOCAL GOVERNMENTS: This change does not impact local governments because they do not determine Medicaid eligibility or conduct eligibility hearings.
- ◆ SMALL BUSINESSES: This change does not impact small businesses because they do not determine Medicaid eligibility.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid clients and applicants because this amendment does not change their right to request a fair hearing for eligibility determinations. The change, therefore, has no impact on the services that providers render to Medicaid clients.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because an individual still has a right to a fair hearing to determine eligibility and does not pay for this entitlement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule clarifies the fair hearing process. This should allow aggrieved parties to protect their rights. No negative fiscal impact is expected.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: David Sundwall, Executive Director

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

R414-301. Medicaid General Provisions.

R414-301-5. Complaints and Agency Conferences.

(1) A client may request an agency conference with the eligibility staff or supervisor at the Medicaid eligibility agency at any time to resolve a problem regarding the client's case. Requests shall be granted at the ~~[department's]~~ Medicaid eligibility agency's discretion. Clients may have an authorized representative or a friend attend the agency conference.

(2) Requesting an agency conference does not prevent a client from also requesting a fair hearing in the event the agency conference does not resolve the client's concerns.

(3) Having an agency conference does not extend the time period in which a client has to request a fair hearing. The client must request a fair hearing according to the provisions in Section R414-301-6, to assure the right to a hearing ~~[within 90 days of the date on the notice with which the client disagrees to assure the right to have a fair hearing if the client is not satisfied with the outcome of the agency conference].~~

(4) There is no appeal to the decisions made during an agency conference; however, if the client is not satisfied with the results of the agency conference, and makes a timely request for a fair hearing as defined in Section R414-30[6]1-6, the client may proceed with the ~~[formal]~~ fair hearing process.

(5) The ~~[department]~~ Medicaid eligibility agency provides proper notice ~~[as defined in R414-308-5]~~ if [there are] the agency makes any additional adverse changes in the client's eligibility ~~[that are made]~~ as a result of the agency conference. The client then has a right to request a fair hearing based on the new adverse action ~~[decision letter of an additional adverse action].~~

R414-301-6. Hearings.

~~[(1) The department adopts 42 CFR 431.220 through 431.246, 2001 ed., which is incorporated by reference. The department requires compliance with Title 63G, Chapter 4.~~

~~———— (2) If a client's hearing request concerns only medical assistance, the department shall conduct a formal hearing.~~

~~———— (3) If a client's hearing request concerns food stamps or financial assistance in addition to medical assistance, the Department of Workforce Services shall conduct an informal hearing.~~

~~———— (4) Hearings may be conducted by telephone if the client agrees to that procedure.~~

~~———— (5) Clients must request a hearing in writing. The written request must include a clear expression stating a desire to present their case.~~

~~———— (6) Clients must ask for the hearing within 90 days of the mailing date of the notice regarding a disagreement with any proposed action.~~

~~———— (7) The hearing officer may schedule one or more pre-hearing conferences to clarify the issues to be heard at the hearing and to arrange exchange of relevant documents.~~

~~———— (8) If the hearing was conducted by the department, the client may appeal the hearing decision to the Court of Appeals.~~

~~———— (9) If the hearing was conducted by the Department of Workforce Services, the client may appeal a hearing decision to the director of the Division of Adjudication within the Department of Workforce Services, or to the District Court.~~

~~(10) If an action requires advance notice, the recipient shall continue to receive assistance if the hearing is requested before the effective date of the action, or within ten days of the mailing date of the notice of action. If the agency action is upheld, the client is responsible for repayment of benefits paid by the department on behalf of the client pending a final hearing decision. The recipient may choose not to accept the benefits offered pending a hearing decision.~~

~~(11) If an agency action does not require advance notice, assistance shall be reinstated if a hearing is requested within ten days of the mailing date of the notice unless the sole issue is one of state or federal law or policy.~~

~~(12) An applicant who has requested a hearing shall receive medical assistance if the hearing decision has not been issued within 21 days of the request. To receive benefits pending the hearing decision, the applicant must request the hearing within 10 days of the mailing date of the notice with which the applicant disagrees. The benefits shall begin on the same date had the application been approved but no earlier than the first day of the application month. If the agency action is upheld, the client is responsible for repayment of benefits paid by the department on behalf of the client pending a final hearing decision. Retroactive benefits shall not be approved unless the applicant would be eligible even if the department prevailed at the hearing. The applicant may choose not to accept the benefits offered pending a hearing decision.~~

~~(13) Final administrative action shall be taken within 90 days from the request for a hearing unless the client asks for a postponement or additional time is needed to allow all parties time to present and respond to the issues. The period of postponement may be added to the 90 days.~~

~~(14) Hearings shall be conducted only at the request of a client; the client's spouse; a minor client's parent; or a guardian of the client, client's spouse, minor client or minor client's parent; or a representative chosen by the client, client's spouse, or minor client's parent.~~

~~(15) A hearing contesting resource assessment shall not be conducted until an institutionalized individual has applied for Medicaid. (1) The Department provides a fair hearing process for applicants and clients in accordance with the requirements of 42 CFR 431.220 through 431.246. The Department complies with Title 63G, Chapter 4.~~

~~(2) An applicant or client must request a hearing in writing or orally at the Medicaid eligibility agency. The request must be made within 90 calendar days of the date of the notice of agency action with which the applicant or client disagrees. The request need only include a statement that the applicant or client wants to present his or her case.~~

~~(3) Hearings are conducted only at the request of a client or spouse; a minor client's parent; or a guardian or representative of the client.~~

~~(4) A client who requests a fair hearing shall receive continued medical assistance benefits pending a hearing decision if the client requests a hearing before the effective date of the action or within ten calendar days of the mailing date of the notice.~~

~~(5) The client must repay the continued benefits that he receives pending the hearing decision if the hearing decision upholds the agency action.~~

~~(a) A client has the right to not accept the continued benefits that the Department offers pending a hearing decision.~~

(b) Benefits that the client must repay include premiums for Medicare or other health insurance, premiums and fees to managed care and contracted mental health services entities, fee-for-service benefits on behalf of the individual, and medical travel fees or reimbursement to or on behalf of the individual.

(6) The Medicaid eligibility agency must receive a request for a hearing by the close of business on a business day that is before or on the due date. If the due date is a non-business day, then the Medicaid eligibility agency must receive the request by the close of business on the first business day immediately following the due date.

(7) The Department of Workforce Services (DWS) conducts fair hearings for all medical assistance cases except those concerning eligibility for foster care or subsidized adoption Medicaid. The Department of Health (DOH) conducts hearings for foster care or subsidized adoption Medicaid cases.

(8) DWS conducts informal, evidentiary hearings in accordance with Sections R986-100-124 through R986-100-134, except for the provisions in Subsections R986-100-124(1) and R986-100-128(17). In addition, DWS complies with all the hearing requirements of Rule R986-100.

(9) DOH conducts informal hearings concerning eligibility for foster care or subsidized adoption Medicaid in accordance with Rule R414-1. Pursuant to Section 63G-4-402, within 30 days of the date DOH issues the hearing decision, the applicant or client may file a petition for judicial review with the district court.

(10) DWS shall not conduct a hearing contesting resource assessment until an institutionalized individual has applied for Medicaid.

(11) An applicant or client may designate a person or professional organization to assist in the hearing or act as his representative. An applicant or client may have a friend or family member attend the hearing for assistance.

(12) The applicant, client or representative can arrange to review case information before the scheduled hearing.

(13) At least one employee from the Medicaid eligibility agency must attend the hearing. Other employees of the Medicaid eligibility agency, other state agencies and legal representatives for the Medicaid eligibility agency may attend as needed.

(14) The DWS Office of Adjudications and Appeals shall mail a written hearing decision to the parties involved in the hearing. The decision shall include the decision, a summary of the facts and the policies or regulations supporting the decision.

(a) DWS shall include information about the right to request a superior agency review from DOH and how to make that request.

(b) The applicant or client may appeal the DWS decision to DOH pursuant to Section R410-14-17. The request for agency review must be made in writing within 30 days of the mailing date of the decision.

(15) DOH, as the single state Medicaid agency, is a party to all fair hearings concerning eligibility for medical assistance programs. DOH conducts appeals and has the right to conduct a superior agency review of medical assistance hearing decisions rendered by DWS.

(16) The DWS hearing decision becomes final 30 days after the decision is sent unless DOH conducts a superior agency review. DOH conducts a superior agency review when the

applicant or client appeals the DWS decision or upon its own accord if it disagrees with the DWS decision. The DWS hearing decision may be made final in less than 30 days upon agreement of all parties.

(17) DOH notifies DWS whenever it conducts a superior agency review. The DWS hearing decision is suspended until DOH issues a final decision and order on agency review.

(18) The superior agency review is an informal proceeding and shall be conducted in accordance with Section 63G-4-301.

(19) A DOH decision and order on agency review becomes final upon issuance.

(20) The Medicaid eligibility agency takes case action within ten calendar days of the date the decision becomes final.

(21) Pursuant to Section 63G-4-402, within 30 days of the date the decision and order on agency review is issued, the applicant or client may file a petition for judicial review with the district court. Failure to appeal a DWS hearing decision to DOH negates this right to a judicial appeal.

(22) Clients are not entitled to continued benefits pending judicial review by the district court.

KEY: client rights, hearings, Medicaid

Date of Enactment or Last Substantive Amendment: [July 2, 2005]2009

Notice of Continuation: January 31, 2008

Authorizing, and Implemented or Interpreted Law: 26-18

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-304

Income and Budgeting

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32933

FILED: 9/1/09 5:49 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to exclude certain types of income to determine Medicaid eligibility as required by the American Recovery and Reinvestment Act of 2009 (ARRA), to update incorporated materials, and to correct or update other rule language.

SUMMARY OF THE RULE OR CHANGE: In accordance with ARRA, this change excludes certain types of income, recovery payments, and Consolidated Omnibus Budget Reconciliation Act (COBRA) health insurance premium subsidies to determine Medicaid eligibility. It also updates

incorporated materials and amends the text to clarify existing rule provisions.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Section 404(h)(4) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2009
- ◆ Updates 42 CFR 435.811, published by Office of the Federal Register, 10/01/2008
- ◆ Adds 42 CFR 435.831, published by Office of the Federal Register, 10/01/2008
- ◆ Updates 20 CFR 416.1102, 416.1103, 416.1120 through 416.1123, 416.1148, 416.1150, 416.1151, 416.1163 through 416.1166, and Appendix to Subpart K of 416, published by Office of the Federal Register, 10/01/2008
- ◆ Updates 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(vi)(A), and 233.20(a)(4)(ii), published by Office of the Federal Register, 10/01/2008
- ◆ Adds Section 1612(b)(24) and (25) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2009
- ◆ Adds 20 CFR 416.1124, 416.1140 through 416.1147, 416.1157, published by Office of the Federal Register, 10/01/2008
- ◆ Updates 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), published by Office of the Federal Register, 10/01/2008
- ◆ Updates 20 CFR 416.1110 through 416.1112, published by Office of the Federal Register, 10/01/2008

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** One provision of this change could result in an annual loss in spenddown collections that would decrease the General Fund by approximately \$15,000, with a loss of \$37,600 in federal dollars. The other changes have no budget impact because they are one-time payments that individuals would not have otherwise received, noncash help to purchase health insurance, or tax credits that may increase refunds available to individuals that the Department would not count as earned income.
- ◆ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not determine Medicaid eligibility or fund Medicaid services.
- ◆ **SMALL BUSINESSES:** This change does not impact small businesses because they do not determine Medicaid eligibility for Medicaid clients.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost to Medicaid recipients because the payments they receive are not counted as income and do not affect their Medicaid eligibility. On the other hand, Medicaid recipients may save approximately \$52,600 because the Department will disregard 6.2% of their earned income.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change does not require a recipient to pay more for coverage and it does not affect individual eligibility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes are necessary for compliance with federal requirements.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: David Sundwall, Executive Director

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

R414-304. Income and Budgeting.

R414-304-2. A, B and D Medicaid and A, B and D Institutional Medicaid Unearned Income Provisions.

(1) This rule establishes how the Department treats unearned income to determine eligibility for Aged, Blind and Disabled Medicaid and Aged, Blind and Disabled Institutional Medicaid coverage groups.

(2) The Department ~~[adopts]~~incorporates by reference 42 CFR ~~[435.725, 435.726,]~~435.811 ~~[through 435.832]~~and 435.831, 200[4]8 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, 416.1163 through 416.1166, and Appendix to Subpart K of 416, 200[4]8 ed.~~[- which are incorporated by reference.]~~ The Department ~~[adopts]~~incorporates by reference ~~[Subs]~~Sections 404(h)(4) and 1612(b)~~[(22)]~~(24) and (25) of the Compilation of the Social Security Laws in effect January 1, 200[3]9, ~~[which are incorporated by reference]~~to determine income and income deductions for Medicaid eligibility. The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(3) The following definitions apply to this section:

(a) "Eligible spouse" means the member of a married couple who is either aged, blind, or disabled.

(b) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(c) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount will not exceed 1/3 of the SSI federal benefit rate plus \$20.

(4) The agency does not count VA (Veteran's Administration) payments for aid and attendance or the portion of a VA payment that is made because of unusual medical expenses. Other VA income based on need is countable income, but is not subject to the \$20 general income disregard.

(5) The agency only counts as income the portion of a VA check to which the client is legally entitled. If the payment includes an amount for a dependent, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent has applied to VA to receive the payment directly, VA has denied that request, and the dependent does not receive the payment. In this case, the amount for a dependent also counts as income of the veteran or surviving spouse who receives the payment.

(6) SSA reimbursements of Medicare premiums are not countable income.

(7) The agency does not count as income, the value of special circumstance items if the items are paid for by donors.

(8) For A, B and D Medicaid, the agency counts as income two-thirds of current child support received in a month for the disabled child. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division.

~~_____~~(9) Child support payments that are payments owed for past months or years are countable income of the parent or guardian, and will be counted to determine eligibility of the parent or guardian. Countable income of the parent is used to determine the amount of income that will be deemed from the parent to the child to determine the child's eligibility.~~[to determine eligibility for the parent or guardian receiving the payments.]~~

~~[(9)]~~(10) For A, B and D Institutional Medicaid, court-ordered child support payments [must be paid to]collected by the Office of Recovery Services (ORS) [when the]for a child who resides out-of-home in a Medicaid 24-hour care facility are not counted as income to the child. If [the child has no income or insufficient income to provide for a personal needs allowance,] ORS [will]allows the parent to retain up to the amount of the personal needs allowance [to send to]for the child's[for] personal needs, that amount is counted as income for the child. All other current child support payments received by the child or guardian that are not subject to collection by ORS count as unearned income to the child.

~~(10)]~~(1) The agency counts as unearned income, the interest earned from a sales contract on either or both the lump sum and installment payments when [it]the interest is received or made available to the client.

(1[+]2) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(1[2]3) Payments under a contract that provide for payments at set intervals or after completion of the contract period are not lump sum payments. The payments are subject to regular income counting rules.~~[retroactive]~~ Retroactive payments from SSI and SSA reimbursements of Medicare premiums are not ~~considered~~ lump sum payments.

(1[3]4) The agency does not count as income educational loans, grants, and scholarships received from Title IV programs of the Higher Education Act or from Bureau of Indian Affairs educational programs. The agency does not count as income grants, scholarships, fellowships, or gifts from other sources that are actually used to pay, or will be used to pay, allowable educational expenses. Any amount of grants, scholarships, fellowships, or gifts from other sources that are used or will be used for non-educational expenses including food and shelter expenses, counts as income in the month received. Allowable educational expenses include:

- (a) tuition;
- (b) fees;
- (c) books;
- (d) equipment;
- (e) special clothing needed for classes;
- (f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount;
- (g) child care necessary for school attendance.

(1[4]5) Except for an individual eligible for the Medicaid Work Incentive Program, the following provisions apply to non-institutional medical assistance:

(a) For A, B, or D Medicaid, the agency does not count income of a spouse or a parent to determine Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors are eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind, or disabled person has more income after deductions than the allocation for a spouse, the agency deems the spouse's income to the aged, blind, or disabled spouse to determine eligibility.

(c) The agency determines household size and whose income counts for A, B or D Medicaid as described below.

- (i) If only one spouse is aged, blind or disabled:

(A) the agency deems income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The agency compares the combined income to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, the agency compares it, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the agency does not count the ineligible spouse's income and does not include the ineligible spouse in the household size. Only the eligible spouse's income is compared to

100% of the federal poverty guideline for one. If the income exceeds that amount, it is compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged, blind or disabled, the income of both spouses is combined and compared to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount, and one spouse receives SSI, only the income of the non-SSI spouse, after allowable deductions, is compared to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds 100% of the federal poverty guideline, then the income of both spouses, after allowable deductions, is compared to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, the agency deems income of the non-covered spouse to the covered spouse when that income exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, then the agency counts only the covered spouse's income. In both cases, the countable income is compared to 100% of the two-person poverty guideline. If it exceeds the limit, then income, after allowable deductions, is compared to the BMS.

(I) If the non-covered spouse has deemable income, the countable income, after allowable deductions, is compared to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have deemable income, then only the covered spouse's income, after allowable deductions, is compared to a one-person BMS to calculate the spenddown.

(iii) In determining eligibility under (c) for an aged or disabled person whose spouse is blind, both spouses' income is combined.

(A) If the combined income after allowable deductions is under 100% of the federal poverty guideline, the aged or disabled spouse will be eligible under the 100% poverty group defined in 1902(a)(10)(A)(ii) of the Social Security Act, and the blind spouse is eligible without a spenddown under the medically needy group defined in 42 CFR 435.301.

(B) If the combined income after allowable deductions is over 100% of poverty, both spouses are eligible with a spenddown under the medically needy group defined in 42 CFR 435.301.

(iv) If one spouse is disabled and working, the other is aged, blind, or disabled and not working, and neither spouse is an SSI recipient nor a 1619(b) eligible individual, the working disabled spouse may choose to receive coverage under the Medicaid Work Incentive program. If both spouses want coverage, however, the agency first determines eligibility for them as a couple. If a spenddown is owed for them as a couple, they must meet the spenddown to receive coverage for both of them.

(e) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, income will not be deemed from a spouse who meets 1619(b) protected group criteria.

(f) The agency determines household size and whose income counts for QMB, SLMB, and QI[+] assistance as described below.

(i) If both spouses receive Part A Medicare and both want coverage, the agency combines income of both spouses and compares it to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare, and the other spouse is aged, blind, or disabled and that spouse either does not receive Part A Medicare or does not want coverage, then the agency deems income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse is counted. In both cases, the countable income is compared to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, the agency deems income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The combined countable income is compared to the applicable percentage of the federal poverty guideline for a two-person household. If the ineligible spouse's deemable income does not exceed the allocation for a spouse, only the eligible spouse's income is counted, and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) SSI income will not be counted to determine eligibility for QMB, SLMB or QI[-+] assistance.

(g) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the agency will not count the income of either parent to determine a child's eligibility for B or D Medicaid.

(h) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(1[5]6) For institutional Medicaid including home and community based waiver programs, the agency counts only the client in the household size, and counts only the client's income and income deemed from an alien client's sponsor, to determine contribution to cost of care.

~~(16) The agency does not count interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No. 105-285 effective October 27, 1998.~~

(17) The agency deems income, unearned and earned, from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(18) Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(19) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(20) If income such as retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, only the amount paid to the individual is counted as income.

~~(21) The Department does not count as unearned income the additional \$25 a week payment to a recipient of unemployment insurance provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115. The recipient may receive this weekly payment from March 2009 through June 2010.~~

~~(22) The Department does not count as unearned income the one-time economic recovery payments that an individual receives under Social Security, Supplemental Security Income, Railroad Retirement, or Veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115. It further does not count refunds that a government retiree receives pursuant to the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.~~

~~(23) The Department does not count as unearned income the Consolidated Omnibus Budget Reconciliation Act (COBRA) premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.~~

R414-304-3. Medicaid Work Incentive Program Unearned Income Provisions.

(1) This rule establishes how the Department treats unearned income for the Medicaid Work Incentive program.

(2) The Department ~~[adopts]~~incorporates by reference 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157 and Appendix to Subpart K of 416, 200[4]8 ed.~~[- which are incorporated by reference.]~~ The Department adopts Subsection 404(h)(4) and 1612(b)[~~(22)~~](24) and (25) of the Compilation of the Social Security Laws in effect January 1, 200[3]9. The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(3) The Department allows the provisions found in Subsections R414-304-2(4) through (1[3]4), and (1[6]8) through (2[0]3).

(4) The agency determines income from an ineligible spouse or parent by the total of the earned and unearned income using the appropriate exclusions in 20 CFR 416.1161, except that court ordered support payments are not allowed as an income deduction.

(5) For the Medicaid Work Incentive Program, the income of a spouse or parent is not considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid Work Incentive Program eligibility factors are eligible without paying a Medicaid buy-in premium.

(6) The agency determines household size and whose income counts for the Medicaid Work Incentive Program as described below:

(a) If the Medicaid Work Incentive Program individual is an adult and is not living with a spouse, the agency counts only the income of the individual. The agency includes in the household size, any dependent children under age 18, or who are 18, 19, or 20 and are full-time students. These dependent children must be living in the home or be temporarily absent. After allowable deductions, the ~~[net]~~agency compares the countable income [is compared-]to

250% of the federal poverty guideline for the household size involved.

(b) If the Medicaid Work Incentive Program individual is living with a spouse, the agency combines their income before allowing any deductions. The agency includes in the household size the spouse and any children under age 18, or who are 18, 19, or 20 and are full-time students. These dependent children must be living in the home or be temporarily absent. After allowable deductions, [F]the agency compares the ~~net~~countable income of the Medicaid Work Incentive Program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the Medicaid Work Incentive Program individual is a child living with a parent, the agency combines the income of the Medicaid Work Incentive Program individual and the parents before allowing any deductions. The agency includes in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students, who are living in the home or temporarily absent. After allowable deductions, [F]the agency compares the ~~net~~countable income of the Medicaid Work Incentive Program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

R414-304-4. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.

(1) This rule establishes how the Department treats unearned income to determine eligibility for Family Medicaid and Institutional Family Medicaid coverage groups.

(2) The Department ~~adopts~~incorporates by reference 42 CFR [435.725, 435.726, 435.811 [through 435.832]and 435.831, 200[4]8 ed., and 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(vi)(A), and 233.20(a)(4)(ii), 200[4]8 ed., ~~which are incorporated by reference.~~] The Department ~~adopts~~incorporates by reference [Subs]Section 404(h)(4) of the Compilation of the Social Security Laws in effect January 1, 200[3]9, ~~which is incorporated by reference.~~] The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(3) The term "unearned income" means cash received for which the individual performs no service.

(4) The agency does not count as income money loaned to the individual if the individual proves the money is from a loan that the individual is expected to repay.

(5) The agency does not count as income support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services.

(6) The agency does not count as income the value of food stamp assistance, USDA food donations or WIC vouchers received by members of the household.

(7) The agency does not count income that is received too irregularly or infrequently to count as regular income, such as cash gifts, up to \$30 a calendar quarter per household member. Any amount that exceeds \$30 a calendar quarter per household member counts as income when received. Irregular or infrequent income may be divided equally among all members of the household.

(8) The agency does not count as income the amount deducted from benefit income that is to repay an overpayment of such benefit income.

(9) The agency does not count as income the value of special circumstance items paid for by donors.

(10) The agency does not count as income home energy assistance.

(11) The agency does not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, the agency only counts the amount that the client does not intend to use or that is more than what is needed for temporary housing.

(12) The agency does not count as income SSA reimbursements of Medicare premiums.

(13) The agency does not count as income payments from the Department of Workforce Services under the Family Employment program, the Working Toward Employment Program, and the Refugee Cash Assistance program. To determine eligibility for Medicaid, the agency counts income used to determine the amount of these payments, unless the income is an excluded income under other laws or regulations. [

~~(14) The agency does not count as income the interest accrued on an Individual Development Account as defined in 42 U.S.C. 604(h).]~~

(1[5]4) The agency does not count as income interest or dividends earned on countable resources. The agency does not count as income interest or dividends earned on resources that are specifically excluded by federal laws from being counted as available resources to determine eligibility for federally-funded, means-tested medical assistance programs, other than resources excluded by 42 U.S.C. 1382b(a).

(1[6]5) The agency does not count as income the increase in pay for a member of the armed forces that is called "hostile fire pay" or "imminent danger pay," which is compensation for active military duty in a combat zone.

(1[7]6) The agency counts as income SSI and State Supplemental payments received by children who are included in the coverage under Child, Family, Newborn, or Newborn Plus Medicaid.

(1[8]7) The agency counts unearned rental income. The agency deducts \$30 a month from the rental income. If the amount charged for the rental is consistent with community standards, the agency deducts the greater of either \$30 or the following actual expenses that the client can verify.

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property, including utility costs paid by the applicant or recipient;

(c) interest paid on a loan or mortgage made for upkeep or repair; and,

(d) the value of a one-person food stamp allotment, if meals are provided to a boarder.

(1[9]8) The agency counts deferred income when it is received by the client if it was not deferred by choice and receipt can be reasonably anticipated. If the income was deferred by choice, it counts as income when it could have been received. The amount deducted from income to pay for benefits like health insurance, medical expenses or child care counts as income in the month the income could have been received.

(20)19) The agency counts the amount deducted from income that is to pay an obligation such as child support, alimony or debts in the month the income could have been received.

(21)0) The agency counts payments from trust funds as income in the month the payment is received by the individual or made available for the individual's use.

(22)1) The agency only counts as income the portion of a Veterans Administration check to which the client is legally entitled. If the payment includes an amount for a dependent, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent has applied to VA to receive the payment directly, VA has denied that request, and the dependent does not receive the payment. In this case, the amount for a dependent counts as income of the veteran or surviving spouse who receives the payment.

(23)2) The agency counts as income deposits to financial accounts jointly owned between the client and one or more other individuals, even if the deposits are made by a non-household member. If the client disputes ownership of the deposits and provides adequate proof that the deposits do not represent income to the client, the agency does not count those funds as income. The agency may require the client to terminate access to the jointly held accounts.

(24)3) The agency counts as unearned income the interest earned from a sales contract on lump sum payments and installment payments when the interest payment is received by or made available to the client.

(25)4) The agency counts current child support payments as income to the child for whom the payments are being made. If a payment is for more than one child, the amount is divided equally among the children unless a court order indicates a different division. Child support payments made for past months or years (arrearages) are countable income to determine eligibility of the parent or guardian who is receiving the payment. Arrearages are payments collected for past months or years that were not paid on time and are like repayments for past-due debts. If the Office of Recovery Services is collecting current child support, it is counted as current even if the Office of Recovery Services mails the payment to the client after the month it is collected.

(26)5) The agency counts payments from annuities as unearned income in the month the payment is received.

(27)6) If income such as retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the agency only counts the amount paid to the individual.

(28)7) The agency deems both unearned and earned income from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(29)8) The agency stops deeming income from a sponsor when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(30)29) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(30) The Department does not count as unearned income the additional \$25 a week payment to a recipient of unemployment insurance provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115. The recipient may receive this weekly payment from March 2009 through June 2010.

(31) The Department does not count as unearned income the one-time economic recovery payments that an individual receives under Social Security, Supplemental Security Income, Railroad Retirement, or Veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115. It further does not count refunds that a government retiree receives pursuant to the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(32) The Department does not count as unearned income the COBRA premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

R414-304-5. A, B and D Medicaid and A, B and D Institutional Medicaid Earned Income Provisions.

(1) The Department ~~adopts~~ incorporates by reference 42 CFR [435.725, 435.726, 435.811 [through 435.832] and 435.831, 200[+]8 ed., and 20 CFR 416.1110 through 416.1112, 200[2]8 ed.] which are incorporated by reference. ~~The department adopts Subsection 1612(b)(4)(A) and (B) of the Compilation of the Social Security Laws, in effect January 1, 2001, which is incorporated by reference].~~ The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) If an SSI recipient has a plan for achieving self-support approved by the Social Security Administration, the Department shall not count income set aside in the plan that allows the individual to purchase work-related equipment or meet self support goals. This income shall be excluded and may include earned and unearned income.

(3) Expenses relating to the fulfillment of a plan to achieve self-support shall not be allowed as deductions from income.

(4) For A, B and D Medicaid, earned income used to compute a needs-based grant is not countable.

(5) For A, B and D Institutional Medicaid, \$125 shall be deducted from earned income before contribution towards cost of care is determined. [

~~(6) For A, B and D Institutional Medicaid impairment-related work expenses shall be allowed as an earned income deduction.]~~

(7)6) Capital gains shall be included in the gross income from self-employment.

(8)7) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion

amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(19)8) No deductions shall be allowed for the following business expenses:

- (a) transportation to and from work;
- (b) payments on the principal for business resources;
- (c) net losses from previous tax years;
- (d) taxes;
- (e) money set aside for retirement;
- (f) work-related personal expenses.

(10)9) Net losses of self-employment from the current tax year may be deducted from other earned income.

(11)0) The Department disregards earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541. This income is also excluded for individuals described in 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), 1902(a)(10)(A)(ii)(XII), 1902(a)(10)(A)(ii)(XIII) 1902(a)(10)(A)(ii)(XVIII), and 1902(a)(10)(E)(i) through (iv)(I) of Title XIX of the Social Security Act. The Department does not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost-of-care contribution for long-term care recipients.

(12)1) Deductions from earned income such as insurance premiums, savings, garnishments, or deferred income ~~is~~ are counted in the month when ~~it~~ the funds could have been received.

(12) The Department does not count as earned income any credit or refund that an individual receives under the provisions of Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, referred to as the Making Work Pay credit.

R414-304-6. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.

This section provides eligibility criteria governing earned income for the determination of eligibility for Family Medicaid and Institutional Family Medicaid coverage groups.

(1) The Department ~~adopts~~ incorporates by reference 42 CFR [435.725, 435.726, 435.811 ~~through 435.832~~] and 435.831, 200[1]8 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 200[3]8 ed. ~~which are incorporated by reference.~~ The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(a) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(b) "Part-time student" means a person who is enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time-period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours a day, whichever is less.

(c) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that lead to gainful employment.

(d) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(e) "Aid to Families with Dependent Children" (AFDC) means a state plan for aid that was in effect on June 16, 1996.

(f) "1931 Family Medicaid" is Medicaid coverage required by Subsection 1931(a), (b), and (g) of the Compilation of Social Security Laws.

(3) The income of a dependent child is not countable income if the child is:

(a) in school or training full-time;

(b) in school or training part-time, if employed less than 100 hours a month;

(c) in a job placement under the federal Workforce Investment Act (WIA).

(4) For Family Medicaid, the AFDC \$30 and 1/3 of earned income deduction is allowed if the wage earner has received 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.

(5) The Department determines countable net income from self-employment by allowing a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. If a self-employed individual provides verification of actual business expenses greater than the 40 percent flat rate exclusion amount, the Department allows actual expenses to be deducted. The expenses must be business expenses allowed under federal income tax rules.

(6) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(7) For Family Medicaid, the Department shall deduct child-care costs, and the costs of providing care for an incapacitated adult who is included in the Medicaid household size, from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to \$200.00 per month per child under age 2 and \$175.00 per month per child age 2 and older or incapacitated adult, may be deducted. A maximum of up to \$160.00 per month per child under age 2 and \$140.00 per month per child age 2 and older or incapacitated adult, may be deducted from the earned income of clients working less than 100 hours in a calendar month.

(8) For Family Institutional Medicaid, the Department shall deduct child-care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to \$160 a month per child may be deducted. A maximum of up to \$130 a month is deducted from the earned income of clients working less than 100 hours in a calendar month.

(9) The Department excludes earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.110, 435.112 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.222, 435.223, and 435.300 through 435.310 and individuals defined in Title XIX of the Social Security Act Sections 1902(a)(10)(A)(i)(III), (IV), (VI), (VII), 1902(a)(10)(A)(ii)(XVII), 1902(a)(47), 1902(e)(1), (4), (5), (6), (7), and 1931(b) and (c), 1925 and 1902(I). The Department does not

exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost-of-care contribution for long-term care recipients.

(10) Under 1931 Family Medicaid, for households that pass the 185% gross income test, if net income does not exceed the applicable BMS, the household is eligible for 1931 Family Medicaid. No health insurance premiums or medical bills are deducted from gross income to determine net income for 1931 Family Medicaid.

(11) For Family Medicaid recipients who otherwise meet 1931 Family Medicaid criteria, who lose eligibility because of earned income that does not exceed 185% of the federal poverty guideline, the state shall disregard earned income of the specified relative for six months to determine eligibility for 1931 Family Medicaid. Before the end of the sixth month, the state shall conduct a review of the household's earned income. If the earned income exceeds 185% of the federal poverty guideline, the household is eligible to receive Transitional Medicaid following the provisions of Rule R414-303 as long as it meets all other criteria.

(12) After the first six months of disregarding earned income, if the average monthly earned income of the household does not exceed 185% of the federal poverty guideline for a household of the same size, the state shall continue to disregard earned income for an additional six months to determine eligibility for 1931 Family Medicaid. In the twelfth month of receiving such income disregard, if the household continues to have earned income, the household is eligible to receive Transitional Medicaid following the provisions of Rule R414-303 as long as it meets all other criteria.

(13) The Department does not count as earned income any credit or refund that an individual receives under the provisions of Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, referred to as the Making Work Pay credit.

KEY: financial disclosures, income, budgeting
Date of Enactment or Last Substantive Amendment:
[September 1, 2008] 2009
Notice of Continuation: January 25, 2008
Authorizing, and Implemented or Interpreted Law: 26-18-1

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-305

Resources

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 32935
 FILED: 9/1/09 6:12 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to exclude certain types of income to determine Medicaid eligibility as required by the American Recovery and Reinvestment Act of 2009 (ARRA), to update incorporated materials, and to correct or update other rule language.

SUMMARY OF THE RULE OR CHANGE: This change excludes certain types of income, recovery payments, and Consolidated Omnibus Budget Reconciliation Act (COBRA) health insurance premium subsidies to determine Medicaid eligibility. In addition, it excludes certain properties that American Indians own from being counted as resources. It further updates incorporated materials and amends the text to clarify existing rule provisions.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 20 CFR 416.1201, 416.1202, 416.1205 and 416.1250, published by Office of the Federal Register, 10/01/2009
- ◆ Adds 42 CFR 435.843, published by Office of the Federal Register, 10/01/2008
- ◆ Updates 42 CFR 435.840 and 435.845, published by Office of the Federal Register, 10/01/2008
- ◆ Updates Section 1917(d) and (e) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2009
- ◆ Removes Sections 6012, 6014 and 6015(b) of Pub. L. No. 109-171, published by Office of the Federal Register, 01/01/2005
- ◆ Adds 20 CFR 416.1224, 416.1229 through 416.1239, and 416.1247 through 416.1249, published by Office of the Federal Register, 10/01/2009
- ◆ Adds Section 1917(f) and (g) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2009
- ◆ Updates 45 CFR 233.20(a)(3)(i)(B)(1),(2),(3),(4), and (6), and 233.20(a)(3)(vi)(A), published by Office of the Federal Register, 10/01/2008
- ◆ Updates Section 404(h)(4) and 1613(a)(13) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2009

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no budget impact because the payments that individuals receive and possibly retain are from sources of income they would not have had without the enactment of ARRA.
- ◆ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not determine Medicaid eligibility or fund Medicaid services.
- ◆ **SMALL BUSINESSES:** This change does not impact small businesses because they do not determine Medicaid eligibility for Medicaid clients.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no cost or savings to other persons because the payments they receive as a result of ARRA are not counted as resources and do not affect their Medicaid eligibility.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change does not require a recipient to pay more for coverage and it does not affect individual eligibility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes are necessary for compliance with federal requirements and should not have a negative fiscal impact on business. Payments under the ARRA stimulus package will not cause ineligibility. More persons who would otherwise be uninsured will have a source of payment to providers.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: David Sundwall, Executive Director

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

R414-305. Resources.

R414-305-1. A, B and D Medicaid and A, B and D Institutional Medicaid Resource Provisions.

(1) This section establishes the standards for the treatment of resources to determine eligibility for aged, blind and disabled Medicaid and aged, blind and disabled institutional Medicaid.

(2) To determine eligibility of the aged, blind or disabled, the Department ~~adopts~~ incorporates by reference 42 CFR [435.725 and 435.726, 435.840 through 435.843, 435.845, 200[5]8 ed., and 20 CFR 416.1201, [through] 416.1202, [and] 416.120[4]5 through 416.1224, 416.1229 through 416.1239, and 416.1247 through 416.12[66]50, 200[5]9 ed.], ~~which are incorporated by reference.~~ The Department adopts Subsection 1902(k) of the

Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department ~~adopts~~ incorporates by reference Section 1917(d), ~~and~~ (e), (f) and (g), ~~404(h)(4) and 4613(a)(13)]~~ of the Compilation of the Social Security Laws in effect January 1, [1999]2009, ~~which are incorporated by reference.~~ ~~The Department adopts sections 6012, 6014 and 6015(b) of Pub. L. 109-171 which are incorporated by reference.] The Department shall not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.~~

(3) The definitions in R414-1 and R414-301 apply to this rule, in addition:

(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers and the cost of opening and closing a grave site.

(b) "Sanction" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a Home and Community Based waiver due to a transfer of assets for less than fair market value.

(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

(4) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

(5) Except for the Medicaid Work Incentive Program, the resource limit for aged, blind or disabled Medicaid is \$2,000 for a one-person household and \$3,000 for a two-~~member~~ person household.

(6) For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is \$15,000. This limit applies whether the household size is one or more than one.

(7) The Department bases non-institutional and institutional Medicaid eligibility on all available resources owned by the client, or deemed available to the client from a spouse or parent. Eligibility cannot be granted based upon the client's intent to or action of disposing of non-liquid resources as described in 20 CFR 416.1240, 200[5]9 ed., unless Social Security is excluding the resources for an SSI recipient while the recipient takes steps to dispose of the excess resources.

(8) Any resource or the interest from a resource held within the rules of the Uniform Transfers to Minors Act is not countable. Any money from the resource that is given to the child as unearned income is a countable resource beginning the month after the child receives it.

(9) The resources of a ward that are controlled by a legal guardian are counted as the ward's resources.

(10) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are used to purchase a new exempt home within three calendar months of when ~~committed to replacement of~~ the property is sold ~~within 30 days and the purchase is completed within 90 days].~~ The individual shall receive one three-month extension ~~of 90 days~~ if more than ~~90 days~~ three months is needed to complete the

actual purchase. Proceeds is defined as all payments made on the principal of the contract. Proceeds does not include interest earned on the principal.

(11) If a resource is potentially available, but a legal impediment to making it available exists, it is not a countable resource until it can be made available. The applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions as determined by a person with established expertise relevant to the resources exists:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(12) Water rights attached to the home and the lot on which the home sits are exempt providing it is the client's principal place of residence.

(13) For an institutionalized individual, a home or life estate is not considered an exempt resource.

(14) To determine eligibility for nursing facility or other long-term care services, [F]the Department excludes [an institutionalized individual's]the value of the individual's principal home or life estate from countable resources if the individual's equity in the home or life estate does not exceed the equity limit of \$500,000 as established in [Section]42 U.S.C. 1396p(f)(1)(A), or as increased according to the provisions of 42 U.S.C. 1396p(f)(1)(C) of the Compilation of the Social Security Laws, [6014 of Pub. L. 109-171,] and one of the following conditions is met:

(i) the individual intends to return to the home;

(ii) the individual's spouse resides in the home;

(iii) the individual's child who is under age 21, or who is blind or disabled resides in the home; or

(iv) a reliant relative of the individual resides in the home.

(15) If the equity value of the individual's home or life estate exceeds \$500,000, or increased value according to the provisions of 42 U.S.C. 1396p(f)(1)(C), the individual is ineligible for nursing facility or other long-term care services unless the individual's spouse, or the individual's child who is under age 21 or is blind or permanently disabled lawfully resides in the home.

(1[5]6) For A, B and D Medicaid, the Department shall not count up to \$6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

(1[6]7) A previously unreported resource that meets the criteria for burial funds found in 20 CFR 416.1231, may be retroactively designated for burial and thereby exempted effective the first day of the month in which it was designated for burial or intended for burial. [However, it]The funds cannot be exempted retroactively [prior to November 1982 or earlier]more than 2 years prior to the date of application. Such resources shall be treated as funds set aside for burial and the amount exempted cannot exceed the limit established for the SSI program.

(1[7]8) One vehicle is exempt if it is used [at least four times per calendar year to obtain necessary medical treatment]for regular transportation needs of the individual or a household member.

(1[8]9) The Department excludes resources [allows]of an SSI recipient[s] who [have]has a plan for achieving self support approved by the Social Security Administration when the resources

are set aside under the plan[to set aside resources that allow them] to purchase work-related equipment or meet self support goals. [-These resources are excluded.]

([19]20) An irrevocable burial trust is not counted as a resource. However, if the owner is institutionalized or on home and community based waiver Medicaid, the value of the trust, which exceeds \$7,000, is considered a transferred resource.

(2[0]1) Business resources required for employment or self-employment are not counted.

(2[1]2) For the Medicaid Work Incentive Program, the Department excludes the following additional resources of the eligible individual:

(a) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or an Individual Retirement Account, even if such funds are available to the individual.

(b) A second vehicle when it is used by a spouse or child of the eligible individual living in the household to get to work.

(2[2]3) After qualifying for the Medicaid Work Incentive Program, these resources described in R414-305-1(2[4]2) will continue to be excluded throughout the lifetime of the individual to qualify for A, B or D Medicaid programs other than the Medicaid Work Incentive, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

(2[3]4) Assets shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(2[4]5) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(26) The Department excludes from countable resources the following resources:

(a) Amounts an individual receives as a result of the Making Work Pay credit defined in Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

(b) Amounts an individual retains from the economic recovery payments defined in Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for nine months after the month of receipt.

(c) Amounts an individual retains from the tax credit allowed to certain government employees as defined in Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

(d) The value of any reduction in Consolidated Omnibus Budget Reconciliation Act (COBRA) premiums provided to an individual under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(e) Certain property and rights of American Indians including certain tribal lands, personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in

Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(2[5]7) Life estates.

(a) For non-institutional Medicaid, life estates shall be counted as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, life estates are countable resources even if no market exists for the sale of the life estate, unless the life estate can be excluded as defined in paragraph 14 of this section.

(c) The client may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the client and the current market value of the property.

(d) The following table lists the life estate figure corresponding to the client's age. This figure is used to establish the value of a life estate:

TABLE

Age	Life Estate Figure
0	.97188
1	.98988
2	.99017
3	.99008
4	.98981
5	.98938
6	.98884
7	.98822
8	.98748
9	.98663
10	.98565
11	.98453
12	.98329
13	.98198
14	.98066
15	.97937
16	.97815
17	.97700
18	.97590
19	.97480
20	.97365
21	.97245
22	.97120
23	.96986
24	.96841
25	.96678
26	.96495
27	.96290
28	.96062
29	.95813
30	.95543
31	.95254
32	.94942
33	.94608
34	.94250
35	.93868
36	.93460
37	.93026
38	.92567
39	.92083
40	.91571
41	.91030
42	.90457
43	.89855
44	.89221

45	.88558
46	.87863
47	.87137
48	.86374
49	.85578
50	.84743
51	.83674
52	.82969
53	.82028
54	.81054
55	.80046
56	.79006
57	.77931
58	.76822
59	.75675
60	.74491
61	.73267
62	.72002
63	.70696
64	.69352
65	.67970
66	.66551
67	.65098
68	.63610
69	.62086
70	.60522
71	.58914
72	.57261
73	.55571
74	.53862
75	.52149
76	.50441
77	.48742
78	.47049
79	.45357
80	.43659
81	.41967
82	.40295
83	.38642
84	.36998
85	.35359
86	.33764
87	.32262
88	.30859
89	.29526
90	.28221
91	.26955
92	.25771
93	.24692
94	.23728
95	.22887
96	.22181
97	.21550
98	.21000
99	.20486
100	.19975
101	.19532
102	.19054
103	.18437
104	.17856
105	.16962
106	.15488
107	.13409
108	.10068
109	.04545

R414-305-2. Family Medicaid and Family Institutional Medicaid Resource Provisions.

(1) This section establishes the standards for the treatment of resources to determine eligibility for Family Medicaid and Family Institutional Medicaid programs.

(2) The Department [adopts]incorporates by reference 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4), and (6), and 233.20(a)(3)

(vi)(A), 200[4]8 ed., ~~which are incorporated by reference.~~ The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department ~~[adopts]~~incorporates by reference Section 1917(d), ~~and (e), (f) and (g), [Subs]~~Section 404(h) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 200[3]9, ~~which are incorporated by reference.~~ ~~The Department adopts sections 6012, 6014 and 6015(b) of Pub. L. 109-171 which are incorporated by reference.~~ The Department does not count as an available resource retained funds from sources that federal laws specifically prohibit from being counted as a resource to determine eligibility for federally-funded medical assistance programs. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

(4) Except for pregnant women who meet the criteria under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 200[3]9, the resource limit is \$2,000 for a one person household, \$3,000 for a two person household and \$25 for each additional household member. For pregnant women defined above, the resource limit is defined in Section R414-303-11.

(5) Except for the exclusion for a vehicle, the agency uses the same methodology for treatment of resources for all medically needy and categorically needy individuals.

(6) To determine countable resources for Medicaid eligibility, the agency considers all available resources owned by the client. The agency does not consider a resource unavailable based upon the client's intent to or action of disposing of non-liquid resources.

(7) The agency counts resources of a household member who has been disqualified from Medicaid for failure to cooperate with third party liability or duty of support requirements.

(8) If a legal guardian, conservator, authorized representative, or other responsible person controls any resources of an applicant or recipient, the agency counts the resources as the applicant's or recipient's. The arrangement may be formal or informal.

(9) If a resource is potentially available, but a legal impediment to making it available exists, the agency does not count the resource until it can be made available. Before an applicant can be made eligible, or to continue eligibility for a recipient, the applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(10) Except for determining countable resources for 1931 Family Medicaid, the agency excludes a maximum of \$1,500 in equity value of one vehicle.

(11) The agency does not count as resources the value of household goods and personal belongings that are essential for day-to-day living. Any single household good or personal belonging with a value that exceeds \$1000 must be counted toward the resource limit. The agency does not count as a resource the value of

any item that a household member needs because of the household member's medical or physical condition.

(12) The agency does not count the value of one wedding ring and one engagement ring as a resource.

(13) For a non-institutionalized individual, the agency does not count the value of a life estate as an available resource if the life estate is the applicant's or recipient's principal residence. If the life estate is not the principal residence, the rule in Subsection R414-305-1(2[5]7) applies.

(14) The agency does not count the resources of a child who is not counted in the household size to determine eligibility of other household members.

(15) For a non-institutionalized individual, the agency does not count as a resource, the value of the lot on which the excluded home stands if the lot does not exceed the average size of residential lots for the community in which it is located. The agency counts as a resource the value of the property in excess of an average size lot. If the individual is institutionalized, the provisions of Subsections R414-305-1(13), (14), (15), and (2[5]7) apply to the individual's home or life estate. ~~—In addition, the provisions of section 6014 of Pub. L. 109-171 apply.]~~

(16) The agency does not count as a resource the value of water rights attached to an excluded home and lot.

(17) The agency does not count any resource, or interest from a resource held within the rules of the Uniform Transfers to Minors Act. The agency counts as a resource any money from such a resource that is given to the child as unearned income and retained beyond the month received.

(18) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are used to purchase a new exempt home within three calendar months~~[committed to replacement]~~ of when the property is sold~~[within 30 days and the purchase is completed within 90 days]~~. The individual shall receive one three-month~~[of 90 days]~~ extension, if more than [90 days]three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(19) Retroactive benefits received from the Social Security Administration and the Railroad Retirement Board are not counted as a resource for the first 9 months after receipt.

(20) The agency excludes from resources, a burial and funeral fund or funeral arrangement up to \$1500 for each household member who is counted in the household size. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial. All such funds must be separated from non-burial funds and clearly designated as burial funds. Interest earned on exempt burial funds and left to accumulate does not count as a resource. If exempt burial funds are used for some other purpose, remaining funds will be counted as an available resource as of the date funds are withdrawn.

(21) Assets shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable

qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(22) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(23) Business resources required for employment or self employment are not counted. The Department treats non-business, income-producing property in the same manner the SSI program treats it as defined in 42 CFR 416.1222.

(24) For 1931 Family Medicaid households, the agency will not count as a resource either the equity value of one vehicle that meets the definition of a "passenger vehicle" as defined in 26-18-2(6), or \$1,500 of the equity of one vehicle, whichever provides the greatest disregard for the household.

(25) For eligibility under Family-related Medicaid programs, the agency will not count as a resource retirement funds held in an employer or union pension plan, retirement plan or account including 401(k) plans and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage.

(26) The agency will not count as a resource, funds received from the Child Tax credit or the Earned Income Tax credit for nine months following the month received. Any remaining funds will count as a resource in the 10th month after being received.

(27) The Department excludes from countable resources the following resources:

(a) Amounts an individual receives as a result of the Making Work Pay credit defined in Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

(b) Amounts an individual retains from the economic recovery payments defined in Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for nine months after the month of receipt.

(c) Amounts an individual retains from the tax credit allowed to certain government employees as defined in Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

(d) The value of any reduction in COBRA premiums provided to an individual under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(e) Certain property and rights of American Indians including certain tribal lands, personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

KEY: Medicaid, resources

Date of Enactment or Last Substantive Amendment: ~~April 1, 2008~~ 2009

Notice of Continuation: January 31, 2008

Authorizing, and Implemented or Interpreted Law: 26-18

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-320** Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32925

FILED: 9/1/09 5:04 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement an amendment to Utah's existing 1115 Demonstration Waiver for Utah's Premium Partnership for Health Insurance (UPP).

SUMMARY OF THE RULE OR CHANGE: This amendment allows individuals and families to receive a subsidy for their share of Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage. This subsidy helps individuals and families keep continuous insurance coverage and avoids preexisting condition exclusions that could occur if there were a lapse in coverage. This change further defines COBRA continuation coverage and adds this coverage as health insurance coverage to be subsidized under the UPP program. It also allows an individual who is covered by COBRA at the time of application and who applies during the first 60 days of the amendment to enroll in UPP. In addition, this amendment increases the maximum subsidy amount for children from \$100 to \$120 per month.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no impact to the state budget because children who enroll in COBRA and UPP are already qualified for and may enroll in the Children's Health Insurance Program (CHIP). In addition, adults who enroll in UPP are already qualified for and may enroll in the Primary Care Network Program. The state, therefore, does not incur any additional costs for COBRA enrollees. It is estimated that the increased costs from the \$20 increase will be offset by savings of moving more children from CHIP to UPP.

♦ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide UPP services.

♦ **SMALL BUSINESSES:** There is no budget impact because this change does not create any new requirements for small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are nominal savings to individuals who qualify for the COBRA and UPP programs. Nevertheless, there is insufficient data to determine this savings based on the number of individuals who will qualify for the UPP Program and the current cost of their COBRA insurance. There are no additional costs to providers based on any new requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because there are no additional costs to a child or adult who is already enrolled in the CHIP or the Primary Care Network Program. Furthermore, there are no additional costs to a single provider based on new requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change should encourage private insurance coverage for persons previously on a public program.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: David Sundwall, Executive Director

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

R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.

R414-320-2. Definitions.

The following definitions apply throughout this rule:

- (1) "Adult" means an individual who is at least 19 and not yet 65 years of age.
- (2) "Applicant" means an individual who applies for benefits under the UPP program, but who is not an enrollee.
- (3) "Best estimate" means the Department's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(4) "Child" means an individual who is younger than 19 years of age.

(5) "Children's Health Insurance Program" or "CHIP" provides medical services for children under age 19 who do not otherwise qualify for Medicaid.

(6) "Consolidated Omnibus Budget Reconciliation Act" (COBRA) continuation coverage is a temporary extension of employer health insurance coverage whereby a person who loses coverage under an employer's group health plan can remain covered for a certain length of time. Coverage must include at least physician visits, hospital inpatient services, pharmacy, well child visits, and children's immunizations. Lifetime maximum benefits must be at least \$1,000,000, the deductible can be no more than \$2,500 per individual, and the plan must pay at least 70% of an inpatient stay after the deductible.

([6]Z) "Department" means the Utah Department of Health.

([7]8) "Enrollee" means an individual who applies for and is found eligible for the UPP program.

([8]9) "Employer-sponsored health plan" means a health insurance plan offered through an employer where:

(a) the employer contributes at least 50 percent of the cost of the health insurance premium of the employee;

(b) coverage includes at least physician visits, hospital inpatient services, pharmacy, well child visits, and children's immunizations;

(c) lifetime maximum benefits are at least \$1,000,000;

(d) the deductible is no more than \$2,500 per individual;

and
(e) the plan pays at least 70% of an inpatient stay after the deductible.]

~~(9) "Utah's Premium Partnership for Health Insurance" (UPP) program provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.]~~

(10) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.

(11) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(12) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(13) "Local office" means any Department of Workforce Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(14) "Open enrollment" means a time period during which the Department accepts applications for the UPP program.

(15) "Public Institution" means an institution that is the responsibility of a governmental unit or that is under the administrative control of a governmental unit.

(16) "Primary Care Network" or "PCN" program provides primary care medical services to uninsured adults who do not otherwise qualify for Medicaid.

(17) "Recertification month" means the last month of the eligibility period for an enrollee.

(18) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(19) "Utah's Premium Partnership for Health Insurance" (UPP) program provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan or COBRA continuation coverage that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

~~(19)~~(20) "Verifications" means the proofs needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

R414-320-3. Applicant and Enrollee Rights and Responsibilities.

(1) Any person who meets the limitations set by the Department may apply during an open enrollment period. The open enrollment period may be limited to:

- (a) Adults with children living in the home;
- (b) Adults without children living in the home;
- (c) Adults enrolled in the PCN program;
- (d) Children enrolled in the CHIP program;
- (e) Adults or children who were enrolled in the Medicaid program within the last thirty days prior to the beginning of the open enrollment period; or

(f) Other groups designated in advance by the Department consistent with efficient administration of the program.

(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the local office or outreach staff.

(3) Applicants and enrollees must provide requested information and verifications within the time limits given. The Department will allow the client at least 10 calendar days from the date of a request to provide information and may grant additional time to provide information and verifications upon request of the applicant or enrollee.

(4) Applicants and enrollees have a right to be notified about the decision made on an application, or other action taken that affects their eligibility for benefits.

(5) Applicants and enrollees may look at information in their case file that was used to make an eligibility determination.

(6) Anyone may look at the eligibility policy manuals located at any Department local office.

(7) An individual must repay any benefits received under the UPP program if the Department determines that the individual was not eligible to receive such benefits.

(8) Applicants and enrollees must report certain changes to the local office within ten calendar days of the day the change becomes known. The local office shall notify the applicant at the time of application of the changes that the enrollee must report. Some examples of reportable changes include:

(a) An enrollee stops paying for coverage under an employer-sponsored health plan or COBRA continuation coverage.

(b) An enrollee changes health insurance plans.

(c) An enrollee has a change in the amount of the premium they are paying for an employer-sponsored health insurance plan or COBRA continuation coverage.

(d) An enrollee begins to receive coverage under, or begins to have access to Medicare or the Veteran's Administration Health Care System.

(e) An enrollee leaves the household or dies.

(f) An enrollee or the household moves out of state.

(g) Change of address of an enrollee or the household.

(h) An enrollee enters a public institution or an institution for mental diseases.

(i) An enrollee's subsidy for COBRA continuation coverage provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, Stat. 123 115 ends.

(9) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in R414-301-5 and R414-301-6.

(10) An enrollee must continue to pay premiums and remain enrolled in an employer-sponsored health plan or COBRA continuation coverage to be eligible for benefits.

(11) Eligible children may choose to enroll in their employer-sponsored health insurance plan or COBRA continuation coverage and receive UPP benefits, or they may choose direct coverage through the Children's Health Insurance Program.

R414-320-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b), 2007 ed., which is incorporated by reference.

(2) An individual who is covered under a group health plan or other creditable health insurance coverage, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for enrollment.

(a) An applicant who is covered by COBRA continuation coverage and who applies for UPP from the dates of October 1, 2009, through November 30, 2009, is eligible for UPP enrollment.

(b) Beginning on December 1, 2009, an applicant who is enrolled in COBRA continuation coverage and has not applied for the UPP program is not eligible for UPP enrollment.

(3) Eligibility for an individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage will be determined as follows:

(a) If the cost of the employer-sponsored coverage is less than 5% of the household's gross income, the individual is not eligible for the UPP program.

(b) For adults, if the cost of the employer-sponsored coverage exceeds 15% of the household's gross income the adult may choose to enroll in the UPP program or may choose direct coverage through the Primary Care Network program if enrollment has not been stopped under the provisions of R414-310-16.

(c) A child may choose enrollment in UPP or direct coverage under the CHIP program if the cost of the employer sponsored coverage is equal to or more than 5% of the household's gross income.

(4) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(5) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the UPP program ends once the individual becomes enrolled in the VA Health Care System.

(6) The Department shall deny eligibility if the applicant, spouse, or dependent child has voluntarily terminated health insurance coverage within the 90 days immediately prior to the application date for enrollment under the UPP program.

(a) An applicant, applicant's spouse, or dependent child can be eligible for the UPP program if their prior insurance ended more than 90 days before the application date.

(b) An applicant, applicant's spouse, or dependent child who voluntarily discontinues health insurance coverage under a COBRA plan, or under the Utah Comprehensive Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for the UPP program without a 90 day waiting period.

(7) An individual with creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program.

(8) Individuals must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, Medicare Part A or B, ~~or~~ the VA Health Care System, or COBRA continuation coverage.

(9) The Department shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual the household seeks to enroll or recertify.

R414-320-10. Income Provisions.

(1) For an adult to be eligible to enroll, gross countable household income must be equal to or less than 150% of the federal non-farm poverty guideline for a household of the same size.

(2) For children to be eligible to enroll, gross countable household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of the same size.

(3) All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income.

(4) The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for the UPP program.

(5) Any income in a trust that is available to, or is received by a household member, is countable income.

(6) Payments received from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 are countable income.

(7) Rental income is countable income. The following expenses can be deducted:

(a) Taxes and attorney fees needed to make the income available;

(b) Upkeep and repair costs necessary to maintain the current value of the property;

(c) Utility costs only if they are paid by the owner; and

(d) Interest only on a loan or mortgage secured by the rental property.

(8) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(9) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the certification period.

(10) Needs-based Veteran's pensions are counted as income. Only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(11) Child support payments received for a dependent child living in the home are counted as that child's income.

(12) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or which is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service, or did not work to receive, is not counted as income.

(13) Supplemental Security Income and State Supplemental payments are countable income.

(14) Income that is defined in 20 CFR 416 Subpart K, Appendix, 2004 edition, which is incorporated by reference, is not countable.

(15) Payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs are not countable.

(16) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(17) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(18) Child Care Assistance under Title XX is not countable income.

(19) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(20) Earned and unearned income of a child is not countable income if the child is not the head of a household.

(21) Educational income, such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(22) Reimbursements for employee work expenses incurred by an individual are not countable income.

(23) The value of food stamp assistance is not countable income.

(24) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

(25) The additional \$25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, which an individual may receive from March 2009 through June 2010 is not countable income.

(26) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, for certain government retirees are not countable income.

(27) [~~The Consolidated Omnibus Reconciliation Act (COBRA)~~] premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, is not countable income.

(28) The making work pay credit provided under Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, is not countable income.

R414-320-15. Effective Date of Enrollment and Enrollment Period.

(1) The effective date of enrollment is the day that a completed and signed application is received at a local office as defined in Subsection R414-308-3(2)(a) and (b), and the applicant meets all eligibility criteria and enrolls in and pays the first premium for the employer-sponsored health insurance or COBRA continuation coverage in the application month.

(2) The effective date of enrollment cannot be before the month in which the applicant pays a premium for the employer-sponsored health insurance or COBRA continuation coverage and is determined as follows:

(a) The effective date of enrollment is the date an application is received and the person is found eligible, if the applicant enrolls in and pays the first premium for the employer-sponsored health insurance or COBRA continuation coverage in the application month.

(b) If the applicant will not pay a premium for the employer-sponsored health insurance or COBRA continuation coverage in the application month, the effective date of enrollment is the first day of the month in which the applicant pays a premium [~~for the employer-sponsored health insurance~~]. The applicant must enroll in the employer-sponsored health insurance or COBRA continuation coverage no later than 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP.

(c) If the applicant does not enroll in the employer-sponsored health insurance or COBRA continuation coverage within 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP, the application shall be denied and the individual will have to reapply during another open enrollment period.

(3) The effective date of enrollment for a newborn or newly adopted child is the date the newborn or newly adopted child is enrolled in the employer-sponsored health insurance or COBRA continuation coverage if the family requests the coverage within 30 days of the birth or adoption. If the request is more than 30 days after the birth or adoption, enrollment is effective the date of report.

(4) The effective date of re-enrollment for a recertification is the first day of the month after the recertification month, if the recertification is completed as described in R414-320-13.

(5) If the enrollee does not complete the recertification as described in R414-320-13, and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.

(6) An individual found eligible shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months. If the enrollee completes the redetermination process in accordance with R414-320-13 and continues to be eligible, the recertification period will be for an additional 12 months beginning the month following the recertification month. Eligibility could end before the end of a 12-month certification period for any of the following reasons:

(a) The individual turns age 65;

(b) The individual becomes entitled to receive Medicare, or becomes covered by [~~Veterans Administration~~]VA Health Insurance;

(c) The individual dies;

(d) The individual moves out of state or cannot be located;

(e) The individual enters a public institution or an Institute for Mental Disease.

(7) If an adult enrollee discontinues enrollment in employer-sponsored insurance or COBRA continuation coverage, eligibility ends. If the enrollment in employer-sponsored insurance is discontinued involuntarily, the individual does not enroll in COBRA continuation coverage, and the individual notifies the local office within [~~10~~]ten calendar days of when the insurance ends, the individual may switch to the PCN program for the remainder of the certification period.

(8) A child enrollee may discontinue employer-sponsored health insurance or COBRA continuation coverage and move to direct coverage under the Children's Health Insurance Program at any time during the certification period without any waiting period.

(9) An individual enrolled in the Primary Care Network or the Children's Health Insurance Program who enrolls in an employer-sponsored plan or COBRA continuation coverage may switch to the UPP program if the individual reports to the local office within [~~10~~]ten calendar days of enrolling in an employer-sponsored plan or COBRA continuation coverage and before coverage [~~on the employer-sponsored plan~~]begins.

(10) If a UPP case closes for any reason, other than to become covered by another Medicaid program or the Children's Health Insurance Program, and remains closed for one or more calendar months, the individual must submit a new application to the local office during an open enrollment period to reapply. The individual must meet all the requirements of a new applicant.

(11) If a UPP case closes because the enrollee is eligible for another Medicaid program or the Children's Health Insurance Program, the individual may reenroll if there is no break in coverage between the programs, even if the State has stopped enrollment under R414-320-15.

(a) If the individual's 12-month certification period has not ended, the individual may reenroll for the remainder of that certification period. The individual is not required to complete a new application or have a new income eligibility determination.

(b) If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll. However, the individual must complete a new application and meet eligibility and income guidelines for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period.

R414-320-19. Benefits.

(1) The UPP program provides cash reimbursement to enrollees as described in this section.

(2) The reimbursement shall not exceed the amount the [employee]individual pays toward the cost of the employer-sponsored or COBRA continuation coverage.

(3) The amount of reimbursement for an adult will be up to \$150 per month per individual.

(4) The amount of reimbursement for children will be up to \$[400]120 per month per child for medical and an additional \$20 if they choose to enroll in employer-sponsored dental coverage.

(a) When the employer-sponsored insurance does not include dental benefits, the children may receive cash reimbursement up to \$[400]120 for the medical insurance cost and enroll in direct dental coverage under the CHIP Program.

(b) When the employer-sponsored insurance includes dental, the applicant will be given the choice of enrolling the children in the employer-sponsored dental and receiving an additional reimbursement up to \$20, or enrolling in direct dental coverage through the CHIP Program.

KEY: Medicaid, PCN, CHIP, UPP

Date of Enactment or Last Substantive Amendment: [July 1], 2009

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

**Human Services, Child and Family Services
R512-51**

Fee Collection for Criminal Background Screening for Prospective Foster and Adoptive Parents and for Employees of Other Department of Human Services Licensed Programs

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32905

FILED: 8/27/09 2:56 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to omit the reference to the Board of Child and Family Services per H.B. 306 from the 2009 Legislative General Session, to add statutory authority for Child and Family Services to perform rulemaking duties, and makes minor formatting changes. (DAR NOTE: H.B. 306 (2009) is found at Chapter 75, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule delete the reference to the Board of Child and Family Services, add the statutory authority for Child and Family Services to perform rulemaking duties, and make minor formatting changes for consistency purposes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. Law No. 109-248 and Section 62A-4a-102 and Section 78A-6-308

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no increase in costs or savings to the state budget because these proposed changes clarify practice, but do not increase workload that would require additional staff or other costs.
- ◆ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government.
- ◆ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no increase in costs or savings to small businesses, businesses, or local government entities because it was determined that this rule does not apply to small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

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

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
ROOM 225
120 N 200 W
SALT LAKE CITY, UT 84103-1500
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Duane Betournay, Director

R512. Human Services, Child and Family Services.
R512-51. Fee Collection for Criminal Background Screening for Prospective Foster and Adoptive Parents and for Employees of Other Department of Human Services Licensed Programs.
R512-51-1. Purpose and Authority.

(1)[A-] The purpose of this rule is to enable the Division of Child and Family Services (Child and Family Services) to collect fees for processing criminal background screenings. These screenings are for prospective foster and adoptive parents of children in state custody and other adults in the home as required by Public Law 109-248 and Section 78A-6-308. These screenings are also for employees of other licensed programs upon request of the Office of Licensing as authorized by Section 62A-2-120, as capacity allows.

(2) This rule is authorized by Section 62A-4a-102.

R512-51-2. Fee Collection for Electronic Fingerprint Scanning.

(1)[A-] It is the responsibility of Child and Family Services Regional Offices to collect fees for electronic fingerprint scanning for the purpose of criminal background screening for prospective foster and adoptive parents of children in state custody and other adults in the home and for employees of other Department of Human Services licensed programs.

(2)[B-] The amount of the fee charged for electronic fingerprint scanning will be approved by [~~the Board of~~]Child and Family Services as required by Section 62A-4a-102 and will not exceed the amount being charged for the same service from the Department of Public Safety, Bureau of Criminal Identification.

R512-51-3. Fee Collection for Cost of Submission of Electronic Fingerprints for Criminal Background Check.

(1)[A-] Child and Family Services has the option to collect fees for all or part of the actual cost of submission of

electronic fingerprints for criminal background checks through the Department of Public Safety, Bureau of Criminal Identification and the Federal Bureau of Investigation.

(2)[B-] Child and Family Services may elect to pay all or part of this cost for prospective foster and adoptive parents of children in state custody and other adults in the home, subject to legislative funding for this purpose.

(3)[C-] Child and Family Services will not pay any of the cost of submission of electronic fingerprints for criminal background checks for employees of other Department of Human Services licensed programs, but may submit the electronic fingerprints upon verification of payment of those fees by the Office of Licensing or designee.

KEY: criminal background screening, fees, foster care, adoption

Date of Enactment or Last Substantive Amendment:
~~[November 7, 2007]~~2009

Authorizing, and Implemented or Interpreted Law: Pub. L. No. 109-248; ~~62A-4a-102~~; 78A-6-308

Human Services, Child and Family Services R512-60 Children's Trust Account

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 32906

FILED: 8/27/09 3:06 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to omit the reference to the Board of Child and Family Services per H.B. 306 from the 2009 Legislative General Session, adds the statutory authority for Child and Family Services to perform rulemaking tasks, and makes minor grammatical and formatting changes. (DAR NOTE: H.B. 306 (2009) is found at Chapter 75, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule delete the reference to the Board of Child and Family Services, add the statutory authority citation allowing Child and Family Services to perform rulemaking duties, and make minor grammatical and formatting changes for consistency purposes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-305

and Section 62A-4a-309 and Section 62A-4a-310 and Section 62A-4a-311

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no increase in costs or savings to the state budget because it was determined that these proposed changes clarify practice, but do not increase workload that would require additional staff or other costs.
- ◆ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government.
- ◆ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN SERVICES
 CHILD AND FAMILY SERVICES
 ROOM 225
 120 N 200 W
 SALT LAKE CITY, UT 84103-1500
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Duane Betournay, Director

**R512. Human Services, Child and Family Services.
 R512-60. Children's Trust Account.**

R512-60-1. Purpose, Authority, Definitions, and Scope.

(1) ~~[Purpose and Authority.]~~ The purpose of this rule is to specify the requirements for carrying out the purposes of the Children's Trust Account, with the funding specified in Section 62A-4a-309.

~~(2) This rule is authorized by Section 62A-4a-102. [This rule, authorized by subsection 62A-4a-303(6), specifies requirements for carrying out the purposes of the Children's Trust Account, with the funding specified in Section 62A-4a-309.]~~

~~(3)(2)~~ Definitions. For the purposes of this section:

~~(a) "Administrator" means the employee of [the Division of] Child and Family Services appointed by the Director to administer the Children's Trust Account.~~

~~(b) "Board" means the Board of Child and Family Services.~~

(b) "Child and Family Services" means the Division of Child and Family Services.

~~(c)(4)~~ "Council" means the Child Abuse Advisory Council established under Section 62A-4a-311.

~~(d)(e)~~ "Director" means Director of ~~[the Division of] Child and Family Services.~~

~~(4)(3)~~ Scope. Funds from the Children's Trust Account shall be used for community-based education, service, and treatment programs to prevent the occurrence and recurrence of child abuse and neglect, as specified in 62A-4a-305.

R512-60-2. Functions of the Council.

~~[In addition to the functions specified in Subsection 62A-4a-311(5), t]~~ The Council shall advise ~~[the Board and]~~ the Director regarding policies and procedures for the administration of the Children's Trust Account.

R512-60-3. Conflict of Interest.

(1) A Council member affiliated with an organization bidding for a trust account contract shall openly declare this conflict of interest.

(2) A Council member with a conflict of interest shall be excused from the discussion, consideration, or voting on any project or proposal in which the Council member has an affiliation.

(3) A Council member shall not exert undue influence or make any requests for favored consideration from the Council ~~[-the Board-]~~ or Child and Family Services ~~[-the Division]~~ to receive a contract award from the State.

R512-60-4. Responsibilities of the Director.

In addition to the responsibilities defined in Section 62A-4a-303, the Director shall:

(1) ~~[d]~~ Designate a staff member to serve as the Administrator of the Children's Trust Account and as the liaison with the Council ~~[-and]~~

(2) ~~[f]~~ Review policies and procedures regarding the administration of the Children's Trust Account which have been developed by the Council.

(3) Hold a public hearing for comments on the Children's Trust Account allocation plan and prevention priorities. This shall meet the requirement of Section 62A-4a-306 requiring public comments on the specific program or service.

(4) Approve the allocation plan and prevention priorities prior to implementation.

(5) Approve policies of the Children's Trust Account.

~~**[R512-60-5. Responsibilities of the Board:**~~

~~(1) The Board shall hold a public hearing for comments on the Children's Trust Account allocation plan and prevention~~

priorities. This shall meet the requirement of Section 62A-4a-306 requiring public comments on the specific program or service.

(2) The Board shall approve the allocation plan and prevention priorities prior to implementation.

(3) The Board shall approve policies of the Children's Trust Account.

R512-60-5[6]. Proposal Requirements.

(1) A request for proposals (RFPs) shall be developed by the Administrator based upon the approved allocation plan and prevention priorities, and in accordance with State Purchasing Guidelines. The request for proposals shall specify the purposes and eligibility requirements for projects or programs to be funded through the Children's Trust Account. The proposal requirements may vary from year to year.

(2) The Administrator shall widely disseminate the RFPs[request for proposals]. Project or program proposals shall be submitted as specified in the RFPs.

R512-60-6[7]. Funding Limitations and Requirements.

(1) Funding for individual projects shall be at least ~~\$4,000~~[\$1,000] and shall not exceed \$20,000 per year, and may have the option of being renewed according to the terms of the request for proposals. The [Board]Director may approve a funding level, recommended by the Council, which varies from this requirement for a program or project serving a geographical area encompassing more than one community or for a program or project of exceptional merit. If unobligated account revenues for a given year are less than \$50,000, the Council may forego the RFP process for that year.

(2) Each program or project funded through the Children's Trust Account shall provide a dollar for dollar match from private or local government sources.

(a) In-kind contributions may be used as part of the local match requirement. No more than 50% of the local match requirement may be in-kind.

(b) Items that may be used as in-kind match are contributed services of support personnel, office space, furniture and equipment, utility costs, vehicles, contributed services of professional personnel including physicians, nurses, social workers, psychologists, educators, public accountants, and lawyers who are performing services for which they would normally be paid. The source of original funding for this in-kind match shall not be state or federal monies.

(3) Of the total monies available for allocation in the Children's Trust Account, 10% to 15% shall be for statewide programs.

(4) The remaining funds shall be awarded according to the allocation plan approved by the [Board]Director. This plan shall be based on monies available for allocation, the population percentage count by area, and a base amount of \$1,000 to \$2,000 recommended by the Children's Trust Fund Administrator.

R512-60-7[8]. Procedures in Selecting Programs or Projects to be Supported by the Children's Trust Account.

(1) Proposals received by [the Division]Child and Family Services in response to the [request for proposals (RFPs)] shall be reviewed according to the criteria specified in the RFPs, consistent with Section 62A-4a-307.

(2) The Administrator or [Division regional]Child and Family Services contract monitors shall negotiate contracts with successful offerors, based on State Purchasing Guidelines.

R512-60-8[9]. Evaluation.

(1)[-] Each program or project funded through the Children's Trust Account shall be evaluated at least once each year to determine if the purposes and goals of the project have been met. This evaluation may be done by personnel within [the Division]Child and Family Services or by contract with a qualified individual, non-profit organization, or agency. The evaluation shall be completed at least 60 working days prior to the end of the contract year. A copy of the written evaluation shall be sent to the Administrator who will provide evaluation information to the Council.

(2)[-] If the Director contracts for evaluation services, the contract may not exceed \$500 per grantee per year.

R512-60-9[10]. Research.

(1) Children's Trust Account funds may be used for research programs consistent with Section 62A-4a-305 at funding levels the [Board and]Council deems appropriate. Basic or applied research programs or projects that provide empirical data to support efforts to prevent the occurrence or recurrence of child abuse and neglect in any of its basic forms, including physical abuse, neglect or abandonment, sexual maltreatment, psychological abuse, or educational or medical neglect, may be funded.

KEY: child welfare, child abuse, children's trust account[*]

Date of Enactment or Last Substantive Amendment: [July 1, 1997]2009

Notice of Continuation: January 3, 2007

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-305; 62A-4a-309; 62A-4a-310; 62A-4a-311

Human Services, Child and Family Services **R512-200** Child Protective Services, Intake Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32907

FILED: 8/27/09 3:12 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to add the statutory authority for Child and Family Services to perform rulemaking duties, to remove the reference to Priority 4 response times,

to add language from H.B. 22 of the 2009 Legislative General Session about the actions that Intake will perform when it receives a report concerning a runaway child, and to make minor formatting changes. (DAR NOTE: H.B. 22 (2009) is found at Chapter 19, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule delete the reference to a Priority 4 response time, add the statutory authority for Child and Family Services to perform rulemaking duties, add language concerning the actions Intake will perform when receiving a report about a runaway child, and make minor formatting changes for consistency purposes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no increase in costs or savings to the state budget because it was determined that these proposed changes clarify practice, but do not increase workload that would require additional staff or other costs.
- ◆ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government.
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COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

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

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
ROOM 225
120 N 200 W
SALT LAKE CITY, UT 84103-1500
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Duane Betournay, Director

**R512. Human Services, Child and Family Services.
R512-200. Child Protective Services, Intake Services.
R512-200-1. Purpose and Authority and Purpose.**

- (1)[A-] The purpose of Intake Services is:
(a)[+] [†]To receive and evaluate whether an investigation is needed;
(b)[2-] [‡]Assign for investigation[;] referrals of suspected child abuse, neglect, and dependency.
(2)[B-] Pursuant to Section 62A-4a-105 and 62A-4a-403, [the Division of]Child and Family Services[~~(DCFS)~~] is authorized to provide CPS[~~child protective services~~].
(3) This rule is authorized by Section 62A-4a-102.

R512-200-2. Definitions.

- (1)[A-] The following terms are defined for the purposes of this rule:
(a) "Child and Family Services" means the Division of Child and Family Services.
(b) "CPS" means Child Protective Services.
(c)[+] "SAFE"[;] means Child and Family Services[DCFS] Child Welfare Management Information System.

R512-200-3. Scope of Services.

- (1)[A-] Qualification for Services.
(a)[+] [DCFS]Child and Family Services will maintain a system for receiving referrals or reports about child abuse, neglect, or dependency. The system shall supply Child and Family Services CPS[DCFS ~~Child Protective Services~~ (CPS)] workers with a complete previous [Division]Child and Family Services history for each child, including siblings, foster care episodes, all reports of abuse, neglect, or dependency, treatment plans, and casework deadlines.
(2)[B-] Priority of the referral.
(a)[+] [The ~~Division~~]Child and Family Services establishes CPS priority time frames as follows:
(i)[‡] A Priority 1 response shall be assigned when the child referred is in need of immediate protection. Intake will begin to collect information immediately after the completion of the initial contact from the referent. As soon as possible thereafter, [†]Intake will obtain additional information, staff the referral to determine the priority, notify law enforcement, and assign to the [DCFS]Child and Family Services CPS worker. Intake shall provide the [DCFS]Child and Family Services CPS worker with information concerning prior investigations on SAFE. The [DCFS]Child and Family Services CPS worker has as a standard of 60 minutes from the time Intake notifies the worker to initiate efforts to make face-to-face contact with an alleged victim. For a Priority 1R (rural) referral, a [DCFS]Child and Family Services CPS worker has, as a standard, three hours to initiate efforts to make face[-]to[-]face contact if the

alleged victim is more than 40 miles from the investigator who is assigned to make the face-to-face contact.

(ii)[b-] A Priority 2 response shall be assigned when physical evidence is at risk of being lost or the child is at risk of further abuse, neglect, or dependency, but the child does not have immediate protection and safety needs, as determined by the Intake checklist. Intake will begin to collect information as soon as possible after the completion of the initial contact from the referent. As soon as possible Intake will obtain additional information, staff the referral to determine the priority, assign the referral to the [DCFS]Child and Family Services CPS worker, and notify law enforcement. Intake shall give verbal notification to the assigned [DCFS]Child and Family Services CPS worker. Intake shall also provide the [DCFS]Child and Family Services CPS worker with information concerning prior investigations on SAFE. The [DCFS]Child and Family Services CPS worker has, as a standard, 24 hours from the time Intake notifies the worker to initiate efforts to make face-to-face contact with the alleged victim. Notification of a Priority 2 referral received after normal working hours (8:00 a.m. through 5:00 p.m.) shall occur as early as possible following morning.

(iii)[e-] A Priority 3 response shall be assigned when potential for further harm to the child and the loss of physical evidence is low. Prior to transferring the case to a Child and Family Services CPS worker, Intake [worker-] will obtain additional information, research data sources, staff the referral as necessary, determine the priority, complete documentation including data entry, make disposition to CPS, and notify law enforcement. Intake shall also provide the [DCFS]Child and Family Services CPS worker with information concerning prior investigations on SAFE. The [DCFS]Child and Family Services CPS worker will make the face-to-face contact with the alleged victim within a reasonable period of time.[]

~~d. A Priority 4 response shall be assigned when one or more of the following apply and there are no safety or protection issues identified:~~

~~1. A juvenile court or district court orders an investigation where there are no specific allegations of abuse, neglect, or dependency (unless otherwise ordered by the court):~~

~~2. There is an alleged out-of-home perpetrator (an alleged perpetrator who does not reside with or have access to the child) and there is no danger that critical evidence will be lost.~~

~~3. An agency outside the state of Utah requests a courtesy investigation, and the circumstances in the case do not meet the definition of a priority 1, 1R, 2, or 3-]~~

(3) If Child and Family Services received a report concerning a runaway child, Intake will gather information to determine if there is an allegation of abuse, neglect, or dependency that requires a CPS referral or will refer the caller to contact a youth services agency in accordance with Section 62A-4a-501.

(4)[c-] Out-of-State Abuse or Neglect Report.

(a)[+-] [DCFS]Child and Family Services will take reasonable steps to ensure that reports of abuse or neglect are referred for investigation to the appropriate out-of-state agency and shall take reasonable steps to adequately protect children in Utah who were victims of abuse in another state or country from the alleged perpetrator.

(b)[2-] When the referent identifies an incident of abuse or neglect that occurred outside Utah but the child is in Utah at the

time of the referral, the [DCFS]Child and Family Services CPS worker shall:

(i)[a-] Obtain all the information needed to complete a referral.

(ii)[b-] Determine whether the child is at risk of abuse or neglect from the alleged perpetrator.

(iii)[e-] Contact the [child protective service]CPS agency in the state where the incident of abuse occurred and complete the referral process of that state.

(iv)[d-] Assign the referral to a [DCFS]Child and Family Services CPS worker for a courtesy interview and coordination with the other state's investigation, when requested.

(v)[e-] In domestic violence related child abuse cases, recognize another state's protective order.

(vi)[f-] If the other state refuses to open an investigation or the investigation is contrary to the evidence acquired in Utah, the referral shall be assigned to a [DCFS]Child and Family Services CPS worker for investigation. The [DCFS]Child and Family Services CPS worker completing the investigation shall review the case with the Attorney General's Office for assistance with jurisdictional issues.

(5)[d-] When a referent identifies an incident of abuse or neglect that occurred in Utah, and the child is not in Utah at the time of the referral, the Intake worker shall:

(a)[+-] Obtain all the information needed to complete a referral.

(b)[2-] Determine the location of the child and the length of time the child will be at their current location. If the child will be outside the state of Utah longer than 30 days, a request for courtesy casework will be made in the state where the child is currently located.

(c)[3-] If the child is determined to be at risk, a request will be made for courtesy casework within the priority time frame.

(6)[E-] The Department of Health Child Care Licensing unit and/or the [DHS]Department of Human Services Office of Licensing and appropriate [DCFS]Child and Family Services staff shall be notified by Intake when [DCFS]Child and Family Services receives a referral for an allegation of child abuse, neglect, or dependency against a licensed child care provider or out-of-home care provider. The referral shall be forwarded to the assigned personnel[contracted entity] for conflict of interest investigations when the allegation involves a child living in substitute care while in protective custody or temporary custody of [DCFS]Child and Family Services, or any other [DCFS]Child and Family Services conflict of interest.

(7)[F-] Availability.

(a)[+-] CPS [Services-]are available in all geographic regions of the state.

KEY: social services, child welfare, domestic violence, child abuse

Date of Enactment or Last Substantive Amendment: [September 3, 2003]2009

Notice of Continuation: August 20, 2008

Authorizing, and Implemented or Interpreted Law: 62a-4a-102; 62A-4a-105

Human Services, Child and Family Services

R512-204

Child Protective Services, New Caseworker Training

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32909

FILED: 8/27/09 3:18 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to omit the reference to the Board of Child and Family Services per H.B. 306 from the 2009 Legislative General Session and makes minor formatting changes. (DAR NOTE: H.B. 306 (2009) is found at Chapter 75, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule delete the reference to the Board of Child and Family Services and make minor formatting changes for consistency purposes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-107

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no increase in costs or savings to the state budget because it was determined that these proposed changes clarify practice, but do not increase workload that would require additional staff or other costs.
- ◆ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government.
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COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

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

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
ROOM 225
120 N 200 W
SALT LAKE CITY, UT 84103-1500
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Duane Betournay, Director

R512. Human Services, Child and Family Services.

R512-204. Child Protective Services, New Caseworker Training.

R512-204-1. Purpose and Authority.

(1)[A:] Pursuant to Section 62A-4a-107, the Division of Child and Family Services (Child and Family Services) mandates that before assuming significant independent casework responsibilities, all caseworkers shall successfully complete the core curriculum training.

(2)[B:] Section 62A-4a-102 gives [the Board of] Child and Family Services rulemaking authority.

R512-204-2. Conflict Training.

(1) The child welfare training coordinator for Child and Family Services is charged with the responsibility for ensuring that the core curriculum is inclusive of information about working with families where there is a conflictual relationship born out of divorce proceedings. This training must include information on fraudulent reporting in Child Protective Services investigations. Other training information must be provided that assists the caseworker in using a variety of techniques to develop a complete picture of the family dynamics and how this may impact the information gathered and the conclusions reached at the end of an investigation.

KEY: child welfare, child abuse, caseworker training

Date of Enactment or Last Substantive Amendment: ~~May 8, 2008~~ 2009

Authorizing, and Implemented or Interpreted Law: 62A-4a-105; 62A-4a-107; 62A-4a-102

Human Services, Recovery Services
R527-258
 Enforcing Child Support When the
 Obligor is an Ex-Prisoner or in a
 Treatment Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32890

FILED: 8/18/09 7:41 AM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify when the office will collect and enforce past-due support when the obligor is involved in an in-patient or out-patient mental health or substance abuse programs. The changes also make this section, R527-258-4, consistent with the collection and enforcement of an obligor that has been released from incarceration.

SUMMARY OF THE RULE OR CHANGE: The changes add language to the first section to clarify that the Office of Recovery Services/Child Support Services (ORS/CSS) will not take collection or enforcement action on an obligor if he is in an in-patient treatment facility for 30 days or more. In that same section, the references to collection of current support and \$1 was deleted, as well as reference to out-patient treatment. A new third subsection was added which states that the office will only collect current support and \$1 dollar for six months after the obligor notifies ORS/CSS that he is involved in an out-patient program or the office determines that the obligor is involved in an out-patient treatment program. Moved the old Subsection R527-258-4(3) to (4).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 78B-12-212 and Subsection 62A-11-320(1)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state because the changes to the rule are for clarification purposes. The office has been and is still required to provide the same services pursuant to federal regulations and state law.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs to the local government because administrative rules of ORS do not apply to local government.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs for small business because the changes affect the internal procedures of the ORS/CSS and provide clarification to the child support staff.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs for other persons because the changes affect the internal procedures of the ORS/CSS and provide clarification to the child support staff.

COMPLIANCE COSTS FOR AFFECTED PERSONS: ORS cannot provide firm figures because there is no way of knowing how many obligors' will have their support debts forgiven and what portion of each obligor's debt will be forgiven.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Passage of this proposed rule will have little or no fiscal impact on local businesses.

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

HUMAN SERVICES
 RECOVERY SERVICES
 515 E 100 S
 SALT LAKE CITY, UT 84102-4211
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ LeAnn Wilber by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Mark Brasher, Director

R527. Human Services, Recovery Services.

R527-258. Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program.

R527-258-4. Collection from Obligor in Treatment Programs.

1. If the obligor is in an in-patient, licensed mental health or substance abuse treatment program for thirty days or more, no collection or enforcement action will be taken to collect~~the office will only collect current support and one dollar towards~~ the past-due support debt for the duration of the in-patient treatment~~[or up to six months of out-patient treatment]~~.

2. If the obligor is in an in-patient, licensed mental health or substance abuse treatment program and notifies ORS/CSS or the office is made aware of the release within 30 days of the release date, the office will only collect current support and one dollar toward the past-due support debt for six months after the in-patient program release date.

3. If the obligor is involved in an out-patient treatment program and notifies ORS/CSS or the office is made aware of the treatment within 30 days of the treatment beginning, the office will only collect current support and one dollar toward the past-due support debt for six months after:

_____ a. the obligor's initial contact with the office, or
_____ b. the office determines that the individual is involved in
 an out-patient treatment program.

_____ 4. [The]ORS/CSS will enforce a support order that requires the obligor to provide medical insurance coverage for the children, if appropriate.

R527-258-5. Enforcing Child Support When the Obligor Is in a Treatment Program.

1. The federal title IV-A past-due support debt which accrued while the obligor was in an in-patient treatment program may be forgiven one time, if the full monthly current support payment and the full monthly assessed payment toward the past-due support debt have been made for twelve consecutive months. The twelve consecutive month period begins when the obligor has been released from an in-patient treatment program and s/he has contacted the office to make payment arrangements within the allotted 30 days.

2. The office will use the federal income withholding notice and procedures to enforce and collect the current support and an arrears payment, when appropriate. The office will use the federal National Medical Support Notice and procedures to enforce insurance coverage for the children, if appropriate.

a. If the obligor does not make the full payment in each of the first six months, additional collection or enforcement action may be taken.

b. If the obligor makes the full required payment each month for twelve consecutive months, the remaining IV-A support debt that accrued during the most recent treatment period shall be forgiven. IV-A debt forgiveness due to participation in an in-patient or out-patient treatment program will only occur one time per obligor.

3. If the obligor owes IV-A arrears only, s/he must make twelve consecutive payments to the office based on an assessed amount determined by ORS/CSS.

4. The obligor's arrearage payment shall be reassessed by the office if his/her financial situation changes during the twelve-month period.

KEY: administrative law, child support

Date of Enactment or Last Substantive Amendment: [July 13], 2009

Notice of Continuation: August 22, 2007

Authorizing, and Implemented or Interpreted Law: 78B-12-212; 62A-11-107; 62A-11-320(1)

DAR FILE NO.: 32901
 FILED: 8/27/09 12:01 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these changes is to update the rule to comply with rate and form filing procedures and to clarify language.

SUMMARY OF THE RULE OR CHANGE: The changes update the rule to comply with rate and form filing procedures; update incorporated documents; eliminate the reference to Sircon; change the time required to make filing corrections from 30 to 15 days; and require that the intent of the filing and purpose of each document be included with each filing.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-2-201.1 and Section 31A-2-202

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These changes will have no fiscal impact on the department. The changes will not increase the work load and no additional filings or fee will be required.

◆ **LOCAL GOVERNMENTS:** The changes to this rule will have no impact on local governments since the rule deals with the relationship between the department and its licensees, in this case around 550 life insurance companies.

◆ **SMALL BUSINESSES:** This rule affects life insurance companies; few, if any, would be considered small businesses. The changes to this rule update the procedures of the department to comply with national standards being used by most states. The only fiscal impact may be the reduction in rejected filings, as a result of language clarifications, which would result in reduced filing fees paid by insurers to the contracted organization processing these filings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule affects life insurance companies; most are large businesses. The changes to this rule update the procedures of the department to comply with national standards being used by most states. The only fiscal impact may be the reduction in rejected filings, as a result of language clarifications, which would result in reduced filing fees paid by insurers to the contracted organization processing these filings. Consumers will likely not be impacted financially by these changes since life insurers will have little, if any, fiscal impact as a result of the procedural changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule affects life insurance companies; most are large businesses. The changes to this rule update the procedures of the department to comply with national standards being used by most states. The only fiscal impact may be the reduction in rejected filings, as a result of language clarifications, which would result in reduced filing fees paid by

Insurance, Administration
R590-226
 Submission of Life Insurance Filings

NOTICE OF PROPOSED RULE
 (Amendment)

insurers to the contracted organization processing these filings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have little, if any, fiscal impact on businesses in Utah.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-226. Submission of Life Insurance Filings.

R590-226-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting:

- (a) life insurance filings required by Section 31A-21-201; ~~and~~
- (b) ~~viatical filings required by Rule R590-222; and~~
- (c) ~~report filings as required [by R590-177].~~

(2) This rule applies to:

- (a) all types of individual and group life insurance~~;~~ ~~and~~ variable life insurance ~~and viatical~~; and
- (b) group life insurance contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-226-3. [Documents Incorporated by Reference.

~~(1) The department requires that the documents described in this rule must be used for all filings.~~

~~(a) Actual copies may be used or you may adapt them to your word processing system.~~

~~(b) If adapted, the content, size, font, and format must be similar.~~

~~(2) The following documents are hereby incorporated by reference and are available on the department's website, www.insurance.utah.gov.~~

~~(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated March 1, 2007.~~

~~(b) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated March 1, 2007.~~

~~(c) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instructions)," dated March 1, 2007.~~

~~(d) "Utah Life Filing Certification for Individual," dated July 2007.~~

~~(e) "Utah Life Filing Certification for Group," dated July 2007.~~

~~(f) "Utah Life and Annuity Group Questionnaire," dated July 2007.~~

~~(g) "Utah Life and Annuity Request for Discretionary Group Authorization," dated July 2007.~~

~~(h) "Utah Annual Life Insurance Illustration Certification Filing Checklist," dated July 2007.~~

R590-226-4. [Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Data page" means the page or pages in a policy or certificate that provide the specific data for the insured detailing the coverage provided and may be titled by the insurer as policy specifications, policy schedule, policy information, etc.

(3) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.

(4) "Electronic Filing" means a:

(a) ~~[a]~~ filing submitted via the Internet by using the ~~[the]~~System for Electronic Rate and Form Filings~~], [the]~~SERFF~~], or~~ ~~[System];~~ or

(b) ~~[a filing submitted via the Internet by using the Sireon system; or~~

~~(c) A]~~ filing submitted via an email system.

(5) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(6) "Endorsement" means a written agreement attached to a life insurance policy that alters a provision of the policy, for example, a war exclusion endorsement, a name change endorsement and a tax qualification endorsement.

(7) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(8) "Filer" means a person ~~[or entity that]~~ who submits a filing.

(9) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;

(b) a form;

(c) a document;

(d) an application;

(e) a report;

(f) a certificate;

(g) an endorsement;

(h) a rider;

(i) a life insurance illustration;

(j) a statement of policy cost and benefit information; and

(k) an actuarial memorandum, demonstration, and certification.

(10) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.

(11) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(12) "Issue Ages" means the range of minimum and maximum ages for which a policy or certificate will be issued.

(13) "Letter of Authorization" means a letter signed by an officer of the ~~licensee~~[insurer] on whose behalf the filing is submitted that designates filing authority to the filer.

(14) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(15) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(16) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules;

(b) returned to the ~~filer~~[licensee] by the department with the reasons for rejection; and

(c) not considered filed with the department.

(17) "Rider" means a written agreement attached to a life insurance policy or certificate that adds a benefit, for example, a waiver of premium rider, an accidental death benefit rider and a term insurance rider.

(18) "Type of insurance" means a specific life insurance product including, but not limited to, term, universal, variable, or whole life.

(19) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department, that indicates a filing has been accepted ~~[r]d~~[pursuant to Subsection 7].

R590-226-[5]4. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensee[s] and filer[s] are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing[s] not in compliance with Utah laws and rules ~~[are]~~[is] subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing; and

(c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order ~~[F]~~[to Prohibit Use] will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing Correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within ~~[30]~~[15] days of the date the original filing was submitted to the department.

~~[The filer must reference the original filing.~~

—————](c) A new filing is required if a filing correction is made more than ~~[30]~~[15] days after the date the original filing was submitted to the department. The filer must reference the original filing in the filing description.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to Section R590-226-1[5]3 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-226-[6]5. Filing Submission Requirements.

(1) All filing must be submitted ~~as an electronic filing~~ ~~[electronically].~~

~~(a) All filers must use SERFF to submit a filing.~~

~~(b) EXCEPTION: life settlement may choose to use email instead of SERFF to submit a filing.~~

~~(c) All filings must comply with The "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2009, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.~~

(2) A filings must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance, or request filing for more than one ~~[insurer]~~[licensee].

(4) SERFF Filings.

(a) Filing Description. Do not submit a cover letter. On the ~~[g]~~[General] ~~[i]~~[Information] tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Provide a description of the filing~~[-]~~ including:

~~(A) the intent of the filing; and~~

~~(B) the purpose of each document within the filing.~~

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous Utah Filed Date;

(C) includes ~~[forms]~~[documents] for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(vi) List the minimum death benefit.

(vii) Identify the intended market for filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.

(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The "Utah Life Insurance Filing Certification for Individual" or the "Utah Life Insurance Filing Certification for Group" must be properly completed, signed, and attached to the [s]Supporting [d]Documentation tab. A false certification may subject the licensee [or filer] to administrative action.

(c) Domiciliary Approval and Filing Status Information. All filings for a foreign [insurer]licensee must include on the [s]Supporting [d]Documentation tab:

(i) copy of domicile approval for the exact same filing; or

(ii) filing status information, which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(d) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the [s]Supporting [d]Documentation tab either a:

(i) signed and fully completed "Utah Life and Annuity Group Questionnaire"; or

(ii) copy of the Utah Life and Annuity Discretionary Group Authorization letter.

(e) Letter of Authorization.

(i) When the filer is not the [insurer]licensee, a letter of authorization from the [insurer]licensee must be attached to the [supplementary]Supporting [d]Documentation tab.

(ii) The [insurer]licensee remains responsible for the filing being in compliance with Utah laws and rules.

(f) Statement of Variability. [Any item or provision on the data page or within the form that is variable must be contained within the brackets.]

(i) [List the ranges of variable items or factors within the brackets.] A statement of variability must be attached to the Supporting Documentation tab and certify:

(A) the final form will not contain brackets denoting variable data;

(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;

(C) the variable data included in this statement will be used on the referenced forms;

(D) any changes to variable data will be submitted prior to implementation.

(ii) [Each variable item must be identified and explained in a statement of variability.] Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.

~~(iii) [If the information contained within the brackets changes, the form must be refiled.]~~ Variable data must be reasonable, appropriate and compliant.

~~(iv) Use of unauthorized variable data is prohibited.~~

(g) Life Insurance Illustration Materials. If the life insurance form is identified as illustrated, the filing must include a sample:

(i) basic illustration complete with data in John Doe fashion;

(ii) current illustration actuary's certification;

(iii) company officer certification; and

(iv) [same]sample annual report.

(h) Statement of Policy Cost and Benefit Information. If the life insurance form is not illustrated, the filing must include a sample of the Statement of Policy Cost and Benefit Information.

(i) Items being submitted for filing.

(i) [Any]All forms must be attached to the [f]Form [s]Schedule tab.

(ii) [Any]All rating documentation, including actuarial memorandums and rate schedules, must be attached to the [rate or rate]Rate/Rule [s]Schedule tab.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance with Utah law are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(A) description of the coverage in detail;

(B) demonstration of compliance with applicable nonforfeiture and valuation laws; and

(C) a certification of compliance with Utah law.

(5) [Sireon Filings:

~~(a) Transmittal. The "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," as provided in R590-226-3, must be properly completed.~~

~~(i) Complete the transmittal by using the following:~~

~~(A) NAIC Life, Accident and Health, annuity, Credit Transmittal Document (instructions); and~~

~~(B) NAIC Uniform Life, Accident and Health, annuity and Credit Coding Matrix.~~

~~(ii) Do not submit the documents described in Subsections (a)(i)(A) and (B), with a filing.~~

~~(b) Filing Description. Do not submit a cover letter. In Section 15 of the transmittal, complete the Filing Description with the following information presented in the order shown below:~~

~~(i) Provide a description of the filing;~~

~~(ii) Indicate if the filing:~~

~~(A) is new;~~

~~(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous Utah Filed Date;~~

~~(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or~~

~~(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect of the submitted forms on the base policy.~~

~~(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.~~

~~(iv) Explain any change in benefits or premiums that may occur while the contract is in force.~~

~~(v) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued;~~

~~(vi) List the minimum death benefit~~

~~(vii) Identify the intended market for the filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.~~

~~(e) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The "Utah Life Insurance Filing Certification for Individual" or the "Utah Life Insurance Filing Certification for Group" must be properly completed and signed. A false certification may subject the licensee or filer to administrative action.~~

~~(d) Domiciliary Approval and Filing Status Information. All filings for a foreign insurer must include:~~

~~(i) a copy of domicile approval for the exact same filing;~~

~~(ii) a filing status information which includes:~~

~~(A) a list of the states to which the filing was submitted;~~

~~(B) the date submitted; and~~

~~(C) summary of the states' actions and their responses; or~~

~~(iii) if the filing is specific to Utah and only filed in Utah, then section 14 of the transmittal must be completed stating, "UTAH SPECIFIC NOT SUBMITTED TO ANY OTHER STATE."~~

~~(e) Group Questionnaire or Discretionary Group Authorization Letter. All group filings must attach either a:~~

~~(i) signed and fully completed "Utah Life and Annuity Group Questionnaire," or~~

~~(ii) a copy of the "Utah Life and Annuity Discretionary Group Authorization Letter."~~

~~(f) Letter of Authorization.~~

~~(i) When the filer is not the insurer, a letter of authorization from the insurer must be included.~~

~~(ii) The insurer remains responsible for the filing being in compliance with Utah laws and rules.~~

~~(g) Statement of Variability. Any item or provision on the data page or within the form that is variable must be contained within the brackets. List the ranges of variable items or factors within the brackets. Each variable item must be identified and explained in a statement of variability. If the information contained within the brackets changes, the form must be refiled.~~

~~(h) Items being submitted for filing. Any form items submitted for filing must be attached to the product forms tab.~~

~~(i) Life Insurance Illustration Materials. If the life insurance form is identified as illustrated, the filing must include a sample:~~

~~(i) basic illustration completed with data in John Doe fashion;~~

~~(ii) current illustration actuary's certification;~~

~~(iii) company officer certification; and~~

~~(iv) sample annual report.~~

~~(j) Statement of Policy Cost and Benefit Information. If the life insurance form is not illustrated, the filing must include a sample of the Statement of Policy Cost and Benefit Information.~~

~~(k) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:~~

~~(i) description of the coverage in detail;~~

~~(ii) demonstration of compliance with applicable nonforfeiture and valuation laws; and~~

~~(iii) a certification of compliance with Utah law.~~

~~(6) Email Filings - viatical providers only. The subject of the Email must display the company name only and be submitted to life.uid@utah.gov.~~

~~(a) Filing Description.~~

~~(i) Provide description of the forms being filed.~~

~~(ii) Indicate if the filing:~~

~~(A) is new;~~

~~(B) is replacing or modifying a previous submission, if so, describe the changes made, if previously rejected the reasons for rejection, and the previous Utah Filed Date; and~~

~~(C) if the filing includes forms for informational purposes, provide the Utah Filed Dates.~~

~~(b) Letter of Authorization.~~

~~(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached.~~

~~(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.~~

~~(e) Items being submitted for filing. Any items submitted for filing must be submitted in PDF format.~~

~~(7) Refer to each applicable [S]section of this rule for additional procedures on how to submit forms and reports.~~

R590-226-[7]6. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Forms must contain a descriptive title on the cover page.

(d) Forms must be in final printed form or printer's proof format. Drafts may not be submitted.

~~(e) [Specific sections may be filed with variable data by placing brackets around affected information. Variable data must be identified within the specific section, or on a separate sheet included with the submission.~~

~~(f) Blank spaces within the form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.~~

(i) If the market intended is for the senior age group, the form must be completed with data representative of senior insureds.

(ii) All John Doe data in the forms including the data page must be accurate and consistent with the actuarial memorandum, the basic illustration, the Statement of Policy Cost and Benefit information, and the application, as applicable.

(2) Application Filing.

(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.

(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.

(3) Policy Filings.

(a) Each type of insurance must be filed separately.

(b) A policy filing consists of one policy form, including its related forms, such as the application, sample data page, rider, endorsement, and actuarial memorandum.

(c) A policy data page must be included with every policy filing.

(d) Only one policy form for a single type of insurance may be filed, in each filing a life insurance policy with different premium payment periods is considered one form.

(e) A policy data page that changes the basic feature of the policy may not be filed without including the entire policy form in the filing. ~~[-A filing consisting of only a data page without the policy form will be rejected as incomplete.]~~

(4) Rider or Endorsement Filing.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.

(c) A rider or endorsement that is based on morbidity risks, such as critical illness or long-term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings."

(d) The filing must include:

(i) a listing of all base policy form numbers, title and Utah Filed Dates;

(ii) a description of how each filed rider or endorsement affects the base policy; and

(iii) a sample data page with data for the submitted form.

(e) Unrelated riders or endorsement may not be filed together.

R590-226-[8]7. Additional Procedures for Individual Life Insurance Forms and Group Life Insurance Certificates Marketed Individually.

(1) Insurers filing life insurance forms are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) R590-79, "Life Insurance Disclosure Rule;"

(d) R590-93, "Replacement of Life Insurance and Annuities;"

(e) R590-94, "Smoker/Nonsmoker Mortality Tables";

(f) R590-95, "Minimum Nonforfeiture Standards 1980 CSO and 1980 CET Mortality Tables;"

(g) R590-98, "Unfair Practice in Payment of Life Insurance and Annuity Policy Values;"

(h) R590-108, "Interest Rate During Grace Period or Upon Reinstatement of Policy;"

(i) R590-122, "Permissible Arbitration Provisions;"

(j) R590-177, "Life Insurance Illustrations;"

(k) R590-191, "Unfair Life Insurance Claims Settlement Practice;"

(l) R590-198, "Valuation of Life Insurance Policies;" and

(m) R590-223, "Rule to Recognize 2001 CSO Mortality Table."

(2) Every individual life insurance policy, rider or endorsement providing benefits, and every group life insurance filing including certificates that are marketed individually, shall include an actuarial memorandum, a demonstration, and a certification of compliance for nonforfeiture and valuation. Refer to the following:

(a) Section 31A-22-408, "Standard Nonforfeiture Law for Life Insurance;"

(b) Section 31A-17 Part V, "Standard Valuation Law."

R590-226-[9]8. Additional Procedures for Group Market Filings.

(1) ~~[Insurers]~~ A filer submitting group life insurance filings are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;"

(d) R590-79, "Life Insurance Disclosure Rule;" and

(e) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) A policy must be included with each certificate filing along with a master application and enrollment form.

(3) Statement of Policy Cost and Benefit Information. A statement of policy cost and benefit information must be included in non-term group life insurance and preneed funeral policies or prearrangements. This disclosure requirement shall extend to the issuance or delivery of certificates as well as to the master policy in compliance with R590-79-3.

(4) Actuarial Memorandum. An actuarial memorandum must be included in all group life insurance filings describing the coverage in detail and certifying compliance with applicable laws and rules. For non-term group life filings, the memorandum must also demonstrate nonforfeiture compliance with Section 31A-22-515.

(5) Eligible Group. A filing for an eligible group must include a completed "Utah Life and Annuity Group Questionnaire."

(a) A questionnaire must be completed for each eligible group under Section 31A-22-502 through 508.

(b) When a filing applies to multiple employer-employee groups under Section 31A-22-502, only one questionnaire is required to be completed.

(6) Discretionary Group. If a group is not an eligible group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a form filing is submitted without discretionary group authorization, the filing will be rejected.

(a) To obtain discretionary group authorization a "Utah Life and Annuity Request For Discretionary Group Authorization" must be submitted and include all required information.

(b) Evidence or proof of the following items are some factors considered in determining acceptability of a discretionary group:

(i) existence of a verifiable group;

- (ii) that granting permission is not contrary to public policy;
 - (iii) the proposed group would be actuarially sound;
 - (iv) the group would result in economies of acquisition and administration which justify a group rate; and
 - (v) the group would not present hazards of adverse selection.
- (c) Discretionary group filings that do not provide authorization documentation will be rejected.
- (d) Any changes to an authorized discretionary group must be submitted to the department, such as; change of name, trustee, domicile state, within 30 days of the change.
- (e) The commissioner may periodically re-evaluate the group's authorization.

R590-226-[10]9. Additional Procedures for Variable Life Filings.

(1) Insurers submitting variable life filings are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-22-411, "Contracts Providing Variable Benefits;"

(b) R590-133, "Variable Contracts."

(2) A variable life insurance policy must have been previously approved or accepted by the [insurer's]licensee's state of domicile before it is submitted for filing in Utah.

(3) Information regarding the status of the filing of the variable life insurance policy with the Securities and Exchange Commission must be included in the filing.

(4) The [transmittal]description and the actuarial memorandum must:

(a) describe the types of accounts available in the policy; and

(b) identify those accounts that are separate accounts, including modified guaranteed accounts, and those that are general accounts.

(5) The actuarial memorandum must demonstrate nonforfeiture compliance:

(a) for separate accounts pursuant to Section 31A-22-411; and

(b) for fixed interest general accounts pursuant to Section 31A-22-408.

(c) In addition, for fixed accounts, the actuarial memorandum must:

(i) identify the guaranteed minimum interest rate, and

(ii) identify the maximum surrender charges.

(6) An actuarial certification of compliance with applicable Utah laws and rules must be included in the filing.

~~(6)~~(7) A prospectus is not required to be filed.

R590-226-[11]10. Additional Procedures for Combination Policies, Riders or Endorsements Providing Life and Accident and Health Benefits.

A filer submitting life and health combination policies, or health riders or endorsement to life policies, is advised to review Rule R590-220.

(1) A combination filing is a policy, rider, or endorsement which creates a product that provides both life and accident and health insurance benefits.

(a) The two types of acceptable combination filings are a rider or endorsement or an integrated policy.

(b) Combination filings take considerable time to process, and will be processed by both the Health Insurance ~~Division~~Division, and the Life Section of the Life, Property and Casualty Insurance Division.

(2) A combination filing must be submitted separately to both the Health Insurance Division and the Life Section of the Life, Property and Casualty Insurance Division.

(3)(a) For an integrated policy, the filing must be submitted to the appropriate division based on benefits provided in the base policy.

(b) For a rider or endorsement, the filing must be submitted to the appropriate division based on benefits provided in the rider or endorsement.

(4) The Filing Description must identify the filing as having a combination of insurance types, such as:

(a) term policy with a long-term care benefit rider; or

(b) major medical health policy that includes a life insurance benefit.

~~**R590-226-[12]11. [Additional Procedures for Viatical Settlements.**~~

~~(1) Insurers submitting Viatical Settlements filings are advised to review the following code sections and rules prior to submitting a filing:~~

~~(a) Section 31A-36, "Viatical Settlements Act;"~~

~~(b) Rule R590-222, "Viatical Settlements."~~

~~(2) The form filing is to be submitted via email to life.uid@utah.gov.~~

~~**R590-226-13. Insurer Annual Reports.**~~

~~[(1)]All [insurer]licensee annual reports must be properly identified and must be filed separately from other filings. Each annual report must be submitted [along with the properly completed report checklist]when requested.[~~

~~(2) "Life Insurance Illustration Certification Annual Report".~~

~~(a) Filing must comply with R590-177-11. Life insurers marketing life insurance with an illustration shall provide an annual certification report to the commissioner each year by a date determined by the insurer.~~

~~(b) The report must include:~~

~~(i) a completed "Utah Life Insurance Illustration Certification Annual Report Checklist";~~

~~(ii) an Illustration Actuary's Certification signed and dated;~~

~~(iii) a Company Officer's Certification signed and dated; and~~

~~(iv) a list of all policies forms for which the certification applies.]~~

~~**R590-226-[14]12. Correspondence and Status Checks.**~~

~~(1) Correspondence. When corresponding with the department, [filers must]provide sufficient information to identify the original filing:~~

~~(a) type of insurance;~~

~~(b) date of filing;~~

~~(c) form numbers; and~~

(d) ~~[submission method, SERFF, Sircan or EMAIL; and~~

~~(e)]SERFF tracking number.~~

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing ~~[by telephone, or email]~~ 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

R590-226-~~[15]~~13. Responses.

(1) Response to a Filing Objection Letter. ~~[A response to]~~ When responding to a Filing Objection Letter a filer must ~~[include]:~~

(a) ~~[a cover letter]~~ provide an explanation identifying all changes made;

(b) ~~[revised documents with all changes highlighted;]~~ include an underline and strikeout version for each revised document; ~~[and]~~

(c) ~~[revised documents incorporating all changes without highlights.]~~ include a final version of revised documents that incorporates all changes; and

~~(d) for filing submitted in SERFF, attach the documents in Subsections R590-226-13 (1)(b)(c) to appropriate Form Schedule or Rate/Rule Schedule tab.~~

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the order.

(b) Use of the filing must be discontinued no[t] later than the date specified in the order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no[t] later than 15 days after the date of the order.

(d) A new filing is required if the ~~[company]~~ licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-226-~~[16]~~14. Penalties.

Persons found, ~~[after a hearing or other regulatory process,]~~ to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-226-~~[17]~~15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from ~~[upon]~~ the effective date of this rule.

R590-226-~~[18]~~16. Severability.

If any provision of this rule or ~~its~~ the application ~~[of it]~~ to any person or ~~situation~~ circumstance is ~~[for any reason]~~ held to be invalid, that invalidity shall not affect any other provision or ~~[the remainder of the rule and the]~~ application of this rule, which can be given effect without the invalid ~~[the]~~ provision or application, and to this end the provisions ~~[to other persons or circumstances may not be affected by it]~~ of this rule are declared to be severable.

KEY: life insurance filings

Date of Enactment or Last Substantive Amendment: ~~[July 30, 2007]~~ 2009

Notice of Continuation: March 26, 2009

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-201.1; 31A-2-202

Insurance, Administration **R590-227** Submission of Annuity Filings

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 32903

FILED: 8/27/09 2:36 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these changes is to update the rule to comply with rate and form filing procedures and to clarify language.

SUMMARY OF THE RULE OR CHANGE: The changes update the rule to comply with rate and form filing procedures; update incorporated documents; eliminate the reference to Sircan; change the time required to make filing corrections from 30 to 15 days; and require that the intent of the filing and purpose of each document be included with each filing.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-2-201.1 and Section 31A-2-202

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix, January 1, 2009, published by National Association of Insurance Commissioner (NAIC), 01/01/2009

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes will have no fiscal impact on the department. The changes will not increase the work load and no additional filings or fee will be required.
- ◆ **LOCAL GOVERNMENTS:** The changes to this rule will have no impact on local governments since the rule deals with the relationship between the department and its licensees, in this case around 550 life and annuity insurance companies.
- ◆ **SMALL BUSINESSES:** This rule affects life insurance companies; few, if any, would be considered small businesses. The changes to this rule update the procedures of the department to comply with national standards being used by most states. The only fiscal impact may be the reduction in rejected filings, as a result of language

clarifications, which would result in reduced filing fees paid by insurers to the contracted organization processing these filings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule affects life insurance companies; most are large businesses. The changes to this rule update the procedures of the department to comply with national standards being used by most states. The only fiscal impact may be the reduction in rejected filings, as a result of language clarifications, which would result in reduced filing fees paid by insurers to the contracted organization processing these filings. The changes to this rule will probably have no fiscal impact on consumers since they will have little if any impact on the insurer and deals solely with the procedures used to file insurance forms with the department.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule affects life insurance companies; most are large businesses. The changes to this rule update the procedures of the department to comply with national standards being used by most states. The only fiscal impact may be the reduction in rejected filings, as a result of language clarifications, which would result in reduced filing fees paid by insurers to the contracted organization processing these filings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have little, if any, fiscal impact on businesses in Utah.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-227. Submission of Annuity Filings.

R590-227-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting annuity filings under Section 31A-21-201.

(2) This rule applies to:

- (a) all types of individual and group annuities, and variable annuities; and
- (b) group annuity contracts issued to nonresident contract holders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-227-3. [Incorporation by Reference.

~~_____ (1) The department requires that documents described in this rule shall be used for all filings.~~

~~_____ (a) Actual copies may be used or you may adapt them to your word processing system.~~

~~_____ (b) If adapted, the content, size, font, and format must be similar.~~

~~_____ (2) The following documents are hereby incorporated by reference and are available at www.insurance.utah.gov:~~

~~_____ (a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated March 1, 2007.~~

~~_____ (b) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated March 1, 2007.~~

~~_____ (c) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instructions)," dated March 1, 2007.~~

~~_____ (d) "Utah Annuity Filing Certification," dated July 2007.~~

~~_____ (e) "Utah Life and Annuity Group Questionnaire," dated July 2007.~~

~~_____ (f) "Utah Life and Annuity Request for Discretionary Group Authorization," dated July 2007.~~

R590-227-4. [Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Contract" means the annuity policy including attached endorsements and riders;

(3) "Data page" means the page or pages in a contract or certificate that provide the specific data for the annuitant detailing the coverage provided and may be titled by the insurer as contract [data page,] specifications [page], contract schedule, policy information, etc.

(4) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.

(5) "Electronic Filing" means[:

~~_____ (a)] a filing submitted via the Internet by using the ["]System for Electronic Rate and Form Filings["], [{}SERFF{}], [System; or~~

~~_____ (b) a filing submitted via the Internet by using the Sireon system; or~~

~~_____ (c) a filing submitted via an email system.]~~

(6) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(7) "Endorsement" means a written agreement attached to an annuity contract that alters a provision of the contract, for example, a name change endorsement and a tax qualification endorsement.

(8) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(9) "Filer" means a person ~~[or entity that]~~ who submits a filing.

(10) "Filing," when used as a noun, means an item required to be filed with the department including:

- (a) a contract;
- (b) a form;
- (c) a document;
- (d) an application;
- (e) a report;
- (f) a certificate;
- (g) an endorsement;
- (h) a rider; and

(i) an actuarial memorandum, demonstration, and certification.

(11) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction to non-compliant items, may request clarification or additional information pertaining to the filing.

(12) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(13) "Issue Ages" means the range of minimum and maximum ages for which a contract or certificate will be issued.

(14) "Letter of Authorization" means a letter signed by an officer of the ~~[insurer]~~ licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(15) "Market type" means the type of contract that indicates the targeted market such as individual or group.

(16) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(17) "Rejected" means a filing is:

- (a) not submitted in accordance with applicable laws or rules;
- (b) returned to the ~~[insurer]~~ licensee by the department with the reasons for rejection; and
- (c) not considered filed with the department.

(18) "Rider" means a written agreement attached to an annuity contract or certificate that adds a benefit, for example, a waiver of surrender charge, a guaranteed minimum withdrawal benefit and a guaranteed minimum income benefit.

(19) "Type of insurance" means a specific type of annuity including, but not limited to, equity indexed annuity, single premium immediate annuity, modified guaranteed annuity, deferred annuity, or variable annuity.

(20) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department~~[,]~~ that indicates a filing has been accepted~~[pursuant to Subsection 7].~~

R590-227-[5]4. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) ~~A~~ ~~[L]~~ licensee[s] and filer[s] are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

- (a) is not considered filed with the department;
- (b) must be submitted as a new filing; and
- (c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filings may be reviewed:

- (i) when submitted;
- (ii) as a result of a complaint;
- (iii) during a regulatory examination or investigation; or
- (iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, ~~[A]~~ a Filing Objection Letter or an Order ~~[F]~~ to Prohibit Use will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing Correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within ~~[30]~~ 15 days of the date the original filing was submitted to the department.

~~[The filer must reference the original filing.~~

~~_____]~~ (c) A new filing is required if a filing correction is made more than ~~[30]~~ 15 days after the date original filing was submitted to department. The filer must reference the original filing in the filing description.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R590-227-12 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-227-[6]5. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

~~_____]~~ (a) All filers must use SERFF to submit a filing.

~~_____]~~ (b) All filings must comply with The "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2009, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.

(2) A filings must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance, or request filing for more than one ~~[insurer]~~ licensee.

(4) SERFF Filings.

(a) Filing Description. Do not submit a cover letter. On the ~~[g]~~ General ~~[i]~~ Information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Provide a description of the filing including:

~~_____]~~ (A) the intent of the filing; and

~~_____]~~ (B) the purpose of each document within the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous ~~[filing's]~~ Utah Filed Date;

(C) includes ~~[forms]~~documents for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(vi) List the minimum initial premium.

(vii) Identify the intended market for the filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.

(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The "Utah Annuity Filing Certification" must be properly completed, signed, and attached to the ~~[s]~~Supporting [d]Documentation tab. A false certification may subject the licensee ~~[or filer]~~ to administrative action.

(c) Domiciliary Approval and Filing Status Information. All filings for a foreign ~~[insurer]~~licensee must include on the ~~[s]~~Supporting [d]Documentation tab:

(i) copy of domicile approval for the exact same filing; or

(ii) filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(d) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the ~~[s]~~Supporting [d]Documentation tab either a:

(i) signed and fully completed "Utah Life and Annuity Group Questionnaire"; or

(ii) copy of the Utah Life and Annuity Discretionary Group Authorization letter.

(e) Letter of Authorization.

(i) When the filer is not the ~~[insurer]~~licensee, a letter of authorization from the ~~[insurer]~~licensee must be attached to the ~~[supplementary]~~Supporting [d]Documentation tab.

(ii) The ~~[insurer]~~licensee remains responsible for the filing being in compliance with Utah laws and rules.

(f) Statement of Variability. ~~Any item or provision on the data page or within the form that is variable must be contained within the brackets.~~

~~(i) [List the ranges of variable items or factors within the brackets.] A statement of variability must be attached to the Supporting Documentation tab and certify:~~

~~(A) the final form will not contain brackets denoting variable data;~~

~~(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;~~

~~(C) the variable data included in this statement will be used on the referenced forms;~~

~~(D) any changes to variable data will be submitted prior to implementation.~~

~~(ii) [Each variable item must be identified and explained in a statement of variability.] Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.~~

~~(iii) [If the information contained within the brackets changes, the form must be refiled.] Variable data must be reasonable, appropriate and compliant.~~

~~(iv) Use of unauthorized variable data is prohibited.~~

(g) Annuity Report. All annuity filings must include a sample annuity annual report.

(h) Items being submitted for filing.

(i) ~~[Any]~~All forms must be attached to the ~~[f]~~Form [s]Schedule tab.

(ii) ~~[Any]~~All rating documentation, including actuarial memorandums and rate schedules, must be attached to the ~~[r]~~Rate/ [f]Rule ~~[s]~~Schedule tab.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance with Utah law are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(A) description of the coverage in detail;

(B) demonstration of compliance with applicable nonforfeiture and valuation laws; and

(C) a certification of compliance with Utah law.

(5) ~~[Sireon Filings:~~

~~(a) Transmittal. The "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," as provided in R590-227-3, must be properly completed.~~

~~(i) Complete the transmittal by using the following:~~

~~(A) NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instruction); and~~

~~(B) NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix.~~

~~(ii) Do not submit the documents described in Section (a) (i)(A) and (B) with the filing.~~

~~(b) Filing Description. Do not submit a cover letter. In Section 15 of the transmittal, complete the Filing Description with the following information presented in the order shown below:~~

~~(i) Provide a description of the filing;~~

~~(ii) Indicate if the filing:~~

~~(A) is new;~~

~~(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date;~~

~~(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or~~

~~(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.~~

~~(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.~~

~~(iv) Explain any change in benefits or premiums that may occur while the contract is in force.~~

~~(v) List the issue Ages, which means the range of minimum and maximum ages for which a policy will be issued.~~

~~(vi) List the minimum initial premium.~~

~~(vii) Identify the intended market for the filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.~~

~~(e) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The "Utah Annuity Filing Certification" must be properly completed and signed. A false certification may subject the licensee or filer to administrative action.~~

~~(d) Domiciliary Approval and Filing Status Information: All filings for a foreign insurer must include:~~

~~(i) a copy of domicile approval for the exact same filing;~~

~~(ii) a filing status information which includes:~~

~~(A) a list of the states to which the filing was submitted;~~

~~(B) the date submitted; and~~

~~(C) summary of the states' actions and their responses; or~~

~~(iii) if the filing is specific to Utah and only filed in Utah, then section 14 of the transmittal must be completed stating, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."~~

~~(e) Group Questionnaire or Discretionary Group Authorization Letter. All group filings must attach either a:~~

~~(i) signed and fully completed "Utah Life and Annuity Group Questionnaire," or~~

~~(ii) copy of the "Utah Life and Annuity Discretionary Group Authorization letter".~~

~~(f) Letter of Authorization.~~

~~(i) When the filer is not the insurer, a letter of authorization from the insurer must be included.~~

~~(ii) The insurer remains responsible for the filing being in compliance with Utah laws and rules.~~

~~(g) Statement of Variability. Any item or provision on the data page or within the form that is variable must be contained within the brackets. List the ranges of variable items or factors within the brackets. Each variable item must be identified and explained in a statement of variability. If the information contained within the brackets changes, the form must be refiled.~~

~~(h) Items being submitted for filing. Any form items submitted for filing must be attached to the product forms tab.~~

~~(i) Annuity Report. All annuity filings must include a sample annuity annual report.~~

~~(j) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration, and a certification of compliance are required in annuity filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:~~

~~(i) description of the coverage in detail;~~

~~(ii) demonstration of compliance with applicable nonforfeiture and valuation laws; and~~

~~(iii) a certification of compliance with Utah law.~~

~~(6)]Refer to each applicable Section of this rule for additional procedures on how to submit forms and reports.~~

R590-227-[7]6. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Forms must c[E]ontain a descriptive title on the cover page.

(d) Forms must be in final printed form or printer's proof format. Drafts may not be submitted.

~~(e) [Specific sections may be filed with variable data by placing brackets around affected information. Variable data must be identified within the specific section, or on a separate sheet included with the submission.~~

~~(f)]Blank spaces within the form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.~~

(i) If the market intended is for the senior age market, the form must be completed with data representative of senior annuitants.

(ii) All John Doe data in the forms including the data page must be accurate and consistent with the actuarial memorandum, the application, and any marketing materials, as applicable.

(2) Application Filing.

(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.

(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.

(3) Contract Filing.

(a) Each type of annuity must be filed separately.

(b) A contract filing consists of one contract form, including its related forms, such as an application, data page, rider or endorsement, and ~~an~~ actuarial memorandum.

(c) A contract data page must be included with every contract filing.

(d) Only one contract form for a single type of insurance may be filed.

~~(e) A contract data page that changes the basic feature of the contract may not be filed without including the entire contract form in the filing. [Separate data page filings without the contract form will be rejected as incomplete.]~~

(4) Rider or Endorsement Filings.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.

(c) A rider or endorsement that is based on morbidity risks such as critical illness or long-term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings".

(d) The filing must include:

(i) a listing of all base contract form numbers, title and Utah Filed Dates; and

(ii) a description of how each filed rider or endorsement affects the base contract.

(iii) a sample data page with data for the submitted form.

(e) Unrelated endorsements may not be filed together.

R590-227-[8]7. Additional Procedures for Fixed Annuity Filings.

(1) Insurers filing annuity forms are advised to review the following code sections and rules prior to submitting a filing:

- (a) Section 31A-21 Part III, "Specific Clauses in Contracts;"
- (b) Section 31A-22 Part IV, "Life Insurance and Annuities;"
- (c) R590-93, "Replacement of Life Insurance and Annuities;"
- (d) R590-96, "Annuity Mortality Tables;" and
- (e) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) Every filing of an individual annuity contract, rider or endorsement providing benefits, and every group annuity filing including certificates that are marketed individually, shall include an actuarial memorandum, a demonstration, and a certification of compliance with nonforfeiture and valuation laws. Refer to the following:

(a) Section 31A-22-409, "Standard Nonforfeiture Law for Deferred Annuities;" and

(b) Section 31A-17 Part V, "Standard Valuation Law."

(3) When submitting annuity filings the ~~[filing description of the transmittal]~~ General Information Tab must:

- (a) identify the specific subsection of the Utah nonforfeiture law, which applies to the submitted annuity;
- (b) describe the basic features of the form submitted;
- (c) identify and describe the interest earning features; including the guaranteed interest rate, the guaranteed interest terms, and any market value adjustment feature;
- (d) describe the guaranteed and nonguaranteed values including any bonuses;
- (e) describe all charges, fees and loads;
- (f) list and describe all accounts, options and strategies, if any;

(g) identify whether the accounts are fixed interest general accounts, registered separate accounts including modified guaranteed separate accounts; and

(h) describe any restrictions or limitations regarding withdrawals, surrenders, and the maturity date or settlement options.

(4) The contract must be complete with a sample specification page attached.

(5) The actuarial memorandum must:

- (a) be currently dated and signed by the actuary;
- (b) identify the specific subsections of the Utah nonforfeiture law which applies to the submitted annuity;
- (c) describe all contract provisions in detail, including all guaranteed and non-guaranteed elements, that may affect the values;
- (d) identify the guaranteed minimum interest crediting rates;
- (e) describe in detail the particular methods of crediting interest, including:
 - (i) guaranteed fixed interest rates; and
 - (ii) guaranteed interest terms.
- (f) specifically identify, describe and list all charges and fees, including loads, surrender charges, market value adjustments or any other adjustment feature;

(g) describe in detail all accounts and factors that are used to calculate guaranteed minimum nonforfeiture values and minimum cash surrender values in the contract and the elements used in the calculation of the minimum values required by the law; and

(h) include the formulas used to calculate the minimum guaranteed values provided by the contract and the formulas used to calculate the minimum guaranteed values required by the applicable subsections of the nonforfeiture law.

(6) The actuarial demonstration must:

(a) compare minimum contract values with minimum nonforfeiture values;

(b) be based on representative premium patterns, for flexible premium products use both a single premium and level premium payment, and for both age 35 and age 60 or the highest issue age if lower;

(c) numerically demonstrate that the values based on the guaranteed minimum interest rates, the maximum surrender charges, fees, loads, and any other factors affecting values, provide values that are in compliance with the Standard Nonforfeiture Law using both the retrospective and the prospective tests, each test must be clearly identified, and include the following:

(i) For the retrospective test, describe the net consideration and the interest rates used in the accumulation. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

(ii) For the prospective test, identify the maturity value and the interest rate used for each respective year to determine the present value. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

(7) The actuarial certification of compliance must be currently dated and signed by the actuary. The certification must state that the formulas used and values provided are in compliance with Utah laws and rules.

R590-227-[9]8. Additional Procedures for Group Annuity Filings.

(1) ~~[Insurers]~~ A filer submitting group annuity filings are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;" and

(d) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) A group contract must be included with each certificate filing along with the master application and enrollment form.

(3) Actuarial Memorandum. An actuarial memorandum must be included in all ~~[Every]~~ group annuity filing ~~[must include an actuarial memorandum]~~ describing the features of the contract and certifying compliance with applicable ~~[Utah]~~ laws and rules. ~~[A group filing that includes a group certificate that is marketed to individuals, must include an actuarial memorandum, demonstration and certification of compliance with the applicable Utah nonforfeiture law.]~~

(4) Eligible Groups. A filing for an eligible group must include a completed "Utah Life and Annuity Group Questionnaire."

(a) A questionnaire must be completed for each eligible group under Sections 31A-22-502 through 508.

(b) When a filing applies to multiple employer-employee groups under Section 31A-22-502, only one questionnaire is required to be completed.

(5) Discretionary Group. If a group is not an eligible group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a filing is submitted without discretionary group authorization, the filing will be rejected.

(a) To obtain discretionary group authorization a "Utah Life and Annuity Request For Discretionary Group Authorization" must be submitted and include all required information.

(b) Evidence or proof of the following items are some factors considered in determining acceptability of a discretionary group:

(i) existence of a verifiable group;
(ii) that granting permission is not contrary to public policy;

(iii) the proposed group would be actuarially sound;
(iv) the group would result in economies of acquisition and administration which justify a group rate; and
(v) the group would not present hazards of adverse selection.

(c) Discretionary group filings that do not provide authorization documentation will be rejected.

(d) Any changes to an authorized discretionary group must be submitted to the department, such as; change of name, trustee, domicile state, within 30 days of the change.

(e) The commissioner may periodically re-evaluate the group's authorization.

R590-227-[40]9. Additional Procedures for Variable Annuity Filings Procedures.

(1) Insurers submitting variable annuity filings are advised to review the following code sections and rule prior to submitting a filing:

(a) Section 31A-22-411, "Contracts Providing Variable Benefits;" and

(b) R590-133, "Variable Contracts."

(2) A variable annuity contract must have been previously approved or accepted by the [insurer's]licensee's state of domicile before it is submitted for filing in Utah. [~~Include the approval date in the submission.~~]

(3) Information regarding the status of the filing of the variable annuity with the Securities and Exchange Commission must be included in the filing.

(4) The [~~transmittal~~]description and the actuarial memorandum must:

(a) describe the type of accounts available in the contract; and

(b) identify [~~and describe~~]those accounts that are separate accounts, including modified guaranteed annuities, and those accounts that are general accounts.

(5) The actuarial memorandum must describe all contract provisions in detail, including all guaranteed and non-guaranteed elements that may affect the values.

(6) The actuarial demonstration must numerically demonstrate compliance with the applicable nonforfeiture laws:

(a) for variable annuities, including modified guaranteed annuities, pursuant to Section 31A-22-411;

(b) for fixed interest general accounts pursuant to 31A-22-409, identify and describe all guaranteed factors that affect values, including:

(i) the guaranteed minimum interest rate; and

(ii) the maximum surrender charges and loads.

(7) An actuarial certification of compliance with applicable Utah laws and rules must be included in the filing.

(8) A filing for a rider that provides benefits, such as guaranteed minimum death benefit and guaranteed minimum withdrawal benefit, must include an actuarial memorandum.

(9) A prospectus is not required to be filed.

R590-227-[44]10. Correspondence and Status Checks.

(1) Correspondence. When corresponding with the department, [~~filers must~~]provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers; and

(d) [~~submission method, SERFF or Sireon; and~~

~~(e)]SERFF tracking number.~~

(2) Status Checks.

~~(a) A complete filing is usually processed within[g] 45 days of receipt.~~

~~(b) A filer[~~s may~~]can request the status of its filing [~~by telephone, or email~~]60 days after the date of submission. A response will not be provided to a status request prior to 60 days.~~

R590-227-[42]11. Responses.

(1) Response to a Filing Objection Letter. [~~A response to~~] When responding to a Filing Objection Letter a filer must[~~include~~]:

(a) [~~a cover letter~~]provide an explanation identifying all changes made;

(b) [~~revised documents with all changes highlighted;~~]include an underline and strikeout version for each revised document;~~[and]~~

(c) [~~revised documents incorporating all changes without highlights;~~]a final version of revised documents that incorporate all changes; and

(d) for filing submitted in SERFF, attached the documents in Subsections R590-227-11(1)(b)(c) to appropriate Form Schedule or Rate/Rule Schedule tab.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued no[~~t~~] later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no[~~t~~] later than 15 days after the date of the Order.

(d) A new filing is required if the [~~company~~]licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-227-[13]12. Penalties.

Persons found, ~~[after a hearing or other regulatory process]~~ to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-227-[14]13. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from~~[upon]~~ the effective date of this rule.

R590-227-[15]14. Severability.

If any provision of this rule or ~~its~~^{the} application ~~[of it]~~ to any person or ~~[circumstance]~~^{situation} is ~~[for any reason]~~ held to be invalid, that invalidity shall not affect any other provision or the remainder of the rule and the application of this rule which can be given effect without the invalid~~[the]~~ provision or application, and to this end the provisions~~[to other persons or circumstances may not be affected by it]~~ of this rule are declared to be severable.

KEY: annuity insurance filings

Date of Enactment or Last Substantive Amendment: ~~[July 12, 2007]~~²⁰⁰⁹

Notice of Continuation: March 26, 2009

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-201.1; 31A-2-202

Insurance, Administration
R590-228

Submission of Credit Life and Credit
Accident and Health Insurance Form
and Rate Filings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32908

FILED: 8/27/09 3:12 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these changes is to update the rule to comply with rate and form filing procedures and to clarify language.

SUMMARY OF THE RULE OR CHANGE: The changes update the rule to comply with rate and form filing procedures; update incorporated documents; eliminate the reference to Sircon; change the time required to make filing corrections from 30 to 15 days; and require that the intent of the filing and purpose of each document be included with each filing.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-2-201.1 and Section 31A-2-202

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix, January 1, 2009, published by National Association of Insurance Commissioners (NAIC), 08/27/2009

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes will have no fiscal impact on the department. The changes will not increase the work load and no additional filings or fees will be required.
- ◆ **LOCAL GOVERNMENTS:** The changes to this rule will have no impact on local governments since the rule deals with the relationship between the department and its licensees, in this case around 550 life and health insurance companies.
- ◆ **SMALL BUSINESSES:** This rule affects life insurance companies; few, if any, would be considered small businesses. The changes to this rule update the procedures of the department to comply with national standards being used by most states. The only fiscal impact may be the reduction in rejected filings, as a result of language clarifications, which would result in reduced filing fees paid by insurers to the contracted organization processing these filings.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule affects life insurance companies; most are large businesses. The changes to this rule update the procedures of the department to comply with national standards being used by most states. The only fiscal impact may be the reduction in rejected filings, as a result of language clarifications, which would result in reduced filing fees paid by insurers to the contracted organization processing these filings. The changes to this rule will probably have no fiscal impact on consumers since it will have little if any impact on the insurer and deals solely with the procedures used to file insurance forms with the department.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule affects life insurance companies; most are large businesses. The changes to this rule update the procedures of the department to comply with national standards being used by most states. The only fiscal impact may be the reduction in rejected filings, as a result of language clarifications, which would result in reduced filing fees paid by insurers to the contracted organization processing these filings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have little, if any, fiscal impact on businesses in Utah.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jilene Whitby by phone at 801-538-3803, by FAX at
801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-228. Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings.

R590-228-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting:

- (a) Credit life and credit accident and health insurance filings required by Section 31A-21-201;
- (b) Credit life and credit accident and health insurance rate filings required by Section 31A-22-807, R590-91; and
- (c) report filings as required ~~by R590-91~~.

(2) This rule applies to all credit life insurance and credit accident and health insurance including group contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-228-3. ~~Documents Incorporated by Reference.~~

~~(1) The department requires that documents described in this rule shall be used for all filings.~~

~~(a) Actual copies may be used or you may adapt them to your word processing system.~~

~~(b) If adapted, the content, size, font, and format must be similar.~~

~~(2) The following documents are hereby incorporated by reference and are available at www.insurance.utah.gov:~~

~~(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated March 1, 2007;~~

~~(b) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated March 1, 2007;~~

~~(c) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instructions)," dated March 1, 2007;~~

~~(d) "Utah Credit Life and Credit Accident and Health Filing Certification," dated July 2007;~~

~~(e) "Utah Annual Credit Life and Credit Accident and Health Insurance Filing Checklist," dated July 2007.~~

R590-228-4. ~~Definitions.~~

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Data page" means the page or pages in a policy and certificate that provide the specific data for the insured detailing the coverage provided and may be titled by the insurer as schedule page, schedule of benefits and premiums, etc.

(3) "Electronic Filing" means[;

~~(a) a filing submitted via the Internet by using the ["System for Electronic Rate and Form (f)Eiling[+(-)_SERFF(-)System; or~~

~~(b) a filing submitted via the Internet by using the Sireon system; or~~

~~(c) A filing submitted via an email system.]~~

(4) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(5) "Endorsement" means a written agreement attached to a life insurance policy that alters a provision of the policy. An example is a company change of name.

(6) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(7) "File for Approval" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was approved.

(8) "Filer" means a person ~~or entity that~~ who submits a filing.

(9) "Filing," when used as a noun, means an item required to be filed with the department including:

- (a) a policy;
- (b) a rate, rate methodologies;
- (c) a form;
- (d) a document;
- (e) an application;
- (f) a report;
- (g) a certificate;
- (h) an endorsement;
- (i) a rider; and
- (j) an actuarial memorandum, demonstration, and certification.

(10) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.

(11) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses

(12) "Issue Ages" means the range of minimum and maximum ages for which a policy or certificate will be issued.

(13) "Letter of Authorization" means a letter signed by an officer of the ~~insurer~~ licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(14) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(15) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(16) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules;~~and~~

(b) returned to the ~~[insurer]~~licensee by the department with the reasons for rejection; and

~~(c) not considered filed with the department.~~

(17) "Rider" means a written agreement attached to a life insurance policy or certificate that adds a benefit. An example is a credit accident and health insurance rider.

(18) "Type of insurance" means a specific credit life and credit accident and health insurance product, as defined in the NAIC Coding Matrix, including, but not limited to, gross decreasing term, net decreasing term, level term, or truncated coverage.

(19) "Utah Filing Date" means the date provided to a filer by the Utah Insurance Department~~[-]~~ that indicates a filing has been accepted~~[pursuant to this subsection 6 or 7].~~

R590-228-[5]4. General Filing Information.

(1) Each filing submitted must be accurate, consistent, and complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensee[s] and filer[s] are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules ~~[are]~~is subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing; and

(c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) ~~A~~[F]filing[s] may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order ~~[F]~~to Prohibit Use will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing Correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within ~~[30]~~15 days of the date ~~["Filed" with]~~the original filing was submitted to the department.

(c) A new filing is required if a ~~[electronic]~~filing correction[s] is made more than ~~[30]~~15 days after the date ~~["Filed" with]~~the original filing was submitted to the department. The filer must reference the original filing in the filing description.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R590-228-11 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-228-[6]5. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

~~(a) All filers must use SERFF to submit a filing.~~

~~(b) All filings must comply with The "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2009, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.~~

(2) A filings must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance; or request filing for more than one ~~[insurer]~~licensee.

(4) SERFF Filings.

(a) Filing Description. Do not submit a cover letter. On the ~~[g]~~General ~~[i]~~Information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Provide a description of the filing including:

~~(A) the intent of the filing; and~~

~~(B) the purpose of each document within the filing.~~

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous ~~[filing's]~~Utah Filed Date;

(C) includes ~~[forms]~~documents for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the types of coverage to be provided, such as gross, net, full term, truncated and critical period.

(vi) Indicate whether the insurer has a Rating and Benefits Plan on file with the department.

(vii) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(viii) Identify the intended market

(ix) Identify the types and durations of loans to be insured.

(x) Describe the methods of premium charge.

(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The "Utah Credit Life and Credit Accident and Health Filing Certification" must be properly completed, signed, and attached to the ~~[s]~~Supporting ~~[d]~~Documentation tab. A false certification may subject the licensee ~~[or filer]~~to administrative action.

(c) Domiciliary Approval and Filing Status Information. All filings for a foreign ~~[insurer]~~licensee must include on the ~~[s]~~Supporting ~~[d]~~Documentation tab:

(i) copy of domicile approval for the exact same filing; or
(ii) filing status information which includes:
(A) a list of the states to which the filing was submitted;
(B) the date submitted; and
(C) summary of the states' actions and their responses; or
(iii) if the filing is specific to Utah and only filed in Utah,
then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY
OTHER STATE."

(d) Letter of Authorization.

(i) When the filer is not the [insurer]licensee, a letter of authorization from the [insurer]licensee must be attached to the [supplementary]Supporting [d]Documentation tab.

(ii) The [insurer]licensee remains responsible for the filing being in compliance with Utah laws and rules.

(e) Statement of Variability. [~~Any item or provision on the data page or within the form that is variable must be contained within the brackets.~~]

~~(i) [List the ranges of variable items or factors within the brackets.]A statement of variability must be attached to the Supporting documentation tab and certify:~~

~~(A) the final form will not contain brackets denoting variable data;~~

~~(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;~~

~~(C) the variable data included in this statement will be used on the referenced forms;~~

~~(D) any changes to variable data will be submitted prior to implementation.~~

~~(ii) [Each variable item must be identified and explained in a statement of variability.]Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.~~

~~(iii) [If the information contained within the brackets changes, the form must be re-filled.]Variable data must be reasonable, appropriate and compliant.~~

~~(iv) Use of unauthorized variable data is prohibited.~~

(f) Items being submitted for filing.

(i) [~~Any~~]All forms must be attached to the form schedule tab.

(ii) [~~Any~~]All rating documentation, including actuarial memorandums and rate schedules, must be attached to the [f]Rate/[r]Rule [s]Schedule tab.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum and demonstration with sample rate calculations and a certification of compliance with Utah law are required in each filing. The memorandum must be currently dated and signed by the actuary.

(5) [Sireon Filings:

~~(a) Transmittal. The "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," as provided in R590-228-3, must be properly completed:~~

~~(i) Completed the transmittal by using the following:~~

~~(A) NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instructions); and~~

~~(B) NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix. (ii) Do not submit the documents described in Section (a)(i) (A) and (B) with the filing.~~

~~(b) Filing Description. Do not submit a cover letter. In Section 15 of the transmittal, complete the Filing Description with the following information presented in the order shown below:~~

~~(i) Provide a description of the filing;~~

~~(ii) Indicate if the filing:~~

~~(A) is new;~~

~~(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date;~~

~~(C) includes forms for informational purpose; if so, provide the Utah Filed Date; or~~

~~(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.~~

~~(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited; and explain why the provision is included in the filing.~~

~~(iv) List the types of coverage to be provided, such as gross, net, full term, truncated and critical period.~~

~~(v) Identify and describe any new or nonstandard benefits or rating methodologies.~~

~~(vi) Indicate whether the insurer has a Rating and Benefits Plan on file with the department.~~

~~(vii) Explain any change in benefits or premiums that may occur while the contract is in force.~~

~~(viii) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.~~

~~(ix) Identify the types and durations of loans to be insured:~~

~~(x) Describe the methods of premium charge.~~

~~(e) Certification. The filer must certify that a filing has been properly completed AND is compliance with Utah laws and rules. The "Utah Credit Life and Credit Accident and Health Filing Certification" must be properly completed and signed. A false certification may subject the licensee or filer to administrative action:~~

~~(d) Domiciliary Approval and Filing Status Information: All filings for a foreign insurer must include:~~

~~(i) a copy of domicile approval for the exact same filing;~~

~~(ii) a filing status information which includes:~~

~~(A) a list of the states to which the filing was submitted;~~

~~(B) the date submitted; and~~

~~(C) summary of the states' actions and their responses; or~~

~~(iii) if the filing is specific to Utah and only filed in Utah, then section 14 of the transmittal must be completed stating, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."~~

~~(e) Group Questionnaire. All group filings must include signed and fully completed "Utah Life and Annuity Group Questionnaire".~~

~~(f) Letter of Authorization:~~

~~(i) When the filer is not the insurer, include a letter of authorization from the insurer.~~

~~(ii) The insurer remains responsible for the filing being in compliance with Utah laws and rules.~~

~~(g) Statement of Variability. Any information that is variable must be bracketed in the form and must be explained in a statement of variability. If after filing, the information contained within the brackets changes, the filing must be refilled.~~

~~(h) Items being submitted for filing. Any form or rate items submitted for filing must be attached to the product forms tab.~~

~~(i) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum with sample rate calculations and a certification of compliance are required in each filing. The memorandum must be currently dated and signed by the actuary representing the insurer.~~

~~(j) Rates. All rates must be filed prior to use. All rates must be in compliance with 31A-22-807 and R590-91. A rate filing is required with each form filing.~~

~~(6) [F]Refer to each applicable Section of this rule for additional procedures on how to submit forms, rates, and reports.~~

R590-228-[7]6. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Forms must contain a descriptive title on the cover page.

~~(e)[d] Forms must be in final printed form or printer's proof format. Drafts may not be submitted.~~

~~(d) Specific sections may be filed with variable data by placing brackets around affected information. Variable data must be identified within the specific section, or on a separate sheet included with the submission~~

~~(e) Blank spaces within the forms must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.~~

(f) All John Doe data in the forms, including the data page, premium rates and benefits, must be accurate and consistent with the actuarial memorandum and rate schedule.

(2) Policy Filings.

(a) Each type of insurance must be filed separately.

(b) A policy filing consists of one policy form, including its related forms, including the application, enrollment form, certificate, actuarial memorandum, certification, and rate schedule.

(c) Only one policy filing for a single type of insurance may be filed.

(3) Rider or Endorsement Filings.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed in the Filing Description and references all affected forms.

~~(c) The filing [A rider or endorsement that provides benefits] must include [all filing documents required for a policy filing including]:~~

~~(a)[i] a listing of the base policy form number, title and Utah Filed Dates;~~

~~(b)[ii] a description of how [the]each rider or endorsement affects the base policy; and~~

~~(c)[iii] appropriate actuarial memorandum and rate schedule.~~

(4) Application Filings.

~~(a) [An]Each application or enrollment form may be submitted as a separate filing or filed with its related policy [and]or certificate filing.~~

~~(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with a policy or certificate filing.~~

(5) Rates. Rates are considered "File for Approval".

R590-228-[8]7. Additional Procedures for Credit Life and Credit Accident and Health Form and Rate Filings.

(1) ~~[Insurers]A Licensee filing Credit Life and Credit Accident and Health~~ are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;"

(d) Section 31A-22 Part VI, "Accident and Health Insurance;"

(e) Section 31A-22 Part VIII, "Credit Life and Accident and Health;"

(f) R590-91, "Credit Life and Disability;" and

(g) R590-191, "Unfair Life Insurance Claims Settlement Practice;"

(h) R590-192, "Unfair Health and Disability Claims Settlement Practices."

(2) A policy must be included with each certificate filing along with a master application and enrollment form.

(3) Actuarial Memorandum, Demonstration and Certification of Compliance. Each form and rate filing must include an actuarial memorandum, demonstration, and certification of compliance with Utah laws, signed and dated by the actuary representing the insurer.

(a) Actuarial memorandum must include a description of the following:

(i) types of coverage, such as gross or net decreasing, single or joint life, full term or truncated, critical period;

(ii) types of loans to be insured, such as open end, closed end,

(iii) types of premium charge: single premium, monthly outstanding balance, or other method explained in detail;

(iv) durations of loans and durations of coverage. Refer to 31A-22-801(2)(a);

(v) rates per unit, rating and premium methodologies including:

(A) formulas used for each type of coverage and premium method; and

(B) sample calculations for each type of coverage and premium method;

(vi) an explanation of whether the company has a Rating and Benefits Plan on file and if so, whether the submitted rates are consistent with the filed plan;

(vii) demonstration of compliance with applicable code and rules;

(viii) refund methods and calculation including formulas for each type of coverage; and

(ix) reserve bases including methods used.

(b) The actuarial certification must include certification of compliance that formulas and methods used produce rates that are in compliance with applicable Utah laws and rules for each type of coverage and duration in the filing.

(4) Rate Schedules.

(a) Rate schedules must be included for each type of coverage and for representative durations.

(b) Rates must be identified as prima facie rates, rates previously filed for compliance with the Rating and Benefits Plan required in R590-91-10, or deviated rates submitted pursuant to 31A-22-807, or rates on nonstandard coverage pursuant to R590-91-5.

(5) All benefits must be reasonable in relation to the premium charge. Insurers filing for approval of a rate higher than prima facie rates must comply with the requirements of 31A-22-807 and R590-91-10. Include a demonstration that the rates are reasonable in relation to the benefits.

R590-228-[9]8. Insurer Annual Reports.

~~(1) All [insurer] licensee annual reports must be properly identified and must be filed separately from other filings. Each annual report must be submitted when requested, along with the properly completed report checklist.~~

~~(2) "Credit Life and Credit Accident and Health Annual Report."~~

~~(a) Filings must comply with R590-91-10. Every Credit Life, and Credit Accident and Health insurer marketing must file annually.~~

~~(b) The report must include:~~

~~(i) Utah Credit Life, and Credit Accident and Health Report Checklist;~~

~~(ii) Annual report filings are due May 1 each year.]~~

R590-228-[10]9. Correspondence and Status Checks.

(1) Correspondence. When corresponding with the department, [filers must] provide sufficient information to identify the original filing [~~Information should include~~]:

(a) type of insurance;

(b) date of filing;

(c) form numbers; and

(d) [Submission method, SERFF or Sireon; and

~~(e)]SERFF tracking number.~~

(2) Status Checks.

(a) A complete filing is usually processed within 45 days o[f] receipt.

(b) A filers can request the status of its filing [by telephone, or email] 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

R590-228-[11]10. Responses.

(1) Response to a Filing Objection Letter. [~~A response to] When responding to a Filing Objection Letter a filer must [~~include~~]:~~

(a) [~~a cover letter] provide an explanation identifying all changes made;~~

(b) [~~revised documents with all changes highlighted;] include an underline and strikeout version for each revised document; [~~and~~]~~

(c) [~~revised documents incorporating all changes without highlights] include a final version of revised documents that incorporates all changes; and~~

(d) for filing submitted in SERFF, attach the documents in Subsections R590-228-10(1)(b)(c) to appropriate Form Schedule or Rate/Rule Schedule tab.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued no[t] later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no[t] later than 15 days after the date of the Order.

(d) A new filing is required if the [company] licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-228-[12]11. Penalties.

Persons found, [~~after a hearing or other regulatory process,] to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

R590-228-[13]12. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule [~~May 1, 2004] upon 15 days from the effective date of this rule.~~

R590-228-[14]13. Severability.

If any provision of this rule or its[the] application [of it] to any person or [circumstance] situation is [for any reason] held to be invalid, that invalidity shall not affect any other provision or [the remainder of the rule and the] application of this rule which can be given effect without the invalid[the] provision or application, and to this end the provisions [~~to other persons or circumstances may not be affected by it]~~ of this rule are declared to be severable.

KEY: credit insurance filings

Date of Enactment or Last Substantive Amendment: [~~July 30, 2007] **2009**~~

Notice of Continuation: **March 26, 2009**

Authorizing, and Implemented or Interpreted Law: **31A-2-201; 31A-2-201.1; 31A-2-202**

Natural Resources, Parks and
Recreation
R651-202-1
Boating Advisory Council

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 32899
FILED: 8/25/09 5:02 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to restructure the boating advisory council to better reflect current trends in boating and provide fair representation for user groups.

SUMMARY OF THE RULE OR CHANGE: Restructure the Boating Advisory Council to include representation for a broader scope of users in boating matters. There will be one member from each of these user groups: boating safety and education organizations, sailing users, boating anglers, marine dealers, personal watercraft users, outfitting companies, paddle craft users, water sports users, and motorboat users.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no cost to the state budget associated with this restructure because the restructure is only changing the boating advisory council members.
- ◆ **LOCAL GOVERNMENTS:** There is no cost to local government associated with this restructure because the restructure is only changing the boating advisory council members.
- ◆ **SMALL BUSINESSES:** There is no cost to small businesses associated with this restructure because the restructure is only changing the boating advisory council members.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost to persons other than small businesses, businesses, or local government entities associated with this restructure because the restructure is only changing the boating advisory council members.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost to affected persons associated with this restructure because the restructure is only changing the boating advisory council members.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change should help business owners by giving them a voice in boating regulation issues.

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:
◆ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Mark Forbes, Financial Manager (Temp)

R651. Natural Resources, Parks and Recreation.

R651-202. Boating Advisory Council.

R651-202-1. Boating Advisory Council.

A Boating Advisory Council, consisting of ~~seven~~nine 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,]~~Boating safety and education organizations, sailing ~~[or non-powered craft-]~~ users, ~~[wildlife and outdoor recreation associations,]~~boating anglers, marine dealers, personal watercraft users, ~~[river runners]~~outfitting companies, paddle craft users, water sports users and ~~[a youth member]~~motorboat users.

KEY: boating

Date of Enactment or Last Substantive Amendment: ~~January 15, 2005~~2009

Notice of Continuation: April 18, 2006

Authorizing, and Implemented or Interpreted Law: 73-18-3.5

**Natural Resources, Parks and
Recreation**

R651-700

**Administrative Procedures for Real
Property Management**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 32898

FILED: 8/25/09 4:05 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes administrative procedures for real property under the management and/or ownership of the State of Utah, Division of Parks and Recreation (State Parks)

real property, as set forth in Title 79, Chapter 4. This rule establishes standards and procedures for acquisition, disposal, and exchange of Division Lands consistent with laws of the State of Utah. The rule provides procedures for granting of rights-of-way, easements and special use permits, and other nonrecreational use of Division Lands. This rule ensures consistency and efficiency of land management in order to maximize benefits to the Division and provide accountability to the citizens of Utah. The rule also establishes protection of real property assets, which are fixed assets of the State of Utah, in compliance with applicable laws, rules, and policies.

SUMMARY OF THE RULE OR CHANGE: Due to the increasing frequency of private and public requests for access to real property owned and operated by Utah State Parks, the Division with assistance from our Deputy Attorney General has drafted the real property rule. This rule will provide Utah State Parks with legally defensible procedures and policies for the decisions made with respect to real property transactions such as water rights, acquisition, exchange, sale, leases, easements, and permits. Utah State Parks currently lacks any rules for real property transactions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 79, Chapter 4

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are application fees associated with special use permits, easements, special use leases, and rights-of-way (ROW). Those fees are outlined in our current fee schedule and are determined by the Parks Board and approved through the legislature. The creation of this rule does not change any fees. Therefore, there are no new fees associated with the creation of this rule.

♦ **LOCAL GOVERNMENTS:** There are application fees associated with special use permits, easements, special use leases, and ROW. Those fees are outlined in our current fee schedule and are determined by the Parks Board and approved through the legislature. The creation of this rule does not change any fees. Therefore, there are no new fees associated with the creation of this rule.

♦ **SMALL BUSINESSES:** There are fees associated with special use permits, etc, but this rule does not change those costs, requirements or fees. They will stay as they are now.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are application fees associated with special use permits, easements, special use leases, and ROWs. Those fees are outlined in our current fee schedule and are determined by our Parks Board and approved through the legislature. The creation of this rule does not change any fees. Therefore, there are no new fees or requirements associated with the creation of this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are fees associated with special use permits, etc, but this rule

does not change those costs, requirements or fees. The fees will stay the same as they currently are.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be minimal impact on business.

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:

♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Mark Forbes, Financial Manager (Temp)

R651. Natural Resources, Parks and Recreation.

R651-700. Administrative Procedures for Real Property Management.

R651-700-1. Authority.

These rules establish administrative procedures for real property under the management and/or ownership of the State of Utah, Division of Parks and Recreation ("State Parks") real property, as set forth in Utah Code Ann. Title 79, Chapter 4. State Parks, through the Parks Board, may establish rules for the acquisition, planning, protection, operation, maintenance, development, and wide use of scenic beauty, recreation utility, historic, archeological, or scientific interest, to the end that the health, happiness, recreational opportunities, and wholesome enjoyment of life may be preserved.

R651-700-2. Purpose.

These rules are intended:

(1) To establish standards and procedures for acquisition, disposal, and exchange of Division lands consistent with law of the State of Utah.

(2) To provide procedure for granting of rights-of-way, easements and special use permits, and other non-recreational use of Division lands.

(3) To ensure consistency and efficiency of land management in order to maximize benefits to the Division and provide accountability to the citizens of Utah.

(4) To protect real property assets, which are fixed assets of the State of Utah, in compliance with applicable laws, rules and policies.

R651-700-3. Application.

These rules are applicable statewide for real property transactions but they shall be liberally construed to permit the Division to effectuate the purposes of Utah law.

R651-700-4. Definitions As Used in This Section.

(1) "Applicant" means any person applying for a Right-Of-Way (ROW), Easement, Lease, Special Use Lease, and Special Use Permit.

(2) "Agriculture" means the cultivation of land to grow crops or the raising of livestock.

(3) "Appraised Value" means an estimate of the current fair market value of property derived by disinterested persons of suitable qualifications, for example, a licensed independent appraiser.

(4) "Authorized Area" is the area of Division-owned land which the Division allows a development to occupy, or person to use through a ROW, Easement, Lease, Special Use Lease, and Special Use Permit.

(5) "Board of Parks & Recreation" is the policy making body of the Division of State Parks and Recreation.

(6) "Communications Facility" means towers, antennas, dishes, buildings, and associated equipment used to transmit or receive radio, microwave, wireless communications, and other electronic signals. The roads, pipes, conduits, and fiber optic, electrical, and other cables that cross over or under State Parks to serve a communications facility shall be governed by the administrative rules for granting Easements as set forth in R651-700.

(7) "Department" means the Department of Natural Resources.

(8) "Development" means any structure built on State Parks land.

(9) "Director" is the agency head of the Division in whom ultimate legal authority is vested or their designee.

(10) "Division" is the Division of Parks and Recreation, also referred to as "State Parks", Division and State Parks may be used interchangeably, as appropriate.

(11) "Division Land" is land owned and/or managed by the Division or its agents.

(12) "Easement" means an interest in land owned by another party, entitling the holder of said interest to limited use of enjoyment of the others land.

(13) "Executive Director" means the executive Director of the Utah Department of Natural Resources.

(14) "Fair Market Rental Value" is the annual amount in cash a willing tenant would pay, and a willing landlord would charge for the same or similar lands for the highest and best use of the property.

(15) "Lands and Environmental Coordinator" is the Division employee responsible for real property planning, documentation, analysis, reports, agreements, databases, and coordination.

(16) "Lease" means an agreement that authorizes use of real property for a specific term and purpose, under specified conditions for a fee.

(17) "Paleontological Resources" means the remains or traces of organisms, plant or animal, which have been preserved by various means.

(18) "Park Manger" is the management official for one or more state parks.

(19) "Rights-of-Way (ROW)" means the right or privilege, acquired through contract or other legally accepted means, to pass over a designated portion of the property of another.

(20) "Real Property" is land under water, upland, and all other property commonly or legally defined as real property (as set forth in Utah Code Ann. Section 79-4-203).

(21) "Real Property Asset" means the land surface, air above, and ground below, including all appurtenances to the land including buildings, structures, fixtures, fences and improvements erected on or attached to the same. Real property assets include any and all the interests, benefits, and rights inherent in the ownership of real estate.

(22) "Region" means a geographical grouping of state parks for management purposes. There are four state park regions: northwest, northeast, southwest, and southeast. Park Managers report to their respective region manager.

(23) "Region Manager" is a manager of a geographic assemblage of state parks. There are four state park regions: northwest, northeast, southwest, and southeast. Park Managers report to their respective region manager.

(24) "Resource Management Plan" is a plan prepared for the current and future management of a state park or recreational resource such as trails, boating safety, or off-highway vehicles.

(25) "Special Use Lease" is a written authorization issued by the Division to a person to use a specific area of Division Land for a special use under specific terms and conditions for a term of one (1) to fifteen (15) years.

(26) "State Park" means unique areas or real property in Utah set aside by the Utah State Government to preserve scenic beauty, recreational utility, historic, archeological, or scientific interest, to the end that the healthy, happiness, recreational opportunities, and wholesome enjoyment of life may be preserved.

(27) "Special Use Permit" means a temporary authorization for a specific, non-depleting land use including but not limited to seismic or land surveys, research sites, or time-certain physical access o Division Lands. This contract vehicle is of a lesser order than a lease or Easement, is generally associated with a temporary event of short duration, and does not convey any proprietary or other rights or the use to the holder other than those specifically granted in the permit authorization.

(28) "Structure" means anything placed, constructed, or erected on Division Land.

R651-700-5. Obtaining an Opinion of Value.

(1) When acquiring, exchanging, or selling Division Lands the Division may determine the value of real property utilizing any or all of the following methods:

(a) Broker's Estimate;

(b) Market Analysis, including but not limited to an appraisal, broker's estimate, market conditions analysis, and market demand analysis; and

(c) Appraisal.

(2) An Appraisal, Broker's Estimate, or Market Analysis may not be required if:

(a) Transactions involve water rights;

(b) Transactions involve federal lands or federal funding, where federal guidelines take precedence over the provisions of this rule;

(c) The market value of the subject property interest is less than One-Hundred Thousand Dollars (\$100,000), as estimated by the Division;

(d) The asking price for the property interest is considerably below prevailing market conditions, as estimated by the Division;

(e) The asking price for the property interest is reasonable based upon prevailing market conditions, but the Division will lose the opportunity to purchase the property if time is taken to conduct an appraisal or acquire a real estate broker's estimate of value prior to making an offer;

(f) An appraisal has been conducted on the subject property interest within the past twelve months;

(g) The subject property interest is being conveyed through an auction;

(h) The real property interest is a gift, contribution, or donation to the Division; or

(i) The real property interest is less-than-fee interest or not perpetual; or

(j) When the Director has determined by a written finding, that the cost of obtaining the appraisal is not justified, or in the best interest of the State of Utah.

(3) When values other than market value are considered in addition to or in place of an appraisal; or are considered in addition to, or in place of, an opinion of value rendered by a broker or sales agent; the Division shall create and keep a memo-to-file describing the Division's rationale in said consideration relative to the proposed price and other terms of the purchase, sale, or exchange.

R651-700-6. Land Acquisition.

(1) The Division may acquire real property through any and all legal means in order to fulfill its mission and legislative mandate.

(2) Acquisition of real property may be made by all legal and proper means, including purchase, gift, devise, eminent domain, lease, exchange, or otherwise, subject to the approval of the Director, Executive Director and the Governor of the State of Utah.

(3) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(4) Eminent domain acquisition shall be in the manner authorized by Utah Code Ann. Title 78, Chapter 34 et seq.

(5) The Division shall prepare an analysis of the proposed acquisition that provides the Director with the benefits of the acquisition to the Division, including an opinion as to whether or not the Division is the appropriate manager of the resource to be acquired.

(6) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.

(7) The Division shall make every effort to acquire subsurface mineral, water and any other rights attached to the land.

(8) Pursuant to Utah Code Ann. Subsection 79-4-203.5(a), before acquiring any real property, the Division shall notify the county legislative body of the county where the property

is situated of its intention to acquire the property. If the county legislative body requests a hearing within ten days of the receipt of the notice, the board shall hold a public hearing in the county concerning the matter.

(9) Pursuant to Utah Code Ann Section 23-21-1.5, the Division shall notify the Resource Development and Coordinating Committee (RDCC) for its review and approval by the Governor.

(10) Proposed purchases of real property, or donations of such, shall be inspected on-site by a team consisting of the local park manager, region manager, Lands and Environmental Coordinator and others as designated by the Director.

(11) When acquiring lands the Division may determine the value of real property according to the policies contained in R651-799-5.

(12) A title report and/or land survey may be performed on all land acquisitions, at the discretion of the Director.

(13) After receiving the preliminary title report the Lands and Environmental Coordinator may request a review by the Attorney General's office.

(14) The closing of a real property transaction may be conducted at a title company. If a title company is used for closing, the Division shall instruct the company to record the deed, and after recording, send it to the Lands and Environmental Coordinator.

R651-700-7. Disposal of Real Property.

(1) The Division may dispose of real property in order to fulfill its mission and legislative mandate.

(2) Unless otherwise directed by the legislature, all land disposals shall be brought before the Parks Board for consultation, and shall have the final approval of the Director.

(3) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(4) The State Historic Preservation Officer shall be provided a reasonable opportunity to review and comment on the proposed sell as required by Utah Code Section 9-8-404.

(5) The Division shall make every effort to retain subsurface mineral, water and any other rights attached to the land. If any of these rights are transferred with the property, the Division shall receive full compensation for the rights conveyed.

(6) When selling real property the Division may determine a minimum selling price according to the policies contained in R651-700-5.

(7) Prior to completion of sale, lessees and permittees shall be notified an leases and permits cancelled or amended in accordance with the terms of the lease or permit may be cancelled or amended.

(8) The Division may sell real property to the public, upon approval of the Parks Board, through a competitive bid process to achieve the Division's goals.

(a) The Division may announce the sale of real property to the public by commercially feasible methods, to include publication in one or more newspapers of general circulation in the county in which the sale is proposed, at least 30 days or more in advance of the deadline for bid submittals.

(b) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information, which may create interest in the sell. The

Division shall also identify the desired form of compensation, whether monetary, in-kind or both.

(c) Sealed bids shall be accepted no sooner than 14 days following the first sale notice. Competing bids shall be evaluated and the highest bid selected unless the highest bid does not meet the minimum value. In the case of a tie bid, the highest bidders shall be offered the opportunity to participate in an oral bidding process.

(d) Once a successful bidder has been determined, a certificate of sale shall be prepared by the Lands and Environmental Coordinator and reviewed by the Assistant Attorney General assigned to represent the Division. A title company may provide the final closing arrangements, at the cost of the purchaser.

(e) The successful bidder shall pay the remaining balance at the time of closing and shall be responsible for all closing costs.

(f) When there are no successful bidders on the property, the unsold parcels may be:

(i) Listed with a realtor

(ii) Offer the property on a "first-come first-served" basis for a period of up to three years following the bid opening date; or

(iii) Auction the property.

R651-700-8. Land Exchanges.

(1) The Division may exchange real property in order to fulfill its mission and legislative mandate.

(2) Pursuant to Utah Code Ann. Subsection 79-4-203.5(a), before acquiring any real property through exchange, the Division shall notify the county legislative body of the county where the property is situated of its intention to acquire the property. If the county legislative body requests a hearing within ten days of the receipt of the notice, the board shall hold a public hearing in the county concerning the matter.

(3) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(4) Pursuant to Utah Code Ann. Section 23-21-1.5, the Division shall notify the Resource Development and Coordinating Committee (RDCC) for its review and approval by the Governor.

(5) The State Historic Preservation Officer shall be provided a reasonable opportunity to review and comment on the proposed exchange as required by Utah Code Section 9-8-404.

(6) Prior to completion of exchanges, lessees and permittees shall be notified and leases and permits cancelled or amended in accordance with the terms of the lease or permit may be cancelled or amended.

(7) When exchanging lands the Division may determine the value of real property according to the policies contained in R651-700-5.

(8) The criteria for exchange proposals are evaluated as follows:

(a) Real property owned by the Division may be exchanged for private and/or public properties of equal or greater recreation or monetary value in both acreage and monetary worth if the exchange shall benefit the Division's park system. The Division may exchange real property for other assets if the exchange benefits the park system.

(b) Verification shall be made that the exchange shall not result in an unmanageable and/or uneconomical parcel of Division Land, nor eliminate access to a remnant holding, without appropriate remuneration or compensation.

(c) Proposed exchanges of real property shall be inspected on-site by a team consisting of the local Park Manager, Region Manager, Lands and Environmental Coordinator and others as designated by the Director.

(d) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.

(e) The Division shall make every effort to retain subsurface mineral, water and any other rights attached to the land. If any of these rights are transferred with the property, the Division shall receive full compensation for the rights conveyed.

(f) The Division, at its discretion, may at any time cancel any and all negotiations for a land exchange.

(9) If the Division is offered a land exchange, an application shall be filed with the Division, and evaluated by the Division with the following additional criteria:

(a) A completed application form shall be submitted with an application-processing fee established by the Division.

(b) Incomplete applications may be denied and the application fee forfeited to the Division.

The Applicant shall provide a property description, preferably a metes and bounds survey, a county plat map of all properties to be considered for the exchange. A map shall be provided indicating the relationship of the properties to Division Land.

(d) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.

(e) Other essential information required by the Lands and Environmental Coordinator and/or the Division.

(f) Upon receipt of an exchange application, the Division may solicit competing exchange property or assets. Competing applications may be solicited through publication, at least once a week for three consecutive weeks, in one or more newspapers of general circulation in the county in which the park is located. The Division may allow all applicants at least 20 days from the date of mailing of notice to submit a sealed bid containing their proposal for the subject parcel.

(g) The Director may approve or disapprove any exchanges based on information solicited through the application process. The Director may also waive the application for good cause.

(h) If competing proposals are received, the Division shall choose the successful applicant by evaluating each proposal for its contribution toward attainment of Division management objectives.

(i) The successful applicant may be charged an amount equal to all appraisal, appraisal reviews, advertisement, staff time, and other costs to the Division. The Director, for good cause shown by the applicant, may waive such costs.

R651-700-9. Right-Of-Way (ROW), Easements, Special Use Leases, and/or Special Use Permit.

(1) The Division may enter into real property transactions in order to fulfill its mission and legislative mandate.

(2) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(3) Potential applicants for ROW, Easements, Special Use Lease, Special Use Permit may contact the park manager or regional manager prior to making a formal application to the Lands and Environmental Coordinator.

(4) To apply for a ROW, Easement, Special Use Lease a person shall:

(a) Complete and submit an application provided by the Division to the Lands and Environmental Coordinator, unless it is an application for a Special Use Permit, in which case it shall be submitted to the appropriate park manager;

(b) Pay a non-refundable application fee;

(c) If for the purpose of construction or occupancy, submit the application and application fee at least 120 days prior to the proposed construction or occupancy date, unless otherwise specified by rule;

(d) Provide a map, aerial photograph, or other guide to the project area. Map scale may be larger but must identify township and range sections, UTM coordinates, and give appropriate scale.

(e) Anyone desiring to perform a survey on Division Land with the intent of filing an application for an ROW, Easement or Special Use Lease shall prior to entry for surveying activities, file with the agency an application for a Special Use Permit. The permit shall include a description of the proposed survey project, including the purpose, general location, and potential resource disturbances of the proposed survey. The appropriate park manager or his delegate shall review the application.

(f) Provide evidence of an ownership or leasehold interest in the estate where development of that estate is the purpose for applicants seeking a ROW or Easement.

(g) Include a project plan with the following information:

(i) Project alternatives, including alternatives not affecting the Division;

(ii) Project alternatives not affecting Division Land which were considered but rejected, and the specific reasons those alternatives were rejected;

(iii) A description of the proposed activity, structures, and/or infrastructure, including site location, construction footprint, above and below ground construction, infrastructure's functional relationship to existing or future infrastructure, etc. the description shall be sufficiently detailed as to provide an accurate and complete representation of the proposed actions;

(iv) Identification of adverse impacts to public recreation and scenic values associated with the proposed use and how they shall be avoided, minimized, or mitigated;

(v) Other essential information required by the Lands and Environmental Coordinator and/or the Division.

(5) Upon receiving the application, application fee, and the information required in Subsection (4) above, the Lands and Environmental Coordinator may either deny the application or grant a conditional approval within 60 days.

(6) If the application is denied, the Lands and Environmental Coordinator shall provide a written notice to the applicant.

(7) Before final approval is granted the Division may require the applicant to provide the following additional information:

(a) A certified copy of a survey of the area affected by the proposed project prepared by a licensed surveyor. A centerline

survey describing the proposed ROW and its width is adequate for a pipeline, road, power line, or similar use.

(b) An electronic file depicting the Easement, ROW or Special Use Lease Area that is compatible with, and requires no editing fork accurate downloading into geographic systems information software used by the Division.

(c) Evidence that the applicant had given the State Historic Preservation Officer a reasonable opportunity to review and comment on the proposed project as required by Utah Code Section 9-8-404.

(d) An impact assessment analyzing the potential direct, indirect, and cumulative effects the proposed project may have on public recreation opportunities, scenic values, wildlife, and wildlife habitat.

(e) A survey of threatened, endangered and candidate plant and animal species. Utah wildlife sensitive species, and Utah species of special concern conducted on and adjacent to the proposed project.

(f) Proof that the applicant has secured all the permits and authorizations required for the project under State, Federal and local laws.

(g) Proof that the applicant has complied with the provisions of the National Environmental Policy Act, where applicable, including preparation of all environmental assessments, environmental impact statements, or other reports required by the administering federal agency.

(h) A survey of the project to determine if wetlands shall be impacted. The project applicant is responsible for obtaining all federal Clean Water Act Section 404 permits. If wetlands are found, the applicant must provide sufficient mitigation to offset any damage to the wetland area.

R651-700-10. Division Assessment of the Applications for ROWs, Easements, and Special Use Leases.

(1) Upon receipt of an application for a ROW, Easement or Special Use Lease, the Division shall determine:

(a) If the application is complete;

(b) If the subject area is available for the requested use; and

(c) The method to be used to determine the amount of compensation payable to the Division.

(2) The Division shall then advise the applicant of its determination concerning each of the three factors in Section (1). Applications determined by the Division to be incomplete, or for an area in which the use would be incompatible shall be returned to the applicant with a written explanation of the reason(s) for rejection.

(3) If an application rejected for incompleteness is resubmitted within ninety (90) calendar days for the date the Division returned it to the applicant (as determined by the date of postmark), no additional application fee will be assessed.

(4) The Division may reject applications for ROWs or Easements that would be more appropriately authorized by a Special Use Lease.

(5) Upon acceptance by the Division, the application may be circulated to various local, state, and federal agencies and other interested persons including tribal governments, adjacent property holders, affected lessees and permittees, and Easement holders for review and comment. As part of this review, the Division shall specifically request comments concerning:

(a) The presence of state or federal listed threatened and endangered species (including candidate species) And archaeological and historic resources within the requested area that may be disturbed by the proposed use;

(b) Conformance of the proposed use with other local, state, and federal laws and rules;

(c) Conformance of the proposed use with a state park comprehensive land use plan, resource management plan, operation plan, business plan, and/or zoning ordinances;

(d) Conformance with existing state park rules, policies, and guidelines;

(e) Potential conflicts of the proposed use with existing leases, permits or Easement holders.

(6) If the application is for a communications facility, the Division may request comments from the Federal Communications Commission, Public Utility Commission, and any other person's owning/leasing communications facilities that advise the Division that they want to receive such applications.

(7) After receipt of agency and public comment concerning the proposed use, the Division shall advise the applicant in writing:

(a) If changes in the use or the requested lease or permit area are necessary to respond to agency or public comment;

(b) If additional information is required from the applicant, including but not limited to a survey of:

(i) State or federal listed threatened and endangered species (including candidate species) within the requested area;

(ii) Archeological and historic resources within the requested area; and/or

(iii) Wetlands.

(c) In the case of a Special Use Lease, if the area requested for lease will be authorized for use by the applicant through a Special Use Lease, or be made available to the public through competitive bidding pursuant to R651-700-12.

R651-700-11. Compensation for ROW, Easements, Leases and Special Use Leases.

(1) In establishing the amount of annual compensation, or minimum bid at auction, the Division shall:

(a) Adhere to the policies contained in R651-700-5 of these rules;

(b) Whenever practicable, base the amount of annual compensation on the fair market rental value received by property owners for similar property used in a similar manner;

(c) Require the holder of a Special Use Lease for a communications facility to annually remit to the Division both:

(i) The full amount of the base annual compensation required by their lease, and

(ii) A payment, the amount to be determined by the Division on a case-by-case basis, of the rental received by the lessee during the previous calendar year from the sublessees using the subject facility authorized by the lease.

(d) In the event that reliable data concerning fair market rental value are not available, the Division shall select another method of determining the amount of annual compensation, or minimum bid at auction such as a percent of the appraised value of the requested area, percent of crop value, or percent of product produced.

(e) Rents for ROW, Easements, and leases are based on the costs incurred by the Division and fair market value. Fees are based on the current fee schedule that can be obtained from the Lands and Environmental Coordinator.

R651-700-12. Competitive Bidding Process for Special Use Leases.

(1) The Division shall determine on a case-by-case basis if an area requested for a Special Use Lease shall be offered to the public through competitive bidding. This decision shall be made after considering:

(a) Whether the area requested for a Special Use Lease or permit is Division Land;

(b) The nature of the use and length of authorization requested;

(c) The availability of reliable data regarding the fair market rental value of the subject parcel for the proposed use; and

(d) Whether other applications are received by the Division to use the same area requested for the same or competing uses.

(2) If the Division determines that the greatest benefit to the public recreation and/or the Division would be achieved by offering the subject area through competitive bidding, it shall give Notice of Leasehold Availability and provide an opportunity for applications to be submitted.

(3) The Notice of Leasehold Availability shall state:

(a) The location and size of the subject area;

(b) The user(s) approved by the Division for the subject area;

(c) The type of auction and minimum acceptable bid amount;

(d) What developments, if annex on the subject area the applicant must purchase from the existing lessee, and a general estimate of the present value of said developments as determined by the Division; and

(e) The deadline for submitting a completed application to the Division.

(4) The Notice of Leasehold Availability shall be:

(a) Published at the applicant's expense not less than once each week for two (2) successive weeks in a newspaper of general circulation in the county(ies) in which the subject parcel is located;

(b) Posted on the Division Internet website; and

(c) Sent to persons indicating an interest in the subject parcel.

(5) The highest qualified bidder shall be awarded the lease at auction subject to satisfaction of the requirements of R651-700- (9 and 10) of these rules. The Division, however, shall have the right to reject any and all bids submitted.

R651-700-13. Right-Of-Way (ROW), Easements, Special Use Leases - Final Determination.

(1) The Director may deny any application if:

(a) The application does not include all the information required;

(b) The potential impact to public recreation, cultural/historic resources, view shed, wildlife habitat, or water quality is unacceptable;

(c) The proposed project contravenes the Recreation Management Plan or site master plan;

(d) The applicant has not, in the opinion of the Division, adequately considered ways to avoid or minimize impacts or proposed adequate compensatory mitigation plans for unavoidable impacts, including cumulative impacts;

(e) There are, in the opinion of the Division, alternative locations reasonably available on lands not owned by the Division for the requested use including organized events that may harm public recreation, wildlife, wildlife habitat, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails;

(f) The application's project affects property in which a third party has contractual or legal oversight rights and the project is rejected by that party; or

(g) The applicant is in default on any previous obligation to the Division.

(2) If the application is rejected, the Division shall provide a written notice to the applicant.

(3) A ROW, Easement or Special Use Lease may include provisions requiring the applicant to:

(a) Restore all structures, including but not limited to fences, roads, and existing facilities, and regard as nearly as practical to the pre-project grade and contour, and re-vegetate the impacted area to Division specifications;

(b) Adhere to the terms of the applicant's approved project plan prescribed in subsection R651-700-9(4)(f);

(c) Pay for surveys, environmental assessments, environmental impact statements, appraisals, restoration, re-vegetation, compensatory mitigation and all other expenses associated with the project; and

(d) Provide all permits and clearances for the project.

(4) Prior to the issuance of an Easement, ROW, Special Use Permit or Special Use Lease or for good cause shown at any time during the term of the agreement, upon 30 days written notice, the applicant or grantee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the Easement, ROW, Special Use Permit or Special Use Lease.

(5) Easements, R"OW, Special Use Permits and Special Use Leases issued by the Division shall be on a form supplied by the Division that has been approved for legal sufficiency.

(6) If the Division decides to issue a ROW, Easement, or Special Use Lease to the applicant without competitive bidding, the written notice will also indicate:

(a) The amount of compensation that the applicant shall remit to the Division to obtain authorization;

(b) Any insurance and/or surety bond required by the Division pursuant to the requirements of R651-700-16; and

(c) A draft copy of the ROW, Easement, or Special Use Lease.

(7) The Division shall not grant an Easement, ROW, Special Use Permit or Special Use Lease to the applicant until it has received all fees and compensation specified in these rules, and evidence of any required insurance and/or surety bond.

(8) The Director may refer any applications for a Special Use Lease to the Parks Board for review and approval.

R651-700-15. Easement, ROW, Special Use Permit or Special Use Lease - General Terms and Conditions.

(1) A ROW or Easement may be granted for a maximum of thirty (30) years from the date of the signing. The Division may grant such real property interests for shorter time periods. The Director may provide an exception, in whole or in part, to the rules for use of Division land and other recreational areas for an Easement, R"OW, Special Use Permit, or Special Use Lease granted pursuant to this section. The exception may be provided by a written decision issued by the Director and shall be effective for the term or such lesser period of time specified by the Director.

(2) The term of a Special Use Lease shall not exceed fifteen (15) years. The Division shall determine the length of a special use lease based on the nature of the use intended for the requested site. The Division may, at its discretion, provide as a provision of the lease that it may be renewed for a term to be determined by the Division.

(3) The term of a Special Use Permit shall not exceed one (1) year. A Special Use Permit may, at the discretion of the Division, be renewed up to two (2) times for a maximum term of ninety (90) days each time.

(4) Special Use Leases and Special Use Permits shall be offered by the Division for the minimum amount of area determined by the Division to be required for the requested use.

(5) The lessee or permittee may request the Division to close all or portions of the authorized area to public entry or restrict recreational use by the public to protect the persons, property, and/or crops from harm.

(6) The Division or its authorized representative(s) shall have the right to enter into and upon the authorized area at any time for the purposes of inspection or management, or to conduct noxious weed or pest abatement, or for wildfire control.

(7) The lessee, grantee or permittee shall dispose of all waste in a proper manner and shall not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into any waterway.

(8) A lessee, grantee or permittee may not interfere with lawful public use of an authorized area, or obstruct free transit across Division Land, or intimidate or otherwise threaten or harm public users of Division Land.

(9) Upon the expiration or termination of a ROW, Easement, Special Use Lease or Permit, the holder shall remove any or all developments as directed by the Division within sixty (60) calendar days of the date of termination of the Easement, ROW, lease or permit. Any developments remaining on the area authorized by the Easement, Row, lease or permit after the sixty (60) day period shall become the property of the Division. If the grantee, lessee or permittee refuse to remove the subject developments, the Division may remove them and charge the grantee, lessee or permittee for doing so.

(10) The holder of a Special Use Lease or permit shall not allow any other use to be made of, or occur on the site or vicinity that is not specifically authorized:

(a) By that lease or permit; or

(b) By the Division in writing prior to the use.

R651-700-16. Insurance and Bond - Easement, ROW, Special Use Lease, Special Use Permit.

(1) The Division may require a grantee, lessee or permittee to obtain insurance in a specified amount if the use, in the opinion of the Division, constitutes a risk to public safety, or to the State of Utah.

(2) The Division may request that the applicant, grantee, lessee or permittee provide information concerning the use of the area to the Risk Management, which may assist the Division in determining the appropriate amount of insurance coverage based on the nature of the use.

(3) All bonds posted on Easements, leases, ROW, or permits may be used for payment of all monies, rentals, and royalties due to the grantor, also for costs of reclamation and for compliance with all other terms and conditions of the Easement, and rules pertaining to the Easement. The bond shall be in effect even if the grantee has conveyed all or part of the Easement interest to a sub lessee, assignee, or subsequent operator until the grantee fully satisfies the Easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

(4) Bonds may be increased in reasonable amounts, at any time as the Division may decide, provided grantor first gives grantee 30 days written notice stating the increase and the reasons(s) for the increase.

(5) Bonds may be accepted in any of the following forms at the discretion of the Division:

(a) Surety bond with an approved corporate surety registered in Utah;

(b) Cash deposit. However, the Division shall not be responsible for any investment returns on cash deposits;

(c) Certificate of deposit in the name of "The Division of State Parks and Recreation and applicant, c/o Applicant's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency, the grantee shall be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the applicant prior to acceptance by the Director; or

(d) Other forms of surety as may be acceptable to the Division.

R651-700-17. Assignment of ROW, Easement, Special Use Leases and Special Use Permits, Subleasing.

(1) A ROW, Easement or Special Use Lease in good standing is freely assignable.

(2) Special Use Permits are non-assignable.

(3) To assign a ROW, Easement or Special Use Lease, the lessee shall submit a:

(a) Notice of proposed assignment on a form provided by the Division; and

(b) Non-refundable assignment processing fee payable to the Division.

(4) The Division shall make every effort to complete its review of such proposed assignments within thirty (30) calendar days of receipt of the notice. The Division may request additional information concerning the proposed assignment.

(5) A sublease or assignment may be made only to a person, firm, association, or corporation qualified to do business in the State of Utah, and which is not in default under the laws of the

State of Utah relative to qualification to do business within the state, and is not in default on any previous obligation to the Division.

(6) A lessee wanting to offer a sublease to another person shall:

(a) Obtain prior written authorization from the Division by applying to the Division on a form provided by the Division, and

(b) Submit to the Division rent, in an amount to be determined by the Division on a case-by-case basis, at the end of the calendar year.

(7) A sublease or assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original grantee/lessee, any conditions in the assignment to the contrary notwithstanding.

(8) A sublease or assignment must be a sufficient legal instrument, properly executed and acknowledged, and should be clearly set forth the lease or contract number, land involved, and the name and address of the assignee and shall include any agreement which transfers control of the lease to a third party. A copy of the documents subleasing or assigning the interest shall be given to the Division.

(9) A sublease or assignment shall be executed according to Division procedures.

(10) A sublease or assignment is not effective until approved by the Division.

R651-700-18. ROW, Easement, Special Use Leases and Special Use Permits - Unauthorized Uses and Penalties.

(1) Uses and developments subject to, but not authorized by a ROW, Easement, Special Use Lease or Special Use Permit issued by the Division constitute a trespass and must be removed as directed unless otherwise authorized in writing by the Division.

(2) In addition to any other penalties provided or permitted by law³, the placement of any development on, or use of Division Land without the required Division authorization as described in these rules, or which is otherwise not in compliance with these rules shall constitute a trespass and be prosecuted pursuant to governing law.

R651-700-19. Termination of a Special Use Lease or Special Use Permit for Default.

(1) If the lessee or permittee fails to comply with these rules or other lease terms and conditions, or otherwise violates laws covering the use of his/her authorized area, the Division shall notify the lessee or permittees in writing of the default and demand correction within a specified time frame.

(2) If the lessee or permittee fails to correct the default within the time frame specified, the Division may:

(a) Modify or terminate the lease or permit, and/or

(b) Request the Attorney General to take appropriate legal action against the lessee or permittee.

R651-700-20. Abandonment or ROW, Easement, or Lease.

(1) If within 365 days of the date of execution of a ROW, Easement or lease a grantee/lessee fails to construct and install the infrastructure which necessitate the grantee/lessee's acquisition of a ROW, Easement or lease, or the grantee/lessee otherwise fails to use all of any portion of a ROW, Easement or lease, that portion of the ROW, Easement or lease so unused shall be deemed abandoned and

the grantee/lessee's leasehold interest in said portion of the ROW or lease shall be terminated with no compensation due from the Division.

(2) If proof of grantee/lessee's use of all or portion of the ROW, Easement or lease cannot be provided for any continuous three year period, that portion of the ROW, Easement or lease shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW, Easement or lease cannot be provided for any continuous three year period, that portion of the ROW, Easement or lease shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW, Easement or lease shall be terminated with no compensation due from the Division.

R651-700-21. ROW, Easement, Special Use Leases and Special Use Permits - Reconsideration of Decision.

(1) An applicant or any other person adversely affected by the issuance of denial may request that the Director or the parks Board, depending upon which entity made the decision, reconsider the decision:

(a) Such a request shall be received by the Director no later than thirty (30) calendar days after the date of delivery of the decision.

(b) If the Director made the decision of concern, she/he may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the appeal.

(c) If the decision was made by the parks Board, the Director may recommend to the parks Board either that the Special Use Lease or permit issuance or denial be modified based on the merits of the request.

R651-700-22. Water Rights.

(1) It is the policy of the Division of Parks and Recreation to use its water resources for beneficial purposes in support of public recreation, including but not limited to, protecting scenic attractions and recreational values for the present and future citizens of Utah.

KEY: property

Date of Enactment of Last Substantive Amendment: 2009

Authorizing, Implemented, or Interpreted Law: 79-4; 79-4-203; 79-4-203.5(a)

**Natural Resources, Wildlife Resources
R657-9
Taking Waterfowl, Common Snipe and
Coot**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 32921
FILED: 9/1/09 4:55 PM

RULE ANALYSIS

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

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule remove all references to the process and procedure for obtaining swan permits; all application procedures are now outlined in Rule R657-62, Drawing Application Procedures.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment only moves the drawing application procedure to a different rule; it does not make any changes to the process. 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, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment has no impact on individual hunters or the local governments, DWR finds that this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** Since this amendment has no impact on small businesses or the local governments, DWR finds that this filing does not create any direct cost or savings impact to small businesses. Nor are small businesses indirectly impacted because the rule does not create a situation requiring services from them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment places the application procedures for all permits issued by DWR into the same rule (Rule R657-62, Drawing Application Procedures) to reduce repetition in many rules and therefore does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment will not create additional costs for those who participate in wildlife related activities in Utah.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: James Karpowitz, Director

**R657. Natural Resources, Wildlife Resources.
 R657-9. Taking Waterfowl, Common Snipe and Coot.
 R657-9-4. Permit Applications for Swan.**

- (1) ~~[Applications for s]Swan permits~~ are available through the division's Internet address. Residents and nonresidents may apply.
- ~~(2)(a) Applications must be submitted online by the date prescribed in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.~~
- ~~(b) If an error is found on the application, the applicant may be contacted for correction.~~
- ~~(c) The division reserves the right to correct applications.~~
- ~~(3) A person may obtain only one swan permit each year~~
- ~~(4) A person may not apply more than once annually.~~
- ~~(5) Group applications are accepted. Up to four applicants may apply as a group.~~
- ~~(6)(a) Fifteen percent of the swan permits in each region are reserved for youth hunters.~~
- ~~(b) For purposes of this section, "youth" means any person 15 years of age or younger on the opening day of the swan season.~~
- ~~(c) Youth hunters who wish to participate in the youth drawing must:~~
 - ~~(i) submit an application in accordance with Section R657-9-4; and~~
 - ~~(ii) not apply as a group.~~
- ~~(d) Youth applicants who apply for a swan 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 swan drawing.~~
- ~~(7) A Utah hunting or combination license may be purchased before applying, or the hunting or combination license will be issued to the applicant upon successfully drawing a permit.~~
- ~~(8) The permit fees and handling fees must be paid] will be issued pursuant to [Rule]R657-[42-8(5)]62-22.~~

R657-9-5. ~~Drawing.~~

- ~~(1)(a) Applicants will be notified by mail or e-mail of draw results on the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.~~
- ~~(b) Any remaining permits are available by mail in request or over the counter at the Salt Lake division office beginning on the date specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.~~
- ~~(2)(a) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.~~
- ~~(b) The division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.~~
- ~~(c) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.~~
- ~~(d) Withheld swan permits shall be used to correct division errors reported to or discovered by the division on or before the fifth day preceding the opening day of the swan hunt.~~
- ~~(e) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.~~
- ~~(3)(a) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-7(3)(b).~~
- ~~(b) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.~~
- ~~(4) Licenses and permits are mailed to successful applicants.~~
- ~~(5)(a) An applicant may withdraw their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.~~
- ~~(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake division office.~~
- ~~(c) Handling fee will not be refunded.~~
- ~~(6)(a) An applicant may amend their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.~~
- ~~(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake division office.~~
- ~~(c) The applicant must identify in their statement the requested amendment to their application.~~
- ~~(d) If the application is amended and that amendment results in an error, the division reserves the right to reject the entire application.~~

R657-9-6. ~~Tagging Swans.~~

- (1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.
- (2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

R657-9-[7]-[6]. Return of Swan Harvest and Hunt Information.

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must respond to the swan questionnaire through the division's Internet address, or by telephone, within 30 calendar days of the conclusion of the prescribed swan hunting season.

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

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

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

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

(4) late swan questionnaires may be accepted pursuant to Rule R657-42-9(3). Swan permit holders are still required to present the swan or its head for measurement to a division office.

R657-9-[8]. Purchase of License by Mail.

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

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

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

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

R657-9-9-[7]. Firearms.

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

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, crossbow, except as provided in Rule R657-12, poison, drug, explosive or stupefying substance.

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

R657-9-[10]-[8]. Nontoxic Shot.

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

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

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

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay,

Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs; or

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

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

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

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

(b) Daggett County - Brown's Park;

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

(d) Emery County - Desert Lake;

(e) Millard County - Clear Lake, Topaz Slough;

(f) Tooele County - Timpie Springs;

(g) Uintah County - Stewart Lake;

(h) Utah County - Powell Slough;

(i) Wayne County - Bicknell Bottoms; and

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

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession, except as provided in Rule R657-12.

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

R657-9-[12]-[10]. Airborne, Terrestrial, and Aquatic Vehicles.

Migratory game birds may not be taken:

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

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

R657-9-[13]-[11]. Airboats.

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

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

(b) Daggett County: Brown's Park

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

(d) Emery County: Desert Lake

(e) Millard County: Clear Lake, Topaz Slough

(f) Tooele County: Timpie Springs

- (g) Uintah County: Stewart Lake
- (h) Utah County: Powell Slough
- (i) Wayne County: Bicknell Bottoms
- (j) Weber County: Ogden Bay within diked units or as posted and all of Harold S. Crane Waterfowl Management Area.
- (2) "Personal watercraft" means a motorboat that is:
 - (a) less than 16 feet in length;
 - (b) propelled by a water jet pump; and
 - (c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

R657-9-[14-]12. Motorized Vehicle Access.

- (1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.
- (2) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.
- (3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.
- (4) Motorized boat use is restricted on waterfowl management areas as specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-[15-]13. Sinkbox.

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

R657-9-[16-]14. Live Decoys.

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

R657-9-[17-]15. Amplified Bird Calls.

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

R657-9-[18-]16. Baiting.

- (1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:
 - (a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:
 - (i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;
 - (ii) from a blind or other place of concealment camouflaged with natural vegetation;

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

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

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

R657-9-[19-]17. Possession During Closed Season.

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

R657-9-[20-]18. Live Birds.

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

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

R657-9-[21-]19. Waste of Migratory Game Birds.

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

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

R657-9-[22-]20. Termination of Possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

R657-9-[23-]21. Tagging Requirement.

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

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

R657-9-[24-]22. Donation or Gift.

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal

abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

R657-9-[25-]23. Custody of Birds of Another.

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

R657-9-[26-]24. Species Identification Requirement.

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

R657-9-[27-]25. Marking Package or Container.

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

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

R657-9-[28-]26. Migratory Bird Preservation Facilities.

(1) No migratory bird preservation facility shall:

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

- (i) the number of each species;
- (ii) the location where taken;
- (iii) the date such birds were received;
- (iv) the name and address of the person from whom such birds were received;

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

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

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

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

R657-9-[29-]27. Importation.

A person may not:

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

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

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

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

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

R657-9-[30-]28. Use of Dogs.

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

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

R657-9-[31-]29. Season Dates and Bag and Possession Limits.

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

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

R657-9-[32-]30. Closed Areas.

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

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

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

- (a) Brown's Park - That part adjacent to headquarters.
- (b) Clear Lake - Spring Lake.
- (c) Desert Lake - That part known as "Desert Lake."
- (d) Farmington Bay - Headquarters and Learning center area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.

(e) Ogden Bay - Headquarters area.

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

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

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

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

(j) State Parks

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

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

(l) Millard County

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

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

R657-9-[33-]31. Shooting Hours.

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

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

R657-9-[34-]32. Falconry.

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

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

R657-9-[35-]33. Migratory Game Bird Harvest Information Program (HIP).

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

(2)(a) A person must call the telephone number published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot, or register online at the address published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot to obtain their HIP registration number.

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

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

(a) hunting license number;

(b) hunting license type;

(c) name;

(d) address;

(e) phone number;

(f) birth date; and

(g) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the division to write their HIP number on and place on their lifetime license card.

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

R657-9-[36-]34. Waterfowl Blinds on Waterfowl Management Areas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[R657-9-37. Preference Point System.

~~(1) Preference points are used in the swan drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.~~

~~(2)(a) A preference point is awarded for:~~

~~(i) each valid unsuccessful application when applying for a swan permit; or~~

~~(ii) each valid application when applying only for a preference point in the swan drawing.~~

~~(3)(a) A person may not apply in the drawing for both a preference point and a 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 swan drawing.~~

~~(4) Preference points are forfeited if a person obtains a swan permit through the drawing.~~

~~(5)(a) Preference points are not transferable.~~

~~(b) Preference points shall only be applied to the swan drawing.~~

~~(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.~~

~~(7)(a) Preference points are tracked using social security numbers or division-issued hunter identification numbers.~~

~~(b) The division shall retain copies of electronic applications from 2008 to the current swan drawing for the purpose of researching preference point records.~~

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

~~(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).~~

~~(e) The division may eliminate any preference points earned that are obtained by fraud or misrepresentation.~~

]KEY: wildlife, birds, migratory birds, waterfowl

Date of Enactment or Last Substantive Amendment:
[November 10, 2008]2009

Notice of Continuation August 21, 2006

Authorizing, and Implemented or Interpreted Law: 23-14-19;
23-14-18; 50 CFR part 20

Natural Resources, Wildlife Resources

R657-10

Taking Cougar

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32922

FILED: 9/1/09 4:58 PM

RULE ANALYSIS

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

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) remove all references to limited entry permit applications, waiting periods and bonus

points, and this information has been moved to Rule R657-62; and 2) add a definition for "Kitten with spots".

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This amendment adds a definition and removes text that is found in another rule (Rule R657-62), therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget, since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** Since this amendment only adds a definition and removes duplicated text, this should have little to no effect on local governments. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** None--The amendments do not impose any additional requirements on small businesses, nor generate a cost or savings impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--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: DWR determines that these amendments will not create additional costs for sportsmen wishing to hunt cougar in Utah. Therefore, the rule amendments do not create a cost or savings impact to individuals who participate in hunting cougar.

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

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

NATURAL RESOURCES

WILDLIFE RESOURCES

1594 W NORTH TEMPLE

SALT LAKE CITY, UT 84116-3154

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-10. Taking Cougar.

R657-10-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
 - (a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the cougar.
 - (b) "Cougar" means Puma concolor, commonly known as mountain lion, lion, puma, panther or catamount.
 - (c) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.
 - (d) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.
 - (e) "Green pelt" means the untanned hide or skin of any cougar.
 - (f) "Kitten" means a cougar less than one year of age.
 - (g) "Kitten with spots" means a cougar that has obvious spots on its sides or its back.
 - (h) "Limited entry hunt" means any hunt listed in the hunt tables of the proclamation of the Wildlife Board for taking cougar, which is identified as limited entry and does not include harvest objective hunts.
 - (i) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.
 - (j) "Pursue" means to chase, tree, corner or hold a cougar at bay.
 - (k) "Split unit" means a cougar hunting unit that begins as a limited entry unit then transitions into a harvest objective unit.
 - (l) "Waiting period" means a specified period of time that a person who has obtained a cougar permit must wait before applying for any other cougar permit.

R657-10-26. General Limited Entry Cougar Permit Application Information.

- (1) ~~[A person must possess or obtain a valid hunting or combination license to apply for or obtain a cougar limited entry permit.~~
- ~~(2) A person may not apply for or obtain more than one cougar permit for the same year.~~
- ~~(3) Limited entry cougar permits are valid only for the limited entry management unit and for the specified season provided in the hunt tables of the proclamation of the Wildlife Board for taking cougar. issued pursuant to R657-62-23.~~

R657-10-27. Waiting Period.

- ~~(1) Any person who obtained a limited entry permit valid for the current season may not apply for a permit for a period of three seasons.~~
- ~~(2) Any person who draws a limited entry permit for the current season may not apply for a permit for a period of three seasons.~~

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

R657-10-28. Application Procedure.

- ~~(1) Applications are available through the division's Internet address.~~
- ~~(2)(a) Group applications are not accepted. A person may not apply more than once annually.~~
- ~~(b) Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.~~
- ~~(3)(a) Applications must be mailed by the date published in the proclamation of the Wildlife Board for taking and pursuing cougar.~~
- ~~(b) If an error is found on the application, the applicant may be contacted for correction.~~
- ~~(c) The division reserves the right to correct applications.~~
- ~~(4) 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.~~
- ~~(5) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-10-30.~~
- ~~(6) To apply for a resident permit, a person must establish residency at the time of purchase.~~
- ~~(7) The posting date of the drawing shall be considered the purchase date of a permit.~~

R657-10-29. Fees.

~~The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).~~

R657-10-30. Drawing and Remaining Permits.

- ~~(1) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation shall be done allowing cross-over usage of remaining resident and nonresident permit quotas.~~
- ~~(2) Applicants will be notified by mail or e-mail of drawing results on the date published in the proclamation of the Wildlife Board for taking cougar.~~
- ~~(3) Beginning on the date published in the proclamation of the Wildlife Board for taking cougar, residents or nonresidents may purchase any of the remaining permits.~~
- ~~(4) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.~~
- ~~(5) Limited entry permits remaining after the drawing may be obtained on a first-come, first-served basis as provided in the proclamation of the Wildlife Board for taking cougar.~~
- ~~(6) Waiting periods do not apply to the purchase of remaining limited entry permits after the drawing. However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying for limited entry permits in the drawing in following years.~~

~~(7)(a) An applicant may withdraw their application for the limited entry cougar permit drawing by the date published in the proclamation of the Wildlife Board for taking cougar.~~

~~(b) Handling fees and Utah hunting or combination license fees will not be refunded.~~

~~(8) An applicant may amend their application for the limited entry cougar permit drawing by the date published in the proclamation of the Wildlife Board for taking cougar.~~

R657-10-31. Bonus Points.

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

~~(a) a valid unsuccessful application when applying for a limited entry permit in the cougar drawing; or~~

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

~~(2) Bonus points are awarded only to applicants eligible to receive a limited entry cougar permit and consistent with subsection (1).~~

~~(3) The purchase of a harvest objective permit will not affect bonus points.~~

~~(4)(a) A person may apply for one cougar bonus point each year, except a person may not apply in the drawing for both a limited entry cougar permit and a cougar bonus point in the same year.~~

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

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

~~(5)(a) Each applicant receives a random drawing number for:~~

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

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

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

~~(6)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.~~

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

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

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

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

~~(7) Bonus points are forfeited if a person obtains a limited entry cougar permit except as provided in Subsection (7).~~

~~(8) Bonus points are not forfeited if:~~

~~(a) a person is successful in obtaining a Conservation Permit; or~~

~~(b) a person obtains a harvest objective cougar permit.~~

~~(9) Bonus points are not transferable.~~

~~(10) Bonus points are tracked using social security numbers or Division-issued hunter identification numbers.~~

R657-10-32. Harvest Objective General Information.

(1) Harvest objective permits are valid only for the open harvest objective management units and for the specified seasons published in the proclamation of the Wildlife Board for taking cougar.

(2) Harvest objective permits are not valid in a specified management unit after the harvest objective has been met for that specified management unit.

R657-10-33.28. Harvest Objective Permit Sales.

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking cougar.

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

(3) A person must possess a valid hunting or combination license to obtain a Harvest objective permit.

R657-10-34.29. Harvest Objective Unit Closures.

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-LION or visit the division's website to verify that the cougar management unit is still open. The phone line and website will be updated each day by 12 noon. Updates become effective the following day thirty minutes before official sunrise.

(2) Harvest objective units are open to hunting until:

(a) the cougar harvest objective for that unit is met; or

(b) the end of the hunting season as provided in the proclamation of the Wildlife Board for taking cougar.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue cougar except as provided in Section R657-10-25.

R657-10-35.30. Harvest Objective Unit Reporting.

(1) Any person taking a cougar with a harvest objective permit must report to the division, within 48 hours, where the cougar was taken and have a permanent tag affixed pursuant to Section R657-10-15.

(2) Failure to accurately report the correct harvest objective management unit where the cougar was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered prima facie evidence of a knowing, intentional or reckless violation for purposes of permit suspension.

R657-10-36.31. Wildlife Management Areas.

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use during the winter without first obtaining written authorization from the appropriate division regional office.

(2) The division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use during the winter provided:

(a) the person seeking access possesses a valid cougar permit for the area;

(b) motor vehicle access is necessary to effectively utilize the cougar permit; and

(c) motor vehicle access will not interfere with wintering wildlife or wildlife habitat.

DAR FILE NO.: 32923
 FILED: 9/1/09 5:00 PM

R657-10-~~37~~32. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening and filing of charges for the poaching incident.

(2) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a cougar on a limited entry cougar unit, under Section 23-20-4, may receive a permit from the division to hunt cougar on the same limited-entry cougar unit where the reported violation occurred, as provided in Subsection (3).

(3)(a) The division may issue poaching-reported reward permits only in limited-entry cougar units that have more than 10 total permits allocated.

(b) The division may issue only one poaching-reported reward permit per limited-entry cougar unit per year.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one cougar poaching-reported reward permit shall be issued to any one person in any one cougar season.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must possess a Utah hunting or combination license and otherwise be eligible to hunt and obtain cougar permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

KEY: wildlife, cougar, game laws

Date of Enactment or Last Substantive Amendment: ~~October 22, 2008~~2009

Notice of Continuation: August 21, 2006

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

RULE ANALYSIS

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

SUMMARY OF THE RULE OR CHANGE: Section R657-11-10 is being amended to add the middle section of the Provo River, between Jordanelle Dam and Deer Creek Reservoir to the list of areas with trapping restrictions and Section R657-11-30 is being amended to add clarification on the waterfowl management areas trapping hours requirement.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments add a section of the Provo River to the list of areas with trapping restrictions and clarify an existing requirement. 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, since the changes will not increase workload and can be done with exiting budget.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment adds a section of the Provo River to the list of areas with trapping restrictions and clarifies an existing requirement; therefore, the amendments do not impose any additional requirements on small businesses, nor generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment adds a section of the Provo River to the list of areas with trapping restrictions and clarifies an existing requirement; therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment only adds a section of the Provo River to the list of areas with trapping restrictions and clarifies an existing requirement. Therefore, DWR determines that there is no additional compliance costs associated with the 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.

**NATURAL RESOURCES
 WILDLIFE RESOURCES**

R657-11

Taking Furbearers

**NOTICE OF PROPOSED RULE
 (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:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-11. Taking Furbearers.

R657-11-10. Traps.

(1) All long spring, jump, or coil spring traps must have spacers on the jaws which leave an opening of at least 3/16 of an inch when the jaws are closed, except;

- (a) rubber-padded jaw traps,
- (b) traps with jaw spreads less than 4.25 inches, and
- (c) traps that are not completely submerged under water when set.

(2) All snares, except those set in water or with a loop size less than 3 inches in diameter, must be equipped with a breakaway lock device that will release when any force greater than 300 lbs. is applied to the loop. Breakaway snares must be fastened to an immovable object solidly secured to the ground. The use of drags is prohibited.

(3) On the middle section of the Provo River, between Jordanelle Dam and Deer Creek Reservoir, the Green River, between Flaming Gorge Dam and the Utah Colorado state line; and the Colorado River, between the Utah Colorado state line and Lake Powell; and the Escalante River, between Escalante and Lake Powell, trapping within 100 yards of either side of these rivers, including their tributaries from the confluences upstream 1/2 mile, is restricted to the following devices:

(a) Nonlethal-set leg hold traps with a jaw spread less than 5 1/8 inches, and nonlethal-set padded leg hold traps. Drowning sets with these traps are prohibited.

(b) Body-gripping, killing-type traps with body-gripping area less than 30 square inches (i.e., 110 Conibear).

(c) Nonlethal dry land snares equipped with a stop-lock device that prevents it from closing to less than a six-inch diameter.

(d) Size 330, body-gripping, killing-type traps (i.e. Conibear) modified by replacing the standard V-trigger assembly with one top side parallel trigger assembly, with the trigger placed within one inch of the side, or butted against the vertical turn in the Canadian bend.

(4) A person may not disturb or remove any trapping device, except:

(a) a person who possesses a valid, current furbearer license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to the trapping device; or

(b) peace officers in the performance of their duties; or

(c) as provided in Subsection (6).

(5) A person may not kill or remove wildlife caught in any trapping device, except:

(a) a person who possesses a valid, current furbearer license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to the trapping device; or

(b) as provided in Subsection (6).

(6) For the purposes of this section, "owner" means the person who has been issued a trap registration number, which is permanently marked or affixed to the trapping device.

(7) A person, other than the owner, may possess, disturb or remove a trapping device; or possess, kill or remove wildlife caught in a trapping device provided:

(a) the person possesses a valid, current furbearer license, the appropriate permits or tags; and

(b) has obtained written authorization from the owner of the trapping device stating the following:

- (i) date written authorization was obtained;
- (ii) name and address of the owner;
- (iii) owner's trap registration number;
- (iv) the name of the individual being given authorization;
- (v) signature of owner.

(8) The owner of any trapping device, providing written authorization to another person under Subsection (6), shall be strictly liable for any violations of this proclamation resulting from the use of the trapping device by the authorized person.

(9) The owner of any trapping device, providing written authorization to another person under Subsection (6), must keep a record of all persons obtaining written authorization and furnish a copy of the record upon request from a conservation officer.

(10)(a) A person may not set any trap or trapping device on posted private property without the landowner's permission.

(b) Any trap or trapping device set on posted property without the owner's permission may be sprung by the landowner.

(c) Wildlife officers should be informed as soon as possible of any illegally set traps or trapping devices.

(11) Peace officers in the performance of their duties may seize all traps, trapping devices, and wildlife used or held in violation of this rule.

(12) A person may not possess any trapping device that is not permanently marked or tagged with that person's registered trap number while engaged in taking wildlife.

(13) All traps and trapping devices must be checked and animals removed at least once every 48 hours, except;

(a) killing traps striking dorso-ventrally,

(b) drowning sets, and

(c) lethal snares that are set to capture on the neck, that have a nonrelaxing lock, without a stop, and are anchored to an immovable object; which must be checked every 96 hours.

(14) A person may not transport or possess live protected wildlife. Any animal found in a trap or trapping device must be killed or released immediately by the trapper.

R657-11-30. Trapping Hours.

On waterfowl management areas Traps may be ~~tended~~checked only between one-half hour before official sunrise to one-half hour after official sunset.

KEY: wildlife, furbearers, game laws, wildlife law
Date of Enactment or Last substantive Amendment: ~~October 22, 2008~~2009
Notice of Continuation: August 24, 2005
Authorizing, and Implementing or Interpreted Law: 23-14-18; 23-14-19; 23-13-17

Natural Resources, Wildlife Resources
R657-12
Hunting and Fishing Accommodations
for People With Disabilities

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 32924
 FILED: 9/1/09 5:03 PM

RULE ANALYSIS

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

SUMMARY OF THE RULE OR CHANGE: Provisions are being amended to this rule to allow increased hunting opportunities for disabled hunters, by adding a season extension for wild turkey.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-19-1 and Section 23-19-36 and Section 23-20-12 and Section 63G-3-201

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** This amendment allows more accommodations or opportunity for disabled people to participate in wild turkey hunting, and makes clarification. The Division of Wildlife (DWR) has determined that this amendment does not create a cost or savings impact to DWR's budget or the state budget.
 ♦ **LOCAL GOVERNMENTS:** This amendment allows more accommodations or opportunity for disabled people to participate in wild turkey hunting, and makes clarification. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by

the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** This amendment allows more accommodations or opportunity for disabled people to participate in wild turkey hunting, and makes clarification. The amendment does not impose any additional requirements on small businesses, nor generate a cost or savings impact to other persons.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment allows more accommodations or opportunity for disabled people to participate in wild turkey hunting, and makes clarification. The amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment allows more accommodations or opportunity for disabled people to participate in wild turkey hunting, and makes clarifications. There are not any additional compliance costs associated with this amendment.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.
R657-12. Hunting and Fishing Accommodations for People With Disabilities.
R657-12-7. Special Season Extension for Disabled Persons - General Deer, Elk and ~~Elk~~Wild Turkey Hunts.

(1) A person may obtain a Certificate of Registration from a division office to hunt an extended general deer, elk or elkwild turkey season as provided in Subsection (2), provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit and tag.

(2)(a) The extended general deer season may include:

(i) a five day hunt immediately preceding the general any weapon buck deer season opening date published in the proclamation of the Wildlife Board for taking big game;

(A) the five day extension does not apply to general any weapon deer hunts with seasons less than nine days in duration; and

(ii) a one time, experimental hunt beginning November 7, 2009 and ending November 8, 2009.

(b) The extended general spike bull elk season may occur five days after the general season spike bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(c) The extended general any bull elk season may occur concurrently with the general youth any bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(d) The extended general wild turkey season may occur during the following dates:

(i) April 2 through April 4 2010;

(ii) April 1 through April 3 2011; and

(iii) March 30 through April 1 2012.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

KEY: wildlife, wildlife law, disabled persons

Date of Enactment or last Substantive Amendment: 2009

Notice of Continuation: September 10, 2007

Authorizing, and Implemented or Interpreted Law: 23-20-12; 63G-3-201

Natural Resources, Wildlife Resources
R657-39
 Wildlife Board and Regional Advisory
 Councils

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32926

FILED: 9/1/09 5:04 PM

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 Division of Wildlife Resources (DWR) Regional Advisory Council program.

SUMMARY OF THE RULE OR CHANGE: This rule is being amended to provide guidelines for the election of Chair and Vice Chair positions.

STATE OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-19 and Subsection 23-14-2.6(7)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These amendments provide guidelines for the election of Chair and Vice Chair positions. Since this is just a procedural change, 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.

◆ **SMALL BUSINESSES:** These amendments provide guidelines for the election of Chair and Vice Chair positions on the Regional Advisory Councils, therefore, the amendment does not impose any additional requirements on small businesses, nor generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments provide guidelines for the election of Chair and Vice Chair positions on the Regional Advisory Councils, therefore, the amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments provide guidelines for the election of Chair and Vice Chair positions on the Regional Advisory Councils as well as establishing term limits for the positions. DWR determines that there is 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:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.
R657-39. Wildlife Board and Regional Advisory Councils.
R657-39-3. Regional Advisory Council Memberships -- Terms of Office.

(1)(a) There are created five regional advisory councils which shall consist of at least 12 members and not more than 15 members each from the wildlife region whose boundaries are established for administrative purposes by the division.

(b) Regional advisory councils shall be established as follows:

- (i) two members who represent agriculture;
- (ii) two members who represent sportsman;
- (iii) two members who represent nonconsumptive wildlife;
- (iv) one member who represents locally elected public officials;
- (v) one member who represents the U.S. Forest Service;
- (vi) one member who represents the Bureau of Land Management;
- (vii) one member who represents Native Americans where appropriate; and
- (viii) two members of the public at large who represent the interests of the region.

(c) The executive director of the Department of Natural Resources, in consultation with the director of the Division of Wildlife Resources, shall appoint additional members to the councils, up to a total of 15 per region, if deemed necessary to provide adequate representation of local interests and needs.

(d) Members of the councils shall serve a term of four years, except members may be appointed for a term of two years to ensure that the terms of office are staggered.

(e) Members may serve no more than two terms, except:
(i) members representing Native Americans may serve unlimited terms;

(ii) members filling a vacancy under Subsection (3) for two years or less will not be credited with having served a term; and

(iii) members who have served two terms may be eligible to serve an additional two terms after four years absence from regional advisory council membership.

(f) Members' terms expire on July 1 of the final year in the appointed term.

(2) The executive director of the Department of Natural Resources, in consultation with the director of the Division of Wildlife Resources, may remove members of the councils from office for cause, but may not do so without a public hearing if requested by the member.

(3) If a vacancy occurs, the executive director of the Department of Natural Resources, in consultation with the director of the Division of Wildlife Resources, shall appoint a replacement to serve the remainder of the term from a list of nominees submitted by the respective interest group, agency, or the public at large.

(4)(a) Each council shall appoint:

(i) a chair to conduct meetings and present council recommendations to the Wildlife Board; and

(ii) a vice chair to conduct meetings in the absence of the chair.

(b) The chair and vice chair shall serve for a two year term of office, the regional advisory council may re-appoint the chair and vice chair to serve a second two year term.

(i) neither the chair nor the vice chair may serve more than two term.

(5) Regional supervisors of the division shall serve as executive secretary to the councils and shall provide administrative support.

(6) Each new member shall attend an orientation course provided by the division to assist them in the performance of the duties of the their office.

(7) Any member who fails to attend two consecutive, previously scheduled meetings without contacting the chair shall be considered to have resigned and shall be replaced as provided in this section.

KEY: terms of office, public meetings, regional advisory councils

Date of Enactment or Last Substantive Amendment:
~~November 10, 2008~~2009

Notice of Continuation: January 9, 2006

Authorizing, and Implemented or Interpreted Law:
23-14-2.6(7); 23-14-19

Natural Resources, Wildlife Resources
R657-50
Error Remedy

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 32929
FILED: 9/1/09 5:06 PM

RULE ANALYSIS

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

SUMMARY OF THE RULE OR CHANGE: The modifications to this rule provide: 1) for the restoration of bonus or preference points if an error is determined to be caused by the Division; 2) allow computer service and internet providers to be included as possible contributors to an error; 3) allow for the restoration of bonus or preference points if an error is determined to be caused by a third party; 4) allow the Division to mitigate applicant errors provided the applicant can provide satisfactory proof to the Division that an error did occur that was a mistake on the part of the applicant; and 5) set time constraints for filing an error remedy request.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-19 and Section 23-19-1 and Section 23-19-38

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Since this amendment is only a process clarification, the Division of Wildlife Resources (DWR) determines that this does not create a cost or savings impact to the state budget or DWR's budget.

◆ **LOCAL GOVERNMENTS:** This amendment is outlining a process clarification. This rule does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** The rule does not impose any additional requirements on other persons, nor generate a cost or savings impact to small businesses, because this correction is only clerical in nature.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons, because this correction is only clerical in nature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since this amendment is only a process clarification, 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:
◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.**R657-50. Error Remedy.****R657-50-1. Purpose and Authority.**

(1) Under the authority of Sections 23-14-19, 23-19-1, and 23-19-38 this rule is established to provide guidelines for identifying and resolving errors ~~resulting in the~~ involving:

- (a) rejection of a wildlife document application;
- (b) denial of a wildlife document; ~~[-or]~~
- (c) incorrect issuance of a wildlife document;
- ~~_____~~ (d) applying for or receiving a wildlife document;
- ~~_____~~ (e) eligibility to apply for or receive a wildlife document;

or

- ~~_____~~ (f) loss or forfeiture of bonus points.

(2) This rule provides standards and procedures in the identification and resolution of division errors, third party errors and ~~[petitioner]~~ applicant errors.

~~_____~~ (3) Nothing in this Section shall be construed, however, as authorizing the Division to remedy or otherwise alter wildlife document ineligibility resulting from a judicial or administrative order suspending wildlife document privileges.

R657-50-2. Policy.

(1)(a) The division receives hundreds of thousands of applications and issues tens of thousands of wildlife documents each year through a variety of distribution methods, including:

- (i) drawings;
- (ii) over-the-counter sales;
- (iii) license agent sales; and
- (iv) online sales.

(b) The application procedures and eligibility requirements for wildlife documents are set forth in Utah Code, Title 23, and Utah Administrative Code Rules, Title R657.

(c) The public must comply with the procedures and requirements set forth in the statutes and rules identified in Subsection (1)(b).

(d) The division recognizes, however, that errors may be made by the division ~~[it]~~ and other parties in eligibility, requesting, processing and issuing wildlife documents, including forfeiture of bonus points. Therefore, procedures are needed for evaluation, identification and resolution of errors.

(2)(a) The division may notify petitioners of rejection status for wildlife document applications completed incorrectly as provided under the applicable application correction procedures set

forth in the respective statutes and rules identified in Subsection (1) (b).

(b) The division may use the data on file to correct rejection status applications. Ultimately, however, it is the responsibility of the [petitioner]applicant to provide all necessary information as required on the application.

(3)(a) Consistent with the requirements in this rule, T[the division may [mitigate division and]mitigate division, third party, and applicant errors when issuing wildlife documents or determining bonus points by:

- (i) extending a deadline;
- (ii) issuing a refund ~~[on an erroneously collected fee]~~consistent with Sections 23-19-38 and 23-19-38.2;
- (iii) issuing the correct wildlife document;~~[or]~~
- (iv) authorizing an incorrectly issued wildlife document~~[-];~~
- (v) restoring forfeited bonus or preference points; or
- (vi) accepting the surrender of a wildlife document and restoring applicable bonus or preference points as authorized in R657-42-4.

(b) Any mitigation efforts shall be subject to the division's determination that the [petitioner]applicant shall not receive an unfair benefit from the mitigation.

(c) The division may not mitigate errors caused in whole or part by the [petitioner]applicant's knowing and willful violation of statute, rule or proclamation.

(d) This rule applies only to errors adversely effecting [a petitioner]an applicant that cannot be remedied through compliance with existing processes and procedures set in statute, rule or proclamation.

(e) The division may refund any fee collected in error.

R657-50-3. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2, and the applicable rules as provided in Section R657-50-1(b).

(2) In addition:

(a)~~(i) "Division error" means the division or one of its license agents erroneously;~~ "Applicant" means the person directly impacted by an error adversely affecting the opportunity to obtain or use a wildlife document.

~~(b)(i) "Applicant error" means the applicant inadvertently or negligently fails to comply with the procedures and requirements to become eligible for, apply for, or obtain a wildlife document.~~

~~(ii) "Applicant error" includes the negligent acts and omissions committed by an individual or entity acting in the applicant's behalf.~~

~~(iii) "Applicant error" does not include knowing and willful noncompliance with division procedures and requirements by the applicant or any individual or entity acting in his or her behalf.~~

~~(c) "Application" means a request made by the applicant to receive a wildlife document whether through a drawing, license agent, division employee, or online application.~~

~~(d)(i) "Division error" means the division or its agent:~~

(A) provides erroneous information to the [petitioner]applicant, which the ~~[petitioner-relied]~~applicant relies upon to ~~[their]his or her~~ detriment in obtaining, or attempting to obtain a wildlife document;

~~(B) fails to provide information to the applicant required by law, policy, practice, or circumstance that directly leads to the applicant's ineligibility, inability, or failure to apply for or receive a wildlife document;~~

~~(C) erroneously rejects a properly completed and accurate wildlife document application;~~

~~([E]D) incorrectly issues a wildlife document;[or]~~

~~([E]E) incorrectly denies issuing a wildlife document; or~~

~~(F) experiences a computer, online, or other electronic systems failure that prevents an applicant from applying for or obtaining a wildlife document.~~

(ii) "Division error" does not include any error made by the division or its agents acting in reliance upon inaccurate or false information provided by the [petitioner]applicant or any other individual acting in the [petitioner]applicant's behalf.

([b]e) "Error Committee" means a committee established by the Director consisting of the Wildlife Chief, Administrative Services Chief, Licensing Coordinator, and Rules Coordinator, or their designees.

([e]f) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) Cooperative Wildlife Management Unit (CWMU) landowner association or its designated operator as provided in Rule R657-37.

([d]g) "Landowner association operator error" means a landowner association operator whose error or mistake results in an incorrect voucher redemption.

~~(e) "Petitioner" means the person directly impacted by an error adversely effecting the opportunity to obtain or use a wildlife document.~~

~~(f) "Petitioner error" means the petitioner did not comply with the procedures and requirements to apply for or obtain a wildlife document. Petitioner error includes errors made by a person acting on the petitioner's behalf.~~

([g]h) "Rejection status" means the application will not be considered for a wildlife document due to:

- (i) ~~[a petitioner]an applicant~~ error on the application;
- (ii) the application lacking required information; or
- (iii) the [petitioner]applicant does not meet a specific requirement.

([h]i) "Third party error" means the [petitioner]applicant is prepared and capable of or has satisfied the procedures and requirements for obtaining a wildlife document, but the opportunity is lost due to an error by computer service, internet provider, mail carrier services or financial institutions.

([i]j) "Voucher" means a document issued by the division to a landowner association member or landowner association operator, to designate who may purchase a CWMU big game hunting permit or a limited entry landowner permit from a division office.

([j]k) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the division.

R657-50-4. Division Error Procedures.

(1) A division error, which results in the rejection or incorrect processing of an application to obtain a wildlife document

through a drawing, may be handled as provided in Subsections (a) through (d).

(a) If the drawing has not been held, the division may extend the application deadline and evaluate the application as though filed timely.

(b) If the drawing is over and the wildlife document applied for is available, the division may issue the wildlife document.

(c) If the drawing is over and the wildlife document applied for is not available, the division must follow the procedures set forth in Subsection ([6]Z).

(d) If an application is for one or more persons applying as a group, the division may treat the remaining members of the group the same as the [petitioner]applicant.

(2) A division error, which results in an application denial for wildlife documents other than those issued through a drawing, may be resolved by extending the application deadline and evaluating the application as though filed timely.

(3) A division error, which results in an impermissible surrender or exchange of a wildlife document may be resolved by extending the deadline necessary to validate the surrender or exchange, provided:

(a) the [petitioner]applicant has not participated in the activity authorized by the surrendered wildlife document; and

(b) the [petitioner]applicant shall be substantially prejudiced if relief under this section is not granted.

(4) A division error, which results in the improper denial of a wildlife document, may be resolved as provided in Subsections (a) through (b).

(a) If the wildlife document erroneously denied is available, the division may issue the wildlife document.

(b) If the wildlife document erroneously denied is not available, the division must follow the procedures set forth in Subsection ([6]Z).

(5) A division error, which results in the erroneous issuance of a wildlife document may be resolved as provided in Subsections (a) through (b).

(a) If the wildlife document requested by the [petitioner]applicant prior to or at the time of the error is currently available, the division may issue the wildlife document.

(b) If the wildlife document requested by the [petitioner]applicant prior to or at the time of the error is currently not available, the division must follow the procedures set forth in Subsection ([6]Z).

(6) A division error, which directly results in the applicant's loss of bonus points or the imposition of a waiting period, may be resolved by restoring part or all of the bonus points and removing the waiting period.

([6]Z) Procedures for issuing wildlife documents otherwise unavailable for distribution are as follows:

(a) If the [petitioner]applicant would have received a wildlife document absent an error, or if the [petitioner]applicant received a wildlife document because of an error, the division shall determine if an additional wildlife document beyond the applicable quota may be issued without detriment to the particular wildlife species in a specific hunt area.

(i) If issuing the additional wildlife document is not detrimental to the species in the hunt area, the division may issue the wildlife document, except as provided in Subsection (A).

(A) Only the Wildlife Board may approve issuing an additional permit for a once-in-a-lifetime hunt.

(B) Additional CWMU permits may not be issued.

(ii) If a wildlife document cannot be issued, the [petitioner]applicant may be placed at the top of the alternate drawing list.

(iii) If a wildlife document is not issued under Subsection (i) or (ii), the division may issue a bonus point or preference point, whichever is applicable.

(iv) If a bonus point or preference point does not apply, the division may issue a refund of the wildlife document and handling fee.

(b) If the [petitioner]applicant would not have received a wildlife document in a drawing, absent an error, the division may issue a bonus point or preference point, where applicable.

(c) If the wildlife document was applied for through a division drawing and the hunting season for that wildlife document is over, the division may:

(i) issue a bonus point or preference point for which the application was submitted, where applicable; or

(ii) issue a refund of the wildlife document and handling fee where bonus points or preference points do not apply.

R657-50-5. Third Party Errors.

(1) The division shall not be held responsible for third party errors, including those of a computer service, internet provider, financial institution or postal service, however, the division may mitigate a third party error as provided under this section.

(2)(a) The [petitioner]applicant must:

(i) provide proof to the satisfaction of the division that the error was due to a third party; and

(ii) provide written documentation from the third party verifying the error.

~~[(b) If the petitioner cannot prove to the satisfaction of the division that the error was due to a third party, no mitigating action will be taken.]~~

(3) Third party errors which result in [the]failure to apply, rejection, or incorrect processing of an application to obtain a wildlife document through a drawing [shall]may be handled as provided in Subsections (a) through (c).

(a) If the error is [found]brought to the division's attention prior to the drawing and there is sufficient time to complete the processing of the application before the drawing for which the application was submitted, the application [shall]may be included in the drawing as though filed timely.

(b) If the error is [found]brought to the division's attention after the drawing or there is not sufficient time to complete the processing of the application before the drawing, and the [petitioner]applicant's application is rejected because of the error, or the [petitioner]applicant otherwise fails to obtain the wildlife document applied for, the division may issue a bonus point or preference point for the hunt applied for, where applicable.

(c) A refund of handling fees shall not be made for third party errors.

(4) A third party error, which results in [a-rejected]failure to apply, rejection, or incorrect processing of an application for a wildlife document issued outside [of-a]the drawing process, may be

handled by extending the application deadline and evaluating the application as though filed timely.

(5) An application deadline extension under this section may not be granted unless the applicant pays the prescribed application late fee.

(5)6 If an application is for one or more persons applying as a group, the division may treat the remaining members of the group the same as the [petitioner]applicant.

(7) A third party error, which directly results in the applicant's loss of bonus points or the imposition of a waiting period, may be resolved by restoring part or all of the bonus points and removing the waiting period.

R657-50-6. Landowner Association Operator Errors.

(1)(a) The division shall not be held responsible for landowner association operator errors, however, the division may mitigate a landowner association operator error as provided under this section.

(b) The [petitioner]applicant must provide proof to the satisfaction of the division that the error was due to a landowner association operator.

(c) If the [petitioner]applicant cannot prove to the satisfaction of the division that the error was due to a landowner association operator, the division will take no mitigating action.

(2) A landowner association operator error, which results in the incorrect processing of a voucher to obtain a wildlife document, [shall]may be mitigated as provided in Rule R657-42-11(3).

R657-50-7. [Petitioner]Applicant Errors.

~~[A petitioner error will not be corrected, except as provided in the applicable proclamations and rules under the Utah Administrative Code, Title R657.]~~(1) The division shall not be held responsible for applicant errors. However, the division may mitigate an applicant error as provided under this section.

(2)(a) The applicant must:

(i) provide proof to the satisfaction of the division that the error was due to a negligent act or omission of the applicant or a person or entity acting in the applicant's behalf; and

(ii) provide written documentation from the person or entity, where applicable, acknowledging and verifying the error.

(3) Applicant errors which result in failure to apply, rejection, or incorrect processing of an application for a wildlife document through a drawing may be handled as provided in Subsections (a) and (b).

(a) If the error is brought to the division's attention prior to the drawing and there is sufficient time to complete the processing of the application before the drawing for which the application was submitted, the application may be included in the drawing as though filed timely.

(b) If the error is brought to the division's attention after the drawing or there is not sufficient time to complete the processing of the application before the drawing, and the applicant's application is rejected because of the error, or the applicant otherwise fails to obtain the wildlife document applied for, the division may issue a bonus point or preference point for the hunt applied for, where applicable.

(4) An applicant error, which results in failure to apply, rejection, or incorrect processing of an application for a wildlife document issued outside the drawing process, may be handled by extending the application deadline and evaluating the application as though filed timely.

(5) An application deadline extension under this section may not be granted unless the applicant pays the prescribed application late fee.

(6) If an application is for one or more persons applying as a group, the division may treat the remaining members of the group the same as the applicant.

(7) An applicant error which directly results in the applicant's failure to earn a bonus point, loss or forfeiture of bonus points or the imposition of a waiting period, may be resolved by restoring part or all of the bonus points and removing the waiting period, provided the request for relief is submitted to the division within 180 days of the deadline for filing an application that resulted in failing to earn or forfeiting a bonus point or the imposition of a waiting period.

KEY: wildlife, permits

Date of Enactment or Last Substantive Amendment: ~~August 3, 2004~~2009

Notice of Continuation: April 4, 2007

Authorizing, and Implemented or Interpreted Law: 23-14-19; 23-19-1; 23-19-38

Natural Resources, Wildlife Resources **R657-54**

Taking Wild Turkey

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32930

FILED: 9/1/09 5:08 PM

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 wild turkey program as approved by the Wildlife Board.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule remove all references to the process and procedure for obtaining Wild Turkey permits, all application procedures are now outlined in Rule R657-62, Drawing Application Procedures.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment only moves the drawing application procedure to a different rule; it does not make any changes to the process. 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, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment has no impact on individual hunters or the local governments, DWR finds that this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment places the application procedures for all permits issued by DWR into the same rule (Rule R657-62, Drawing Application Procedures) to reduce repetition in many rules and therefore, does not have the potential to generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment places the application procedures for all permits issued by DWR into the same rule (Rule R657-62, Drawing Application Procedures) to reduce repetition in many rules and therefore, does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment places the application procedures for all permits issued by DWR into the same rule (Rule R657-62, Drawing Application Procedures) to reduce repetition in many rules and therefore, does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.**R657-54. Taking Wild Turkey.****R657-54-3. Application Procedure for Wild Turkey.**

~~(1)(a) Applications are available through the division's internet address. Applications must be submitted by the date prescribed in the Turkey Proclamation of the Wildlife Board for taking wild turkey.~~

~~(b) Residents and nonresidents may apply.~~

~~(2)(a) Group applications.] Permits for wild turkey will not be accepted.~~

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

~~(c) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.~~

~~(d) To apply for a resident permit, a person must be a resident at the time of purchase.~~

~~(e) The posting date of the drawing shall be considered the purchase date of a permit.~~

~~(3)(a) A person may obtain only one wild turkey permit each year, except a person may obtain wild turkey conservation permits in addition to obtaining a limited entry or remaining wild turkey permit.~~

~~(b) A person may not apply for wild turkey more than once annually.~~

~~(4) (a) If an error is found on the application, the applicant may be contacted for correction.~~

~~(b) The division reserves the right to correct applications.~~

~~(c) A turkey permit allows a person using any legal weapon as provided in Section R657-54-7 to take one bearded turkey within the area and season specified on the permit.~~

~~(5) The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5)]be issued pursuant to R657-62-25.[~~

~~(6) Applicants will be notified by mail or e-mail of drawing results by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.~~

~~(7) Any permits remaining after the drawing are available on the date published in the Turkey Proclamation on a first-come, first-served basis from division offices and participating online-license agents.~~

~~(8)(a) An applicant may withdraw their application for the wild turkey permit drawing by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.~~

~~(b) Handling fees and hunting or combination license fees will not be refunded.~~

~~(9)(a) An applicant may amend their application for the wild turkey permit drawing by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.]~~

R657-54-4. [Waiting Period for Wild Turkey.

~~(1) Waiting periods do not apply to wild turkey permits.~~

R657-54-5. Bonus Points for Wild Turkey.

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

~~(a) a valid unsuccessful application when applying for a permit in the turkey drawing; or~~

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

~~(2)(a) A person may not apply for a bonus point if that person is ineligible to apply for a permit.~~

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

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

~~(3) A bonus point shall not be awarded for an unsuccessful landowner application.~~

~~(4)(a) Each applicant receives a random drawing number for:~~

~~(i) the current valid turkey application; and~~

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

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

~~(5)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.~~

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

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

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

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

~~(6) Bonus points are forfeited if a person obtains a wild turkey permit, except as provided in Subsection (7).~~

~~(7) Bonus points are not forfeited if:~~

~~(a) a person is successful in obtaining a Conservation Permit or Sportsman Permit;~~

~~(b) a person obtains a Landowner Permit; or~~

~~(c) a person obtains a Poaching-Reported-Reward Permit.~~

~~(8) Bonus points are not transferable.~~

~~(9) Bonus points are tracked using social security numbers or Division-issued hunter identification numbers.~~

R657-54-6. [Landowner Permits.

(1)(a) Up to an additional 20 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to private landowners through a drawing.

(2) Landowners interested in obtaining landowner permits must:

(a) contact the regional Division office in their area on the dates published in the Turkey Proclamation of the Wildlife Board for taking wild turkey;

(b) obtain and complete a landowner application;

(c) obtain a Division representative's signature on the landowner application; and

(d) submit the landowner application in accordance with Section R657-~~54~~~~62~~-~~3~~-~~25~~.

(4)(a) Landowner permit applications that are not signed by the local Division representative will be rejected.

(5)(a) Only one eligible landowner may submit an application for the same parcel of land within the respective regional hunt boundary area.

(b) In cases where more than one application is received for the same parcel of land, all applications will be rejected.

(6) Applications must include:

(a) description of total acres owned within the respective regional hunt boundary;

(b) evidence of property ownership, including a copy of a title, deed, or tax notice indicating the applicant is the owner of the property; and

(c) the signature of the landowner.

(i) The signature on the application will serve as an affidavit certifying land ownership.

(7)(a) A landowner is eligible to participate in the drawing for available landowner turkey permits provided the landowner owns:

(i) at least 640 acres of essential habitat, or 40 acres of essential habitat that is cleared and planted land, in an open unit designated as a Merriam's unit that supports wild turkeys; or

(ii) at least 20 acres of essential habitat in an open unit designated as a Rio Grande unit that supports wild turkeys.

(b) Land qualifying as essential habitat, or cleared and planted land, and owned by more than one landowner may qualify for a landowner permit. However, the landowners who own the qualifying land must determine the landowner who will be participating in the drawing.

(8)(a) A landowner who applies for a landowner permit may:

(i) be issued the permit; or

(ii) designate a member of the landowner's immediate family or landowner's regular full-time employee to receive the permit.

(b) At the time of application, the landowner must identify the designee who will receive the permit.

(c) The landowner permit may be used only on the open limited entry area in which the landowner's property is located during the open season established for hunting wild turkeys.

(d) A person may not apply for or obtain a landowner permit without possessing a Utah hunting or combination license.

(9) Applicants will be notified by mail or e-mail of the drawing results for landowner permits by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(10)(a) Any landowner permits remaining after the landowner drawing shall be converted to public limited entry permits for that specific unit.

(b) These permits shall be issued through the limited entry drawing. Therefore, the number of public permits listed in the Turkey Proclamation of the Wildlife Board for taking wild turkey, may increase.

(11)(a) A waiting period does not apply to landowners applying for landowner permits.

(b) A landowner may apply once annually for a landowner permit and a limited entry permit, but may only draw or obtain one permit.

R657-54-~~7-~~5. Firearms and Archery Tackle.

Wild turkey may be taken only with a bow and broadhead tipped arrows or a shotgun no larger than 10 gauge and no smaller than 20 gauge, firing shot sizes between BB and no. 6.

R657-54-~~8-~~6. Shooting Hours.

(1) Wild turkey may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the proclamation of the Wildlife Board for taking wild turkey.

R657-54-~~9-~~7. State Parks.

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

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

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

R657-54-~~10-~~8. Falconry.

Falconers may not release a raptor on wild turkey.

R657-54-~~11-~~9. Live Decoys and Electronic Calls.

A person may not take a wild turkey by the use or aid of live decoys, records or tapes of turkey calls or sounds, or electronically amplified imitations of turkey calls.

R657-54-~~12-~~10. Baiting.

A person may not hunt turkey using bait, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. An area is considered baited for 10 days after bait is removed, or 10 days after bait in an area is eaten.

R657-54-~~13-~~11. Sitting or Roosting Turkeys.

A person may not take or attempt to take any turkey sitting or roosting in a tree.

R657-54-~~14-~~12. Tagging Requirements.

(1) The carcass of a turkey must be tagged before the carcass is moved from, or the hunter leaves, the site of kill.

(2) To tag a carcass, a person shall:

(a) completely detach the tag from the license or permit;

(b) completely remove the appropriate notches to

correspond with:

(i) the date the animal was taken;

(ii) the sex of the animal; and

(c) attach the tag to the carcass so that the tag remains securely fastened and visible.

(3) A person may not:

(a) remove more than one notch indicating date or sex; or

(b) tag more than one carcass using the same tag.

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

R657-54-~~15-~~13. Identification of Species and Sex.

The head and beard must remain attached to the carcass of wild turkey while being transported.

R657-54-~~16-~~14. Use of Dogs.

(1) Dogs may be used to locate and retrieve wild turkey during open hunting seasons.

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

R657-54-~~17-~~15. Closed Areas.

A person may not hunt wild turkey in any area posted closed by the Division or any of the following areas:

(1) Salt Lake Airport boundaries as posted.

(2) Incorporated municipalities: Most of the incorporated areas of Alta, a portion of Davis County, Garland City, Layton, Logan, Pleasant View City, South Ogden City, West Jordan, and West Valley City are closed to the discharge of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.

(3) Wildlife Management Areas:

(a) Waterfowl management areas are open for hunting wild turkey only during designated turkey hunting seasons, including: Bear River National Wildlife Refuge, Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to wild turkey hunting.

(c) Goshen Warm Springs is closed to wild turkey hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

R657-54-~~18-~~16. Possession of Live Protected Wildlife.

It is unlawful for any person to hold in captivity at any time any protected wildlife, except as provided by Title 23, Wildlife Resources Code or any rules and regulations of the Wildlife Board. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-54-~~19-~~17. Spotlighting.

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

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

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

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

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

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

R657-54-[20-]18. Exporting Wild Turkey from Utah.

A person may export wild turkey or their parts from Utah only if:

(1) the person who harvested the turkey accompanies it and possess a valid permit corresponding to the tag; or

(2) the person exporting the turkey or its parts, if it is not the person who harvested the turkey, has obtained a shipping permit from the Division.

R657-54-[21-]19. Waste of Game.

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

(2) A person shall not kill or cripple any wild turkey without making a reasonable effort to retrieve the turkey.

R657-54-[22-]20. Wild Turkey Poaching Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a wild turkey under Section 23-20-4, within any limited entry area may receive a permit from the Division to hunt wild turkey in the following year on the same limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a Poaching-Reported Reward Permit would exceed 5 percent of the total number of limited entry permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the Division may issue a permit as outlined in Subsection (b).

(b) A permit for a wild turkey, on an alternative limited entry area that has been allocated more than 20 permits, may be issued.

(3)(a) The Division may issue only one Poaching-Reported Reward Permit for any one wild turkey illegally taken.

(b) No more than one Poaching-Reported Reward Permit shall be issued to any one person per successful prosecution.

(c) No more than one Poaching-Reported Reward Permit shall be issued to any one person in any one calendar year.

(d) A person must possess a Utah hunting or combination license to receive a Poaching-Reported Reward Permit.

(4)(a) Poaching-Reported Reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the Division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the Poaching-Reported Reward Permit.

(5) Any person who receives a Poaching-Reported Reward Permit must be eligible to hunt and obtain wild turkey

permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

R657-54-[23-]21. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking wild turkey are provided in the Turkey Proclamation of the proclamation of the Wildlife Board for taking wild turkey.

R657-54-24. Youth Hunting.

~~(1)(a) Up to 15 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to youth hunters.~~

~~(b) For purposes of this section "youth" means any person who is 18 years of age or younger on the posting date of the wild turkey drawing.~~

~~(2)(a) Youth hunters who wish to participate in the youth limited entry wild turkey permit drawing must submit an application in accordance with Section R657-54-3.~~

~~(b) Youth who apply for a turkey permit in accordance with Section R657-54-3, will automatically be considered in the youth permit drawing based on their birth date.~~

~~(3)(a) Bonus points shall be used when applying for youth turkey permits in accordance with Section R657-54-5.~~

~~(b) Waiting periods will be incurred in accordance with Section R657-54-4.]~~

KEY: wildlife, wild turkey, game laws

Date of Enactment or Last Substantive Amendment: [November 10, 2008]2009

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

School and Institutional Trust Lands,
Administration
R850-40-250
Determination of the Status of
Temporary Easements and Rights-of-
Entry

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 32931
FILED: 9/1/09 5:39 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment clarifies that the agency may use the rule process for extinguishing the statutory easement created by Section 72-5-203, outside of the sale context.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment clarifies that the agency may use the rule process for extinguishing the statutory easement outside of the sale context and allows any responsible party to apply to make the statutory temporary easement permanent. Alternately, the agency may self-start the process by notifying local government, etc., in accordance with the existing rule. The amendment primarily deletes three references to land sales as a basis for elimination of the statutory easement.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53C-1-302 and Section 53C-4-203 and Subsection 53C-2-201(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state as a result of this proposed amendment because the process for extinguishing statutory easements is already in place. The amendment is simply removing the limitation of the rule applying only to sale parcels.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the proposed amendment because the process for extinguishing statutory easements is already in place.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the proposed amendment. Since the process for extinguishing statutory easements is already in place, the cost for a small business using the process would not increase or diminish.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities as a result of the proposed amendment. Because the process for extinguishing statutory easements is already in place, any person using the process would not encounter any additional costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should not be any additional compliance costs for affected persons. The process for extinguishing statutory easements is already in place and any costs involved for participating in the process are already established and in use.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The intent of this rule is to broaden the applicability of the existing rule to management instances, beyond sale of land, where an entity will be notified of their opportunity to perfect an easement if they believe they satisfy a 1992 legislative grant. Since the 1992 grant already required compensation

for granting an easement, the proposed modification has no fiscal impact on businesses.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at jandrews@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Kevin Carter, Director

R850. School and Institutional Trust Lands, Administration.**R850-40. Easements.****R850-40-250. Determination of the Status of Temporary Easements and Rights-of-Entry.**

1. In order to determine the existence and continuation of any temporary easements or rights-of-entry granted pursuant to Section 72-5-203 on a specific parcel of trust land (the subject property), the agency may undertake the notification process set forth in R850-40-250(2). This evaluation ~~shall~~ does not adjudicate the status of any highway crossing the subject property that may have been established pursuant to any federal statute, such as R.S. 2477. Highways established in accordance with the requirements of federal law, including R.S. 2477, prior to the state taking title to the subject property are recognized as valid existing rights.

2. In order to determine the existence of a ~~permissive~~ statutory temporary easement or right-of-entry on the subject property, the agency shall give notice to responsible authorities, as defined in Subsection 72-5-202(1). This notice ~~will~~ is intended to provide information to any responsible authority wishing to assert ~~ing~~ a temporary easement or right-of-entry on the process used to file an application to make such temporary easement or right-of-entry permanent (the "application") The application must contain a description of the facts which lead the applicant to believe that a statutory temporary easement or right-of-entry exists on the subject property, and other information that may be required by the agency to verify the assertion. Notice shall be provided as follows:

(a) Certified notice shall be mailed by the agency to the Attorney General and the executive body of the county in which the subject property is located. This notice shall include the legal description of the subject property and a map showing its location. The executive body of the county shall have 90 days from the date of the notice within which to submit an application.

(b) Notice to other responsible authorities who may have an interest in the subject property shall be given through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located. In addition to the legal description of the subject property, ~~being considered for sale,~~ the advertisement shall put responsible authorities on notice that the agency may take action extinguishing the temporary easement or right-of-entry, ~~upon sale of the subject property.~~ Other responsible authorities shall have 90 days from the first date of publication within which to submit the application.

3. Upon the receipt of an application to convert a temporary easement or right-of-entry into an authorized ~~permanent property~~ easement or right-of-entry, the agency shall evaluate the request pursuant to the fiduciary responsibilities of the agency. ~~A decision on whether or not to approve the application shall be made at least 30 days prior to a sale of the subject property.~~ Prior to the agency approving or rejecting an application, if any, the agency shall review the supporting documentation submitted by the applicant. The agency shall consider material submitted by any responsible authority pursuant to the applicant's appropriate statutory authority. If no application is received after notice is given pursuant to R850-40-250(2), or if an application to make the temporary easement or right-of-entry permanent is not approved, ~~the any statutory temporary easement or right-of-entry on the subject property shall automatically be extinguished. The agency will not sell trust lands for at least 30 days after a final decision to disapprove an application to make a statutory temporary easement or right-of-entry permanent.~~

KEY: natural resources, management, surveys, administrative procedures
Date of Enactment or Last Substantive Amendment: ~~November 21, 2007~~ **October 22, 2009**
Notice of Continuation: June 27, 2007
Authorizing, and Implemented or Interpreted Law: 53C-1-302; 53C-2-201(1)(a); 53C-4-203

School and Institutional Trust Lands,
Administration
R850-140
Development Property

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 32932
FILED: 9/1/09 5:44 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes are being made to this

rule in order to incorporate various provisions contained in Board Policy 2008-01, enacted following suggestions made to the agency in a legislative audit.

SUMMARY OF THE RULE OR CHANGE: Definitions for "Joint Venture," "Other Business Arrangement," and "Supporting Transactions" were added in Section R850-140-250. Clarification is being made to the process of designating property for development purposes in Section R850-140-300. Section R850-140-350 is a new section on planning. Section R850-140-400 outlines General Provisions for processing Development Transactions and removes outdated procedures. Sections R850-140-500 and R850-140-600 are new sections that outline the processes for approval of "Minor" and "Major" Development Transactions, respectively. Section R850-140-800 is a new section added to address the issues of "Supporting Transactions" and Section R850-140-900 is new to address situations where a need exists to deviate from the transaction approval processes set forth in rule. Changes to Section R850-140-1000 are for clarification purposes. In order to accommodate these changes, many of the sections have been renumbered.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53C-2-201 and Section 53C-4-103 and Subsection 53C-4-101(1)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget as a result of this rule amendment. The changes are largely for clarification purposes and greater structure of existing processes.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government as a result of this rule amendment. The changes address more of the internal agency actions and procedures rather than changes to compliance issues directed at those with whom we do business.
- ◆ **SMALL BUSINESSES:** It is not anticipated that there will be any additional cost or savings to small businesses because of these rule amendments. The requirements that must be met by any business desiring to enter into a development transaction with the agency have not been changed.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities as a result of the amendments to this rule. The amendments are directed at giving greater guidance and clarification to agency staff in processing development transactions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is not anticipated that there will be any costs for compliance for affected persons. The requirements have not been modified; only the manner in which the agency performs existing processes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule modification provides a more detailed definition of terms, and imposes upon the Administration a greater due-diligence obligation prior to presenting proposals for real estate transactions to the Board of Trustees. Consequently, the impact will primarily be upon the Administration rather than upon business. The greater degree of evaluation prior to entering into transactions may require prospective partners (businesses) to provide more detailed information, but it is not anticipated that the additional information will be in excess of what would be required for any private transaction.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at jandrews@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Kevin Carter, Director

R850. School and Institutional Trust Lands, Administration.

R850-140. Development Property.

R850-140-200. Purpose of Development Property Rules.

This rule permits the agency to designate trust land as development property and thereby~~[(+)]~~

1. subject agency activities in connection with such properties to this rule; and~~[(+)]~~

2. exempt agency activities in connection with such properties from the rules listed in R850-140-~~[600]~~1000.

R850-140-250. Definitions.

For the purposes of this rule:

1. Development ~~[p]~~Property: a parcel of trust land that has been designated a development property pursuant to the director's determination that the parcel meets the criteria established in R850-140-300(1).

2. Development ~~[t]~~Transaction: a transaction entered into by the agency for the purpose of generating financial returns to the trust ~~[on]~~from real estate development of a particular development property. Development transactions include sales, exchanges, ground leases, development leases, build-to-suit leases, joint ventures, and ~~[o]~~Other ~~[b]~~Business ~~[a]~~Arrangements with respect to development properties.

3. Joint Venture: a transaction in which the agency contributes trust assets to a joint undertaking in which such assets may be subject to risk of loss, including without limitation a transaction in which the agency becomes a member of a limited liability company in exchange for the commitment of trust assets.

4. Other Business Arrangement: a transaction other than a joint venture which involves similar risk of loss of trust assets as a joint venture and which involves material reliance on the economic performance of a third party or other contingent events to generate expected returns. The non-subordinated lease of trust property for development purposes, with the trust's returns based upon a percentage of final property sales, is not an Other Business Arrangement.

5. Supporting Transaction: a transaction entered into by the agency for the purpose of preparing for or supporting real estate development on trust lands, but not directly conveying trust lands for real estate development purposes. Supporting transactions include without limitation: exchange, acquisition or conveyance of lands for assemblage or configuration of development projects; agreements with local government entities with respect to development entitlements and provision of infrastructure; rights-of-entry, dedications and easements for development improvements and amenities on trust lands; and leasing or conveyance of trust lands for necessary development infrastructure and amenities.

R850-140-300. Designation of Development Property.

1. The director may designate a property as a development property upon the director's determination that the following criteria are met:

(a) The property is located in or near ~~[to either a high growth or]~~an urban area of the State or, in more rural ~~[settings]~~locations, the property is of a character suitable for current or future commercial, industrial, resort, residential or other real estate development activities; ~~[and]~~or

(b) The agency has received inquiry from private parties concerning the potential for development of the property or the agency, after preliminary analysis, has determined that the probable highest and best use for the property is for development purposes~~[- and]~~.

~~[(c) The agency believes that it is timely and in the best interests of the trust to consider a development transaction involving the property.~~

~~—]2. The director shall maintain a [listing]database of each property designated as a development property. [The listing shall be available to the public and shall include the date of designation, together with a written finding designating the property to be a development property.]The director may remove property from development designation in his discretion as deemed appropriate for the best interests of the trust beneficiaries. [If the agency fails to achieve a transaction involving a property designated as development property within a period of three (3) years following such property's designation, the property shall cease to be a development property and shall be removed from the development listing. Properties may be redesignated as a development property at a later time if the director finds it to be in the best interests of the trust.]~~

R850-140-350. Planning.

1. Prior to designating a property as a development property, the agency shall submit the proposed designation to the Resource Development Coordinating Committee (RDCC), and evaluate and respond to comments received through the RDCC process. Participation in the RDCC process shall constitute compliance with Subsection 53C-2-201(1).

2. If the agency chooses to participate in local government planning and entitlement processes, such participation constitutes an additional degree of planning supplemental to the RDCC process, but is not required under Subsection 53C-2-201(1).

R850-140-400. Development [Property-]Transactions - General Provisions.

1. Subject to the board notice and approval provisions contained in R850-140-500 and R850-140-600, [F]the agency may solicit and reject proposals, make offers, counter offers and otherwise negotiate freely with interested parties in its efforts to arrange development transactions that are in the best interests of the trust. Development transactions will be structured according to the circumstances of the market and the attributes of the particular development property.

2. Prior to entering a development transaction, the agency shall initiate an appropriate advertising program designed to effectively solicit interested parties. Advertising may be implemented through print media, internet, signage, direct mail or other appropriate marketing methods.

3. In [undertaking such efforts,]negotiating development transactions, the agency shall [consider]undertake appropriate due diligence with respect to the proposed transaction, including consideration of the following criteria[-with regard to a proposed development transaction]:

(a) The ownership, character, reputation, financial status, credit and litigation history and prior real estate development experience of the party with whom the development transaction is proposed.

(b) The financial attributes of the proposed development transaction.

(c) The legal structure of the proposed development transaction.

(d) The potential effects of the proposed development transaction upon nearby trust lands[-]; and

(e) Whether the proposed transaction will bring the highest long-term return to the trust compared to other reasonably foreseeable alternatives.

4. Development transactions shall result in the trust receiving not less than fair market value for the sale, use or exchange of the development property in question.

5. The purchase, sale or exchange of land in connection with a development transaction shall be supported by either an appraisal or a detailed internal analysis of value.[

2. At such time as the agency determines that it is appropriate to seek a development transaction, the agency shall initiate an advertising program designed to effectively solicit interested parties. Advertising may be implemented through print media, signage, direct mail or other appropriate marketing methods.

3. After the agency has identified an interested party with whom to seek a development transaction and negotiated core

business terms with the interested party, the director will deliver a summary description of the proposed development transaction to the board.

4. Prior to completing a development transaction, the agency shall conduct a financial analysis of the transaction. The financial analysis shall examine whether the development transaction provides for the return to the trust of at least fair market value for the sale, use or exchange of the property in question. Analysis of fair market value shall be based upon market research, staff experience or outside appraisals, or a combination of these factors as the agency determines necessary based on the particular circumstances of each development transaction.

5. Upon completion of the requirements set forth in R850-140-400(1)-(4), a development transaction shall be presented to the director or the board, as required by law, for final approval. The board or the director, as appropriate, may approve or reject a proposed transaction consistent with their fiduciary obligations.]

6. Formal contract documentation of any development transaction shall be subject to approval by a representative of the attorney general's office. [The]No party [with whom the trust is negotiating]to a proposed development transaction shall have [no]any vested rights in [and to the development property in question]the transaction until the formal contract documents have been approved by the agency representative of the attorney general's office, approved by the board [as appropriate,]if required by rule or statute, approved and executed by the director, and delivered.]

7. If, as a result of a development transaction, a property is improved and/or subdivided, such property shall be conveyed or leased for consideration no less than the fair market value of such property as improved and subdivided. The consideration resulting from the transaction on such improved and/or subdivided property shall be allocated between the trust and the developing entity as provided for in the development transaction.]

R850-140-500. Development Transactions -- Approval of Minor Development Transactions.

1. For purposes of this rule, a minor development transaction is a proposed development transaction that:

(a) involves a projected commitment of trust lands or assets of less than \$5 million; or

(b) if the proposed development transaction is a joint venture or Other Business Arrangement, involves a projected commitment of trust lands or assets of less than \$2 million.

2. The agency shall provide the board with the following information with respect to a proposed minor development transaction:

(a) a description of the parties to and terms of the proposed transaction;

(b) an economic analysis of the proposed transaction;

(c) a description of the competitive/advertising process used in soliciting offers for the transaction;

(d) a declaration of staff conflicts of interest, if any;

(e) if the transaction will involve the subordination of trust assets in connection with a joint venture or Other Business Arrangement, a description of the assets and an analysis of relevant risks to those assets; and

(f) other relevant information derived from the agency's due diligence activities.

3. The board must approve any proposed minor development transaction that is a joint venture or Other Business Arrangement in accordance with Subsection 53C-1-303(4)(e).

4. The director may approve any proposed minor development transaction that is not a joint venture or Other Business Arrangement after compliance with R850-140-500(2).

5. The board or director, as appropriate, may approve, conditionally approve, or reject any proposed minor development transaction consistent with their fiduciary obligations.

R850-140-600. Development Transactions -- Approval of Major Development Transactions.

1. For purposes of this rule, a major development transaction is a proposed development transaction that:

(a) involves a projected commitment of trust lands or assets of \$5 million or more; or

(b) involves a projected commitment of trust lands or assets of \$2 million or more if the proposed development transaction is a joint venture or Other Business Arrangement.

2. Prior to entering negotiations for a major development transaction, the agency shall provide the board with the following information:

(a) relevant information concerning the property and the financial aspects of a possible transaction, including:

(i) property value;

(ii) financial goals for a proposed transaction;

(iii) timeliness of a proposed transaction; and

(iv) type of transaction contemplated;

(b) a summary of the anticipated competitive process and advertising program to be utilized in soliciting proposals; and

(c) other information requested by the board to assist it in evaluating the proposed transaction.

3. Prior to seeking final board approval of a major development transaction, the agency shall provide the board with the following information:

(a) a statement of the key terms of the transaction;

(b) the results of the agency's due diligence activities under R850-140-400(3)(a);

(c) a projected financial pro forma for the transaction;

(d) the results of the competitive process and advertising process utilized to select the proposed transaction; and

(e) a declaration of staff conflicts of interest, if any;

(f) a description of legal risks assumed by the trust;

(g) an analysis of the financial strength and commitment of the parties to the transaction; and

(h) if the transactions will involve the subordination of trust assets in connection with a joint venture or Other Business Arrangement, a description of the assets and an analysis of relevant risks to those assets.

4. The board must approve any proposed major development transaction prior to the director's execution of the transaction.

5. The board or director, as appropriate, may approve, conditionally approve, or reject proposed major development transactions consistent with their fiduciary obligations.

R850-140-[500]700. Amendments to Development Transactions.

[When promoting, negotiating, approving and documenting amendments to a development transaction, the agency

shall adhere to the following conditions:]1. The agency may amend development transactions subject to the conditions contained in Subsections R850-140-700(2) through(4).

[~~(a)~~2. No amendment to a development transaction shall [be entered into which]result[s] in the trust receiving less than fair market value for the sale, use or exchange of the property in question.

[~~(b) In connection with any amendment that materially modifies the financial terms of a development transaction;~~]

3. [~~¶~~]The director shall deliver a summary description of the terms of [the]proposed material amendments to minor or major development transactions to the [members of the]board with sufficient detail to permit the board to review the proposed amendment consistent with its statutory duties.

[~~(c) Upon completion of the requirements set forth in paragraph (b) above, the proposed amendment shall be presented to the director for final approval. Amendments to joint ventures and other business arrangements shall require approval by the board. The board or the director as appropriate may approve or reject a proposed amendment to a development transaction consistent with their fiduciary obligations.~~4. All amendments that will materially modify the financial terms of a joint venture, Other Business Arrangement, or major development transaction must be approved by the board.]

[~~(d) Formal contract documentation of any amendment to a development transaction shall be subject to approval by a representative of the attorney general's office. The party with whom the trust is negotiating the amendment shall have no vested rights in and to the terms of the proposed amendment until the formal contract documents are approved by the representative of the attorney general's office, approved by the board as appropriate, executed by the director, and delivered.~~]

R850-140-800. Supporting Transactions.

1. The agency may enter into supporting transactions as necessary to promote prudent and profitable development of trust lands designated as development properties.

2. The purchase, sale or exchange of land in connection with a supporting transaction shall be supported by either an appraisal or a detailed internal analysis of value.

3. The board must approve any proposed supporting transaction that involves the purchase, sale or exchange of land having a value in excess of \$500,000.00.

R850-140-900. Deviation from Rules.

In situations where the board determines that an economic opportunity favorable to the trust beneficiaries may otherwise be lost, or other good cause exists that is in furtherance of the statutory obligations of the board, the board may authorize the agency to deviate from the transactional approval processes set forth in this rule, so long as the board and agency's actions are otherwise in compliance with law.

R850-140-[600]1000. Exemption From Rules.

The agency, in connection with its activities in [promoting, negotiating, approving and documenting development transactions,]managing and conveying development property, shall be subject to all rules [and board policies]applicable to the agency, except the following, which shall not be applicable:

- (a) ~~[Rule 850-3. Applicant Qualifications and Application Forms.]~~R850-3-300. Application Forms.
- (b) R850-3-400. Application Processing.
- (c) ~~[Rule]~~R850-4. Application Fees and Assessments.
- (e) ~~Rule 850-5. Payments, Royalties, Audits and Assessments.]~~
- (d) ~~[Rule]~~R850-30. Special Use Leases.
- (e) ~~[Rule]~~R850-40. Easements.
- (f) R850-41. Rights-of-Entry.
- (g) ~~[Rule]~~R850-80. Sale of Trust Lands. (Except R850-80-250.)
- (g) ~~Rule 850-81. Right of Noncompetitive Purchase.]~~
- (h) ~~[Rule 850-82. Preference Right Sales.~~
- (i) ~~Rule]~~R850-90. Land Exchanges.

KEY: development, land sale, real estate
Date of Enactment or Last Substantive Amendment:
~~[September 16, 1996]~~October 22, 2009
Notice of Continuation: September 14, 2006
Authorizing, and Implemented or Interpreted Law: 53C-2-201;
53C-4-101(1); 53C-4-103

Sports Authority (Utah),
 Pete Suazo Utah Athletic Commission
R859-1-501
 Promoter's Responsibility in Arranging
 Contests - Permit Fee, Bond,
 Restrictions

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 32920
 FILED: 9/1/09 4:51 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The current rule language states that fees are determined by the number of seats in a venue. The commission has in practice set its fees, based on the number of occupied seats. The proposed rule amendment will clarify that fees are set and based on the number of attendees at an event.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment will clarify existing rule language and state that fees are set and based on the number of attendees at an event.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63C, Chapter 11

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The proposed rule incorporates existing policy that fees are set by the number of attendees at an event, rather than the number of seats, some of which could be unoccupied. It would also establish a maximum ceiling on broadcast revenue fees consistent with the fees charged by competing state commissions. The state could conceivably lose money for a large pay-per-view event, from what would be charged under the current rule language. However, since the current rule language does not contain a maximum fee ceiling, it could make large pay-per-view events noncompetitive in Utah when compared to other states. However, to date, the state has never hosted an unarmed combat event that would have been impacted by this proposed ceiling in broadcast fees.

♦ **LOCAL GOVERNMENTS:** The proposed rule incorporates existing policy that fees are set by the number of attendees at an event, rather than the number of seats, some of which could be unoccupied. The proposed ceiling in pay per view fees will not impact local government revenue. Consequently, there are no anticipated costs or savings since this proposed amendment will not impact local government.

♦ **SMALL BUSINESSES:** The proposed rule incorporates existing policy that fees are set by the number of attendees at an event, rather than the number of seats, some of which could be unoccupied. It would also establish a maximum ceiling on broadcast revenue fees consistent with the fees charged by competing state commissions. Small businesses could conceivably lose money for a large pay-per-view event, from what would be charged under the current rule language. However, since the current rule language does not contain a maximum fee ceiling, it could make large pay-per-view events noncompetitive in Utah when compared to other states. However, to date, the state has never hosted an unarmed combat event that would have been impacted by this proposed ceiling in broadcast fees.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed rule incorporates existing policy that fees are set by the number of attendees at an event, rather than the number of seats, some of which could be unoccupied. It would also establish a maximum ceiling on broadcast revenue fees consistent with the fees charged by competing state commissions. Large businesses could conceivably lose money for a large pay-per-view event, from what would be charged under the current rule language. However, since the current rule language does not contain a maximum fee ceiling, it could make large pay-per-view events noncompetitive in Utah when compared to other states. However, to date, the state has never hosted an unarmed combat event that would have been impacted by this proposed ceiling in broadcast fees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The net total increased annual cost to local businesses or individuals is anticipated to be zero.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule incorporates existing policy that fees are set by the number of attendees at an event, rather than the number of seats, some of which are likely unoccupied. It would also establish a maximum ceiling on broadcast revenue fees consistent with the fees charged by competing state commissions. The state could conceivably lose money for a large pay-per-view event, from what would be charged under the current rule language. However, since the current rule language does not contain a maximum fee ceiling, it could make large pay-per-view events noncompetitive in Utah when compared to other states. However, to date, the state has never hosted an unarmed combat event that would have been impacted by this proposed ceiling in broadcast fees.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
SPORTS AUTHORITY (UTAH)
PETE SUAZO UTAH ATHLETIC COMMISSION
ROOM 500
324 S STATE ST
STE 500
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Bill Colbert, Secretary, PSUAC

R859. Sports Authority (Utah), Pete Suazo Utah Athletic Commission.

R859-1. Pete Suazo Utah Athletic Commission Act Rule.

R859-1-501. Promoter's Responsibilities in Arranging a Contest.

(1) Before a licensed promoter may hold a contest or single contest as part of a single promotion, the promoter shall file with the Commission an application for a permit to hold the contest not less than 15 days before the date of the proposed contest, or not less than seven days for televised contests.

(2) The application shall include the date, time, and place of the contest as well as information concerning the on-site emergency facilities, personnel, and transportation.

(3) The permit application must be accompanied by a contest registration fee determined by the Department under Section 63-38-32.

(4) Before a permit to hold a contest is granted, the promoter shall post a surety bond with the Commission in the amount of \$10,000.

(5) Prior to the scheduled time of the contest, the promoter shall have available for inspection the completed physical facilities which will be used directly or indirectly for the contest. The designated Commission member shall inspect the facilities in the presence of the promoter or the promoter's authorized representative, and all deficiencies cited upon inspection shall be corrected before the contest.

(6) A promoter shall be responsible for verifying the identity, ring record, and suspensions of each contestant. A promoter shall be held responsible for the accuracy of the names and records of each of the participating contestants in all publicity or promotional material.

(7) A promoter shall be held responsible for a contest in which one of the contestants is disproportionately outclassed.

(8) Before a contest begins, the promoter shall give the designated Commission member the money for payment of contestants, referees, judges, and the attending physician. The designated Commission member shall pay each contestant, referee, judge, and physician in the presence of one witness.

(9) A promoter shall be not under the influence of alcohol or controlled substances during the contest and until all purses to the contestants and all applicable fees are paid to the commission, officials and ringside physician.

(10) At the time of an unarmed combat contest weigh-in, the promoter of a contest shall provide primary insurance coverage for each uninsured contestant and secondary insurance for each insured contestant in the amount of \$10,000 for each licensed contestant to provide medical, surgical and hospital care for licensed contestants who are injured while engaged in a contest or exhibition:

(a) The term of the insurance coverage must not require the contestant to pay a deductible for the medical, surgical or hospital care for injuries he sustains while engaged in a contest of exhibition.

(b) If a licensed contestant pays for the medical, surgical or hospital care, the insurance proceeds must be paid to the contestant or his beneficiaries as reimbursement for the payment.

(c) The promoter should also have life insurance coverage of \$10,000 for each contestant in case of death.

(11) In addition to the payment of any other fees and money due under this part, the promoter shall pay the following event fees:

(a)(i) \$100 for a contest or event occurring in a venue of fewer than 200 attendees[-seats;]

(ii) \$200 for a contest or event occurring in a venue of at least 200 attendees but fewer than 500 attendees[-seats;]

(iii) \$300 for a contest or event occurring in a venue of at least 500 attendees[seats] but fewer than 1,000 attendees[-seats;]

(iv) \$400 for a contest or event occurring in a venue of at least 1,000 attendees[seats] but fewer than 3,000 attendees[-seats;]

(v) \$600 for a contest or event occurring in a venue of at least 3,000 attendees[seats] but fewer than 5,000 attendees[-seats;]

(vi) \$1000 for a contest or event occurring in a venue of at least 5,000 attendees[seats] but fewer than 10,000 attendees[-seats;] or

(viii) \$2000 for a contest or event occurring in a venue of at least 10,000 attendees; ~~seats;~~ and

(b) 3% of the first \$500,000, and one percent of the next \$1,000,000, of the total gross receipts from the sale, lease, or other exploitation of broadcasting, television, and motion picture rights for ~~each~~ any contest or exhibition thereof, without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses or any other expenses or charges, except in no case shall the fee be more than \$25,000.

(c) the applicable fees assessed by the Association of Boxing Commission designated official record keeper.

(d) the commission may exempt from the payment of all or part of the assessed fees under this section for a special contest or exhibition based on factors which include:

- (i) a showcase event promoting a greater interest in contests in the state;
- (ii) attraction of the optimum number of spectators;
- (iii) costs of promoting and producing the contest or exhibition;
- (iv) ticket pricing;
- (v) committed promotions and advertising of the contest or exhibition;
- (vi) rankings and quality of the contestants; and
- (vii) committed television and other media coverage of the contest or exhibition.
- (viii) contribution to a 501(c)(3) charitable organization.

KEY: licensing, boxing, unarmed combat, white-collar contests
Date of Enactment or Last Substantive Amendment: 2009
Notice of Continuation: May 10, 2007
Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.

Technology Services, Administration
R895-13
 Access to the Identity Theft Reporting
 Information System Database

NOTICE OF PROPOSED RULE

(New Rule)
 DAR FILE NO.: 32891
 FILED: 8/18/09 1:46 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Pursuant to Utah Code Ann. Subsection 67-5-22 (4)(iii), the Identity Theft Reporting Information System (IRIS) database may be accessed by vendors and federal, state, and local government agencies approved by the Utah Attorney General's Office. Approved vendors and government agencies may receive data from IRIS/UCJIS

(Utah Criminal Justice Information System) pushed to them via state web services, and they may post data to IRIS/UCJIS via state web services.

SUMMARY OF THE RULE OR CHANGE: Vendors and federal, state, and local government agencies approved by the Utah Attorney General's Office shall have access to the IRIS database.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-5-22 (4)(iii) and Subsection 67-5-22(3)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: After a review, it was determined by the Department of Technology Services and the Attorney General's office that there would be no financial impact to the state budget.
- ◆ LOCAL GOVERNMENTS: After a review, it was determined by the Department of Technology Services and the Attorney General's office that there would be no financial impact to local government.
- ◆ SMALL BUSINESSES: After a review, it was determined by the Department of Technology Services and the Attorney General's office that there would be no financial impact to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: After a review, it was determined by the Department of Technology Services and the Attorney General's office that there would be no financial impact to persons other than small businesses, businesses, or local governmental entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: After a review, it was determined by the Department of Technology Services and the Attorney General's office that there would be no financial impact to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will not have a fiscal impact on the business community in Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TECHNOLOGY SERVICES
 ADMINISTRATION
 ROOM 6000 STATE OFFICE BUILDING
 450 N STATE ST
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Russell Smith by phone at 801-514-3125, by FAX at 801-538-3622, or by Internet E-mail at russellsmith@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: J Stephen Fletcher, CIO and Executive Director

R895. Technology Services, Administration.

R895-13. Access to the Identity Theft Reporting Information System Database.

R895-13-1. Purpose.

Pursuant to Utah Code Ann. Subsection 67-5-22(4)(iii) the Identity Theft Reporting Information System (IRIS) database may be accessed by vendors and federal, state, and local government agencies approved by the Utah Attorney General's Office. Approved vendors and government agencies may receive data from IRIS/UCJIS pushed to them via state web services, and they may post data to IRIS/UCJIS via state web services.

R895-13-2. Authority.

The rule is issued by the Chief Information Officer, with the approval of the Office of the Attorney General under the authority of Utah Code Ann. Subsection 67-5-22(3)(a) and Subsection 67-5-22 (4)(iii).

R895-13-3. Definitions.

(a) "Identity theft" is a crime used to refer to fraud that involves someone pretending to be someone else in order to steal money or get other benefits.

The terms used in this rule are defined in Section 63G-4-103. In addition, "division" means the Division of Enterprise Services, and "department" means the Department of Technology Services.

KEY: IRIS, identify theft

Date of Enactment or Last Substantive Amendment: 2009

Authorizing, and Implemented or Interpreted Law: 63G-4-202; 63F-1-206

Transportation, Program Development
R926-12
 Share the Road Bicycle Support
 Restricted Account

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 32934

FILED: 9/1/09 5:52 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to recognize the provisions of S.B. 102 (2009 General Session) that authorize a Share the Road Bicycle Support Restricted Account and create a Share the Road special group license plate. The bill grants the Department of Transportation rulemaking authority to make rules establishing a procedure for an organization to apply for funds in the Share the Road Bicycle Support Restricted Account. (DAR NOTE: S.B. 102 (2009) is found at Chapter 380, Laws of Utah 2009, and will be effective 10/01/2009.)

SUMMARY OF THE RULE OR CHANGE: The rule is being established to define the procedure for certain organizations to apply for funds in the Share the Road Bicycle Support Restricted Account.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-2-127

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** An annual \$25 donation is made by applicants to the Share the Road Bicycle Support Restricted Account administered by the Department of Transportation. This is a new rule, therefore, no amount can be determined at this time.

♦ **LOCAL GOVERNMENTS:** This is a state involved program to promote bicycle operation and safety through charitable organizations, therefore, no cost or savings for local government are anticipated.

♦ **SMALL BUSINESSES:** This is a state involved program to promote bicycle operation and safety through charitable organizations, therefore, no cost or savings for small businesses are anticipated.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The law requires applicants for a new Share the Road Bicycle Support special group plate to make a \$25 annual donation for bicycle operation and safety awareness programs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance cost as only applicants who choose to have the new Share the Road special group license plate will pay \$25 when they apply for the plate.

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

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

TRANSPORTATION
 PROGRAM DEVELOPMENT
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W
 SALT LAKE CITY, UT 84119-5998
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Maureen Short by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at maureenshort@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: John Njord, Executive Director

R926. Transportation, Systems Planning and Programming.

R926-12. Share the Road Bicycle Support Restricted Account.

R926-12-1. Purpose.

This rule provides procedures and requirements for an organization to apply to the Department of Transportation to receive a distribution from the Share the Road Bicycle Support Restricted Account.

R926-12-2. Authority.

This rule is enacted under the authority granted to the Department of Transportation by Section 72-2-127(6)(c).

R926-12-3. Definitions.

Terms used in these rules are defined as follows:

(a) "Share the Road Bicycle Support Restricted Account" means the restricted account created in the General Fund into which monies are deposited from the purchase of Share the Road special group license plates, appropriations by the Legislature, private contributions, and donations or grants.

(b) "Qualified applicant" means an organization that qualifies as being tax exempt under Section 501(c)(3), Internal Revenue Code, and has as part of their primary mission the promotion and education of safe bicycle operations, safe motor vehicle operation around bicycles, healthy lifestyles, and contributes to the start-up fees associated with providing a Share the Road special group license plate.

R926-12-4. Proposals.

A qualified applicant may apply to the Department of Transportation for funding from the Share the Road Bicycle Support Restricted Account for use in support of safe bicycle operation, safe motor vehicle operation around bicycles and healthy lifestyles.

An applicant shall provide to the Department as part of an application:

(a) contact information for the applicant;

(b) proof that the applicant is tax exempt under Section 501(c)(3), Internal Revenue Code;

(c) proof that the applicant promotes safe bicycle operation, safe motor vehicle operation and healthy lifestyles as a primary part of its mission;

(d) a statement of the purpose for which the application is submitted, along with an explanation of how the applicant would use a disbursement of money to promote safe bicycle operation, safe motor vehicle operation around bicycles and healthy lifestyles; and

(e) an explanation of the internal management controls and financial controls of the applicant that would insure that any funds received would be used only for authorized purposes.

R926-12-5. Selection of Recipients.

The Department shall select recipients based on available funds, eligibility of the applicant, and verification of effective and efficient use of funds to promote safe bicycle operation, safe motor vehicle operation around bicycles and healthy lifestyles.

R926-12-6. Distribution of Funds.

In April and October of each year, the Department will review applications and approve funding distribution from the Share the Road Bicycle Support Restricted Account. Notice of request status will be provided to the applicant and funding distributions made by the end of the months specified in this section.

The Department is authorized to expend up to 5% of the monies appropriated to administer account distributions to eligible applicants.

KEY: share the road, bicycle support, restricted, account
Date of Enactment or Last Substantive Amendment: 2009
Authorizing and Implemented or Interpreted Law: 72-2-127

Workforce Services, Employment
 Development
R986-200-244
 TANF Needy Family (TNF)

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 32910

FILED: 8/27/09 4:24 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change the eligibility criteria from 200% of poverty to 300% of poverty.

SUMMARY OF THE RULE OR CHANGE: This rule change is being made to better accommodate refugees who face multiple challenges to successful integration in their communities. This provision allows the Department to provide case management services for families at or below 300% of poverty instead of 200%. TNF does not provide cash payments.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There will be no costs or savings to the state budget because this is a federally-funded program.
- ◆ LOCAL GOVERNMENTS: There will be no costs or savings to local government as this is a federally-funded program.
- ◆ SMALL BUSINESSES: There will be no costs to small businesses to comply with these changes because this is a federally-funded program.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs of any persons to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these changes for any persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 EMPLOYMENT DEVELOPMENT
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Kristen Cox, Executive Director

**R986. Workforce Services, Employment Development.
 R986-200. Family Employment Program.
 R986-200-244. TANF Needy Family (TNF).**

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed [2]300% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

KEY: family employment program

Date of Enactment or Last Substantive Amendment: [February 12], 2009

Notice of Continuation: September 14, 2005

Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.

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.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends October 15, 2009.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules will include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through January 13, 2010, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303; Rule R15-2; and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page

**Commerce, Occupational and
Professional Licensing
R156-16a
Optometry Practice Act Rules**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 32711
FILED: 8/31/09 8:22 AM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Following further review of this rule by the Optometrist Licensing Board and the Division, and as a result of a July 2009 rule hearing and written comments received, an additional amendment is being proposed to further clarify the rule.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-16a-304(3), added that the continuing education which may come from the Division of Occupational and Professional is for training regarding the use of the Utah Controlled Substance Database. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the July 1, 2009, issue of the Utah State Bulletin, on page 15. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-16a-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No additional costs or savings beyond those identified in the original proposed rule amendment filing are anticipated.
- ◆ **LOCAL GOVERNMENTS:** The additional proposed amendment only applies to licensed optometrists. As a result, the additional proposed amendment does not apply to local governments.
- ◆ **SMALL BUSINESSES:** No additional costs or savings beyond those identified in the original proposed rule amendment filing are anticipated for small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No additional costs or savings beyond those identified in the original proposed rule amendment filing are anticipated for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional costs or savings beyond those identified in the original proposed rule amendment filing are anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing clarifies that the Division may provide a maximum of two hours of continuing education relating to the controlled substance database. No fiscal impact to businesses is anticipated from this clarification.

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 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 NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-16a. Optometry Practice Act Rule.**

R156-16a-304. Continuing Education.

In accordance with Section 58-16a-304, the standards for the 30 hours of qualified continuing professional education are the following.

(1) With the exception of Subsections (2) and (3), only courses approved by the Council on Optometric Professional Education (COPE) or optometry related courses approved by the Council on Medical Education will be accepted.

(2) A maximum of two hours of continuing professional education will be accepted for courses in certification or recertification in cardiopulmonary resuscitation (CPR) or Basic Life Support (BCLS).

(3) A maximum of two hours of continuing professional education may come from the Division of Occupational and Professional Licensing for training regarding the use of the Utah Controlled Substance Database.

(4) Qualified continuing professional education hours for licensees who have not been licensed for the entire two year renewal cycle will be prorated from the date of licensure.

(5) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year renewal cycle to which the records pertain.

(6) Hours in excess of the 30 hours obtained in one renewal cycle cannot be transferred to the next renewal cycle.

(7) A licensee who has a serious health problem or who has left the United States for an extended period of time which may prevent the licensee from being able to comply with the professional education requirements established under this section may be excused from completing some or all of the requirements established under this section by submitting a written request to the Division and receiving Division approval.

.....

KEY: optometrists, licensing

Date of Enactment or Last Substantive Amendment: 2009

Notice of Continuation: April 26, 2007

Authorizing, and Implemented or Interpreted Law: 58-16a-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and Professional Licensing

R156-55b-302a

Qualifications for Licensure - Education and Experience Requirements

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 32717
FILED: 8/31/09 8:14 AM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Following further review of this rule by the Electricians Licensing Board and Construction Services Commission and a July 2009 rule hearing, additional amendments are being proposed.

SUMMARY OF THE RULE OR CHANGE: In Subsections R156-55b-302a(1)(a) and (2)(a), the word "curriculum" is replaced with "program". Also added in both subsections that programs approved by the Electricians Licensing Board prior to January 1, 2009, remain approved programs. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the July 1, 2009, issue of the Utah State Bulletin, on page 22. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been

deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-55-308(1)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No additional costs or savings beyond those identified in the original proposed rule amendment filing are anticipated.
- ◆ LOCAL GOVERNMENTS: These additional proposed amendments only apply to licensed electrician classifications and applicants for licensure in those classifications. As a result, these additional proposed amendments do not apply to local governments.
- ◆ SMALL BUSINESSES: No additional costs or savings beyond those identified in the original proposed rule amendment filing are anticipated for either small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No additional costs or savings beyond those identified in the original proposed rule amendment filing are anticipated for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional costs or savings beyond those identified in the original proposed rule amendment filing are anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from the minor amendments in this change to proposed rule.

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:

◆ Dennis Meservy by phone at 801-530-6375, by FAX at 801-530-6511, or by Internet E-mail at dmeservy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.**R156-55b. Electricians Licensing Rule.****R156-55b-302a. Qualifications for Licensure - Education and Experience Requirements.**

(1) In accordance with Subsection 58-55-302(3)(i)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:

(a) a ~~curriculum~~ program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state curriculum that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(2) In accordance with Subsection 58-55-302(3)(h)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:

(a) a ~~curriculum~~ program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state curriculum that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(3) A semester of school shall include at least 81 hours of classroom instruction time. A student shall attend a minimum of 72 hours to receive credit for the semester.

(4) A competency exam shall be given to each student at the end of each semester with the exception of the fourth year second semester. A student, to continue to the next semester, shall achieve a score of 75% or higher on the competency exam. A student who scores below 75% may retake the test one time.

(5) The applicant shall pass each class with a minimum score of 75%.

(6) Competency test results shall be provided to the Board at the Board meeting immediately following the semester in a format approved by the Board.

(7) An applicant for a master electrician license, applying pursuant to Subsection 58-55-302(3)(f)(i) shall be a graduate of an electrical program accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET).

(8) An applicant shall provide documentation that all education and experience meets the requirements of this rule.

KEY: occupational licensing, licensing, contractors, electricians

Date of Enactment or Last Substantive Amendment: 2009

Notice of Continuation: November 8, 2006

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-308(1)

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 agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

NOTICES are governed by Section 63G-3-305.

Commerce, Occupational and Professional Licensing **R156-60a** Social Worker Licensing Act Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 32911
FILED: 8/31/09 8:06 AM

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 60, Part 2, provides for the licensure of classifications of social workers. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-60-203(3) provides that the Social Worker Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 60, Part 2, with respect to classifications of social workers.

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 the rule was last reviewed in October 2004, no written comments with respect to the rule have been received by the Division.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY

DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 60, Part 2, with respect to the classifications of social workers. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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:
♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 08/31/2009

Commerce, Occupational and Professional Licensing **R156-60b** Marriage and Family Therapist Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 32912
FILED: 8/31/09 8:08 AM

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 60, Part 3, provides for the licensure of marriage and family therapists. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-60-303(3)(a) provides that the Marriage and Family Therapist Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 60, Part 3, with respect to marriage and family therapists.

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 the rule was last reviewed in October 2004, no written comments with respect to the rule have been received by the Division.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 60, Part 3, with respect to marriage and family therapists. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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:
♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 08/31/2009

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-501
Preadmission and Continued Stay
Review

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 32894
FILED: 8/20/09 4:21 PM

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. In addition, 42 CFR Part 456 requires the evaluation of each resident's need for admission and continued stay review.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Utah Health Care Association wanted to see the rule changed to allow for retroactive authorization when making the medical determination for nursing facility care. The Department has recently filed a change to this rule that addressed this concern. (DAR NOTE: The proposed repeal and reenactment of Rule R414-501 is under DAR No. 32882 in the September 1, 2009, issue of the Bulletin.)

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it outlines provisions for preadmission authorization and continued stay reviews. Therefore, this rule should be continued.

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:
 ♦ Kimi McNutt by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at kmcnutt@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 08/20/2009

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kimi McNutt by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at kmcnutt@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 08/27/2009

Health, Health Care Financing,
 Coverage and Reimbursement Policy

R414-502

Nursing Facility Levels of Care

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 32902
 FILED: 8/27/09 1:04 PM

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. In addition, 42 CFR Part 456 requires the Department to monitor nursing facility levels of care.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department of Human Services and the Utah Health Care Association provided comments stating that the rule should be revised to more clearly and objectively describe the level of care requirements. The Department of Health has addressed these concerns by amending this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it outlines the criteria for nursing facility care and appropriate levels of care. Therefore, this rule should be continued.

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

Health, Health Care Financing,
 Coverage and Reimbursement Policy

R414-503

Preadmission Screening and Annual
 Resident Review

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 32895
 FILED: 8/20/09 4:23 PM

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. In addition, 42 CFR Part 456 requires the evaluation of each resident's need for admission.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department of Human Services commented that the rule needed to be amended to clarify requirements. The Department of Health has addressed this concern with several amendments to the rule over the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it outlines provisions for preadmission screening and annual resident review. Therefore, this rule should be continued.

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:
♦ Kimi McNutt by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at kmcnutt@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 08/20/2009

There is still a need for this rule to maintain the exemption for this facility. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Joel Hoffman, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 08/31/2009

Health, Health Systems Improvement,
Licensing
R432-32
Licensing Exemption for Non-Profit
Volunteer End-of-Life Care

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 32915
FILED: 8/31/09 9:48 AM

**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 26, Chapter 21, is the health code that mandates the licensing of health facilities. Section 26-21-7 code outlines the types of facilities that are exempt from licensing. This rule was written for Subsection 26-21-7(6), which gives that statutory exemptions for the Non-Profit Volunteer End-of-Life facility.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments from any parties regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There is one facility in the state which meets the definition of exemption from licensing listed in this rule.

Human Services, Services for People
with Disabilities
R539-2
Service Coordination

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 32889
FILED: 8/17/09 3:09 PM

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is required by Subsection 62A-5-103(1) which directs the Division to establish standards for service coordination by rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division must have standards for the service system for people with disabilities, including planning, developing, and managing an array of services as required by Subsection 62A-5-103(1). Therefore, this rule should be continued.

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:
♦ Steven Bradford by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at sbradford@utah.gov

AUTHORIZED BY: Alan Ormsby, Director

EFFECTIVE: 08/17/2009

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is required by Subsection 62A-5-103(2)(b) which directs the Division to establish standards for protecting the rights of people with disabilities receiving Division funded services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division must have procedures and standards to protect the rights of persons with disabilities who apply for or receive Division services as required by Subsection 62A-5-103(2)(b). Therefore, this rule should be continued.

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:
♦ Steven Bradford by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at sbradford@utah.gov

AUTHORIZED BY: Alan Ormsby, Director

EFFECTIVE: 08/17/2009

**Human Services, Services for People
with Disabilities
R539-3
Rights and Protections**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 32888
FILED: 8/17/09 3:02 PM

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

After a PROPOSED RULE or a CHANGE IN PROPOSED RULE has been published, and after any comment period has ended, the agency promulgating the rule may notify the Division of Administrative Rules of the effective date of the rule. A NOTICE OF EFFECTIVE DATE may provide for an effective date that after the public comment period designated by the agency, no fewer than 31 days nor more than 120 days from the publication date. Failure to file a NOTICE OF EFFECTIVE DATE within 120 days from its publication results in the rule lapsing and the agency must start the publication process over.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(9), and Subsection R15-4-5.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Commerce

Consumer Protection

No. 32687 (AMD): R152-11-12. Negative Options

Published: 06/15/2009

Effective: 08/19/2009

Occupational and Professional Licensing

No. 32757 (AMD): R156-56. Utah Uniform Building Standard Act Rules

Published: 07/15/2009

Effective: 08/24/2009

No. 32754 (AMD): R156-60d. Substance Abuse Counselor Act Rule

Published: 07/15/2009

Effective: 08/24/2009

No. 32753 (AMD): R156-73. Chiropractic Physician Practice Act Rules

Published: 07/15/2009

Effective: 08/24/2009

No. 32770 (NEW): R156-80. Medical Language Interpreter Act Rule

Published: 07/15/2009

Effective: 08/24/2009

Real Estate

No. 32767 (AMD): R162-3-6. Renewal and Reinstatement

Published: 07/15/2009

Effective: 08/21/2009

No. 32765 (AMD): R162-4-4. Written Instructions for Commission Distribution by Title Insurance Agent

Published: 07/15/2009

Effective: 08/21/2009

No. 32766 (AMD): R162-9-2. Determining Fitness for Course Certification

Published: 07/15/2009

Effective: 08/21/2009

Environmental Quality

Solid and Hazardous Waste

No. 32726 (AMD): R315-15-13. Registration and Permitting of Used Oil Handlers

Published: 07/01/2009

Effective: 09/01/2009

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 32745 (AMD): R414-302-1. Citizenship and Alienage

Published: 07/15/2009

Effective: 09/01/2009

No. 32747 (AMD): R414-303-11. Prenatal and Newborn Medicaid

Published: 07/15/2009

Effective: 09/01/2009

No. 32750 (AMD): R414-310. Medicaid Primary Care Network Demonstration Waiver

Published: 07/15/2009

Effective: 09/01/2009

No. 32752 (AMD): R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver

Published: 07/15/2009

Effective: 09/01/2009

No. 32748 (AMD): R414-502-8. Criteria for Intermediate Care Facility for the Mentally Retarded

Published: 07/15/2009

Effective: 08/27/2009

Health Systems Improvement, Child Care Licensing

No. 32716 (NEW): R430-70. Out of School Time Child Care Programs

Published: 07/01/2009

Effective: 10/01/2009

NOTICES OF RULE EFFECTIVE DATES

Labor Commission

Adjudication

No. 32764 (AMD): R602-2-3. Compensation for Medical Panel Services

Published: 07/15/2009

Effective: 08/24/2009

Public Safety

Administration

No. 32741 (NEW): R698-5. Hazardous Chemical Emergency Response Commission

Published: 07/15/2009

Effective: 08/26/2009

Workforce Services

Employment Development

No. 32781 (AMD): R986-200-215. Family Employment Program Two Parent Household (FEPTP)

Published: 07/15/2009

Effective: 08/26/2009

No. 32780 (AMD): R986-300-303. Eligibility, Income Standards, and Amount of Assistance

Published: 07/15/2009

Effective: 08/26/2009

Unemployment Insurance

No. 32782 (AMD): R994-403-118e. Disqualification Periods if a Claimant Fails to Provide Information

Published: 07/15/2009

Effective: 08/26/2009

End of the Notices of Rule Effective Dates Section

**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, 2009, including notices of effective date received through September 01, 2009. The Rules Index is published in the Utah State Bulletin and in the annual Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index is not included in this issue of the Utah State Bulletin. The release of eRules version 2.0 has introduced different functionality with regards to the index; this functionality has yet to be fully tested. Persons interested in alternative methods of acquiring the same information should visit "Researching Administrative Rules" at: <http://www.rules.utah.gov/research.htm>

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).
