

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 801-359-0759. 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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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for October 2010 Medicaid Rate Changes

Effective October 1, 2010, 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. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

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 Executive Agreement EO/006/2010: Executive Agreement to the Executive Authority of the State of Idaho

EXECUTIVE AGREEMENT

TO THE EXECUTIVE AUTHORITY OF THE STATE OF IDAHO

WHEREAS; the undersigned as Governor of the State of Utah, has made demand upon the executive authority of the State of Idaho for the rendition of **Matthew John Breck**, White, Male, DOB: [XX-XX-XXXX], presently incarcerated in the State of Idaho, Idaho Correctional Institution, Orofino, Clearwater County, Idaho, as a fugitive from the State of Utah, and which demand is in the hands of the executive authority of the State of Idaho, and

WHEREAS; the said Matthew John Breck stands charged in the State of Utah in the Third District Court in Salt County in the case of **State of Utah v. Matthew John Breck**, case number [XXXXXXXXXX], with the crimes of Criminal Homicide, Aggravated Murder in violation of Utah Code Section 76-5-202, Aggravated Sexual Abuse of a Child a First Degree Felony in violation of Utah Code Section 76-5-404.1 and Child Abuse a Second Degree Felony in violation of Utah Code Subsection 76-5-109(2)(a) committed in said State, as more fully appears from the requisition and the papers and exhibits attached thereto, and

WHEREAS; the said Matthew John Breck, Offender number [XXXXXX], is now under the jurisdiction of the State of Idaho, Idaho Correctional Institution, Department of Corrections, and

WHEREAS; the undersigned is informed and believes that the said Matthew John Breck, will not be released and discharged from imprisonment for a considerable length of time, and

WHEREAS; the undersigned and the prosecuting authorities of the State of Utah are desirous that the said Matthew John Breck, be brought to arraignment and trial at the earliest possible date, and

WHEREAS; the powers and duties of the several states, including the State of Utah, in matters relating to inter-State extradition are contained and prescribed in Article IV, Section 2 of the Constitution of the United States which reads, in pertinent part as follows:

A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

AND WHEREAS; the above provisions of the Constitution have been further implemented by the enactment by Congress of Section 3182 of Title 18, United States Code Annotated, **AND WHEREAS,** the state of Utah has enacted the Uniform Criminal Extradition Act, which provides at Utah Code of Criminal Procedure, Section 77-30-5 that:

When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in Section 77-30-23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

AND WHEREAS; the state of Utah agrees that the rendition of Matthew John Breck is only for the purpose of the criminal proceedings in the Third District Court in Salt County in the case of State of Utah v. Matthew John Breck, case number [XXXXXXXXXX], and for prosecution of no other cause,

AND WHEREAS; pursuant to the authority hereinabove set forth and in consideration of the granting of said demand for the rendition, said Matthew John Breck, shall be held in custody of the demanding state at all times thereafter;

NOW THEREFORE; pursuant to the authority hereinabove set forth and in consideration of the granting of said demand for the rendition of said Matthew John Breck, and the issuance of a warrant of arrest and a delivering up of said Matthew John Breck to duly authorized agents of the State of Utah by the executive authority of the State of Idaho, which said acts by the executive authority of the State of Idaho shall constitute an acceptance of this agreement.

IT IS HEREBY AGREED by the undersigned, Governor of the State of Utah, that in the event that Matthew John Breck shall be acquitted following a trial in the courts of the State of Utah in the cause of the Third District Court in Salt County in the case of State of Utah v. Matthew John Breck, [XXXXXXXXXX], or in the event that the prosecution in the State of Utah in said matter is concluded in any manner other than by the imposition and execution of the judgment and sentence of death or commitment to prison, or in the event that Matthew John Breck is released from the custody of the State of Utah for any other reason before the expiration of his current sentence in the State of Idaho, said Matthew John Breck shall be returned to the State of Idaho and to the physical and legal custody of the Idaho Department of Correction at the expense of the State of Utah, and that the Governor, or other acting executive authority of the State of Utah, shall upon demand of the executive authority of the state of Idaho, surrender said Matthew John Breck to the duly authorized agents of the State of Idaho.

IT IS FURTHER AGREED by the undersigned Governor of the State of Utah and the Governor of the State of Idaho, that in the event of escape of Matthew John Breck from the Utah authorities, it shall be the responsibility of said authorities to locate and return Matthew John Breck to the duly authorized agents of the State of Idaho at the expense of the State of Utah.

IN WITNESS WHEREOF; the undersigned Governor of the State of Utah and the Governor of the State of Idaho, do hereby join in the agreement for the purposes aforesaid and it is ordered and directed that the custody of the said Matthew John Breck be surrendered by the authorities of the State of Idaho to the agents of the State of Utah, to be by them transported to the State of Utah to appear in order to answer charges pending, all at the expense of the State of Utah.

IN WITNESS WHEREOF, we have here unto signed our names at Salt Lake City, County of Salt Lake, in the State of Utah, and cause the Great Seal of the State of Utah to be affixed, on this **10th** day of **June 2010**.

(State Seal of Utah)

Gary R. Herbert
Governor of the State of Utah

Attest:

Greg Bell
Lieutenant Governor

IN WITNESS WHEREOF, we have here unto signed our names at Boise Idaho County of Ada, and cause the Great Seal of the State of Idaho to be affixed, on this 10th day of June 2010

(State Seal of Idaho)

C. L. "Butch" Otter
Governor of the State of Idaho

Attest:

Ben Ysursa
Secretary of State

EO/006/2010

DAR NOTE: [XX...] indicates information that has been redacted for privacy reasons.

Governor's Proclamation 2010/11/E: Calling Fifty-Eighth Legislature Into the Eleventh Extraordinary Session

PROCLAMATION

WHEREAS, since the close of the 2010 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 Senate 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 Eleventh Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 15th day of September, 2010, at 1:30 p.m., 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 2010 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 1st day of September 2010.

(State Seal)

Gary R. Herbert
Governor

Greg Bell
Lieutenant Governor

2010/11/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 17, 2010, 12:00 a.m., and September 01, 2010, 11:59 p.m. are included in this, the September 15, 2010 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, 2010. 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, 2011, 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

**Administrative Services, Facilities
Construction and Management
R23-22-7
Requirements for the Disposition of
Real Property by DFCM**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34050

FILED: 09/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change to Section R23-22-7 is to eliminate language in Subsections R23-22-7(1)(a) and (iii) and in Subsection R23-22-7(1)(b)(ii) designating the Legislative Management Committee as the legal authority on historically significant real property, as well as property valued at over \$500,000.

SUMMARY OF THE RULE OR CHANGE: This rule changes Section R23-22-7 by eliminating language designating the Legislative Management Committee as the legal authority to determine the disposition of historically significant real property, as well as property valued at over \$500,000. The changes are made to the following subsections: R23-22-7(1)(a) and (iii); and R23-22-7(1)(b)(ii). The changes further state that any real property that is of historical significance shall not be disposed by the Division of Facilities Construction and Management without the appropriate legal authorization.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-5-103 and Section 63A-5-401

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs; however, there could be some anticipated savings to the state budget as these changes streamline the process for the disposition of real property. Savings, if any, would be in the form of staff time spent on the sale and would be minimal.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs; however there could be some anticipated savings to the local governments as these changes streamline the process for the disposition of real property. This could result in minimal savings to other entities including local government involved in real estate transactions with the state.

◆ **SMALL BUSINESSES:** There are no anticipated costs; however there could be some anticipated savings to small businesses as these changes streamline the process for the

disposition of real property. This could result in a minimal savings to small businesses involved in real estate transactions with the state.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This change to Section R23-22-7 is only procedural to govern the disposition of real property and does not affect persons other than small business, businesses, or local government entities unless they are involved in a real estate transaction with the state. As this change streamlines the process for disposition of real property, if persons were involved in a real property transaction with the state, it would most likely result in a minimal savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The procedural changes to Section R23-22-7 will not require any compliance costs for affected persons as they are only procedural changes that govern the disposition of real property.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes to Section R23-22-7 are procedural and streamline the process for the disposition of historically significant real property, as well as property valued over \$500,000. There are no anticipated costs; however, there may be a minimal fiscal impact on businesses resulting in minimal savings for businesses involved in real property transactions with the state.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ La Priel Dye by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at ldye@utah.gov
◆ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: D. Gregg Buxton, Director

R23. Administrative Services, Facilities Construction and Management.

R23-22. General Procedures for Acquisition and Selling of Real Property.

R23-22-7. Requirements for the Disposition of Real Property by DFCM.

(1) Determination of disposition of real property.

(a) Notwithstanding, any other provision of this Rule R23-22, any real property that is of historical significance to the State of Utah shall not be disposed by the Division, ~~[regardless of the value amount of the property, unless approval has been obtained by the Legislative Management Committee of the Utah Legislature] without appropriate authorization.~~

(i) "Historical significance" for the purposes of this Rule R23-22 includes real property, including any structures, statues or other improvements on the real property, that is listed on the National Register of Historic Places or the State Register.

(ii) The Division, after consultation with the State Historic Preservation Officer, shall make a recommendation to the Board as to whether a property proposed to be declared as surplus property, is historically significant based on the definition of "historically significant" in this Rule. The Board, after considering the recommendation of the Division as well as any other interested persons or entities, shall determine whether or not the property is historically significant.

(iii) A copy of the determination regarding Historical Significance shall be sent to the State Historic Preservation Officer, ~~as well as the Chair and Vice Chair of the Legislative Management Committee, any of which may within ten (10) working days of the receipt of the determination by the Board, decide that the issue should be considered by the Legislative Management Committee and that the Division shall not proceed with the disposition of the property until the Legislative Management Committee approves the disposition.]~~

(b) If the Board has not determined that the real property is historically significant, then the Building Board may declare the real property to be surplus under the procedures described in this Rule. ~~]~~

~~—(i)]~~ Thereafter, if the appraised value of the real property is estimated by the Director to be \$500,000 or below, then the Board may authorize the Division to dispose of the real property in accordance with the provisions of this Rule.

~~[(ii) If the appraised value as estimated by the Director is above \$500,000, then the Board shall refer consideration of the sale of the real property to the Legislative Management Committee.~~

~~—(c)~~ Nothing in the rule shall prohibit the Director from proceeding with easements, lot line and other minor, incidental adjustments with other State entities or other public/private persons or entities, as long as the Director reasonably determines that such property is not historically significant after consultation with the State Historic Preservation Officer, that the adjustment is in the public interest, and that the value of the adjustment as determined by the Director is less than \$100,000.

(2) Determination of surplus property. If the real property is determined to not be historically significant under this rule and in addition to the policy of Section R23-22-3, it is the policy of this Board to efficiently and economically dispose of real property that is determined by DFCM or the State to be surplus in accordance with State law. In accordance with State law, DFCM

may recommend to the Board that certain real property be declared as surplus. The Board shall consider the following factors in the determination of declaring the property to be surplus:

- (a) the input of the Division;
- (b) the input of State agencies;
- (c) any other input received from concerned persons or entities; and
- (d) the appraised value of the property.

(3) Detailed disposition procedures. After the appropriate determination is made that the real property is surplus, and it is determined that the property is not historically significant under this rule, then DFCM shall endeavor to sell the surplus real property on the open market, unless such property is to be conveyed to another State agency or public entity in accordance with Utah law. If there is such a sale, it shall be as follows:

(a) DFCM shall confirm that all necessary approvals have been sought for the declaration of surplus property.

(b) Unless otherwise allowed by State law, DFCM shall obtain at least fair market value for the real property to be sold. This shall be accomplished by the following:

(i) DFCM shall determine a fair market valuation of the property prior to the offer for sale. The fair market value determination used by DFCM in offer for sale shall be based upon an appraisal completed by an appraiser that specializes in the type of the subject real property and is a state-certified general appraiser under Section 61-2B-2, or by a Utah licensed MAI appraiser who also has such a certificate, except as follows:

(A) When this rule is not applicable under its scope;

(B) When State law otherwise provides that DFCM does not have to use fair market value; or

(C) When the Director has determined by a writing filed with DFCM, that the cost of obtaining the appraisal is not justified in the economic interest of the State of Utah.

(c) DFCM shall establish a listing price based on the appraisal obtained under this Rule or, if there is no appraisal based on the above, based upon DFCM's knowledge of prevailing market conditions and other circumstances customarily used in the industry for such sales.

(d) DFCM shall advertise the property for sale in such a manner that is commercially reasonable in the discretion of the Director. DFCM may set a time deadline for the submission of bids for the real property based upon the economic conditions at the time of the sale.

(e) DFCM shall endeavor to enter into a contract for sale to the highest reasonable bidder, unless the DFCM Director files a written justification statement as to why a lower bidder is more advantageous to the State or if there is a sole bidder, that such bid is unreasonable. If after a reasonable timeline set by the Director of public advertisement, no acceptable bid is submitted, then DFCM may sell the property through a private negotiated sale, provided that any sale below the fair market value initially established by DFCM for the subject property is accompanied by a written justification statement filed by the Director and a copy of which is provided to the Board prior to execution of the contract for sale.

(f) DFCM shall, in accordance with DFCM's governing statutes, negotiate, draft and execute the applicable Real Estate Contract, with due consideration to the comments of the affected State agency. The affected State agency may be required by DFCM to be a signatory to the Contract.

(g) DFCM shall review, approve, and execute when appropriate, closing documents as prepared by the selected title company.

(h) DFCM may use boiler plate documents approved as to form by the Utah Attorney General or shall consult with the Utah Attorney General regarding provisions of the sale or significant changes to the boiler plate documents approved as to the form by the Utah Attorney General.

(i) DFCM shall endeavor to monitor the distribution of the closing documents.

KEY: real estate, historical significance, property transactions
Date of Enactment or Last Substantive Amendment: [July 8], 2010

Authorizing, and Implemented or Interpreted Law: 63A-5-103; 63A-5-401

Agriculture and Food, Regulatory Services **R70-940-7** Blending

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34000
FILED: 08/25/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to allow flexibility for motor fuel manufacturers to meet Federal requirements for alternative fuel quotas, by expanding the location where fuel may be blended.

SUMMARY OF THE RULE OR CHANGE: The changes allow motor fuel to be blended at places such as terminals in addition to the currently allowed refineries and retail locations; and allow for temporary permits for blending locations up to 12 months. The changes also clarify that having a separate fixed tank for ethanol is one method of blending at a retail location.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-33-4

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be no impact on the state budget. Our weights and measures inspectors already test gasoline for ethanol content.

◆ **LOCAL GOVERNMENTS:** The rules places no responsibilities on local government. There should be no cost or savings to them.

◆ **SMALL BUSINESSES:** The rules provides significant savings to gasoline manufacturers and retailers by allowing them to blend at locations such as terminals. This was not able to be calculated by the industry.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Major gasoline manufacturer and retailers such as Chevron, Golden Eagle, Sinclair and others requested these changes. The rule will benefit the industry and the consumer by assuring that ethanol they purchase is blended correctly.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The energy companies will have costs of assuring the blends are correct. No costs has been identified. They are aware of this and feel it is worth it to be able to blend at more locations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will give flexibility to the industry regarding the blending of motor fuels. They will be able to more efficiently serve their customers and meet the Federal Energy Alternative Fuels requirements. Industry requested and supports this rule.

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

AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Brett Gurney by phone at 801-538-7158, by FAX at 801-538-7126, or by Internet E-mail at bgurney@utah.gov
 ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
 ◆ Richard Clark by phone at 801-538-7150, by FAX at 801-538-7126, or by Internet E-mail at richardwclark@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: Leonard Blackham, Commissioner

R70. Agriculture and Food, Regulatory Services.

R70-940. Standards and Testing of Motor Fuel.

R70-940-7. Blending.

A. Blending of motor fuels will be done only at [~~refineries or at retail outlets~~]facilities equipped [~~with calibrated dispensers or tank blenders that~~]to accurately measure the products

to be blended. The finished blend must meet the requirements of octane, vapor pressure, distillation, and other standards as outlined by ASTM.

(1) The Department may issue a temporary approval for the blending of gasoline and ethanol provided that the operator has a Department-approved plan in place to assure the blended product meets the referenced requirements. The temporary approval shall not exceed 12 months.

B. At retail locations, a[A] separate fixed tank or a method approved by the Utah State Department of Agriculture and Food shall be used for blending the "methanol or ethanol-based fuel" into the gasoline.

KEY: inspections, motor fuel

Date of Enactment or Last Substantive Amendment: [~~June 22, 2009~~October 22, 2010]

Notice of Continuation: August 29, 2006

Authorizing, and Implemented or Interpreted Law: 4-33-4

Commerce, Occupational and Professional Licensing

R156-17b-310

Exemption from Licensure - Physicians Dispensing Cosmetic Drug or Injectable Weight Loss Drug

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33972

FILED: 08/19/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule amendment is to implement the legislative changes enacted as a result of passage of S.B. 88, Pharmacy Practice Act Amendments, sponsored by Senator Curtis Bramble. The bill exempts a physician or osteopathic physician from the practice of pharmacy as it applies to the dispensing of a cosmetic drug or injectable weight loss drug. The statute requires the Division to adopt rules to specify the drugs that can be dispensed from a physician's office under the new exemption and also provides authority to the Division to implement an administrative rule to address labeling, record keeping, patient counseling, and storage requirements. (DAR NOTE: S.B. 88 (2010) is found at Chapter 213, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: A new Section R156-17b-310 is established to implement S.B. 88. Subsection R156-17b-310(1) identifies Latisse as a cosmetic

drug that can be dispensed by a physician. Subsection R156-17b-310(2) identifies human chorionic gonadotropin (HCG) as an injectable weight loss drug that can be dispensed under this new exemption. Subsection R156-17b-310(3) establishes the standards for a label that is affixed to a drug dispensed by a physician. Subsection R156-17b-310(4) establishes the record keeping standards, including requirements for a medication profile, which must be followed by a physician who chooses to dispense drugs under this Section. Subsection R156-17b-310(5) establishes the standard for patient counseling required if a physician dispenses a cosmetic or injectable weight loss drug in accordance with this Section. Subsection R156-17b-310(6) establishes the storage standards for the drugs listed in Subsections R156-17b-310(1) and R156-17b-310(2). Subsection R156-17b-310(7) requires a physician dispensing a cosmetic or injectable weight loss drug that requires reconstitution or compounding to follow the United States Pharmacopeia-National Formulary (USP-NF) 797 standards for sterile compounding. Subsection R156-17b-310(8) identifies the factors that must be considered by the Utah State Board of Pharmacy, Utah Physicians Licensing Board and the Utah Osteopathic Physician and Surgeon's Licensing Board when determining if a drug may be dispensed by a physician.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-17b-101 and Section 58-37-1 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-17b-601(1)

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. The proposed amendments allow physicians to dispense cosmetic or injectable weight loss drugs as defined in this rule. The legislation also granted authority to the Division to inspect physician offices should a complaint be made. This exemption or expanded scope of practice for a physician may lead to an increase in the number of complaints received by the Division. Given the new authority to inspect physicians' offices, the Division's investigators may be able to investigate a greater number of cases in a more in-depth manner. However, caseloads will need to be readjusted given there was no fiscal note and no additional monies provided to enforce the legislation.

◆ **LOCAL GOVERNMENTS:** There should be little to no effect on local government. Local governments do not own or operate physician offices which may choose to dispense cosmetic or injectable weight loss drugs.

◆ **SMALL BUSINESSES:** Currently physicians are not permitted to dispense prescription drugs. This proposed rule permits the dispensing, while requiring physicians who choose to dispense to follow the same dispensing standards required for pharmacists. A physician who elects to dispense the drugs listed in Subsections R156-17b-310(1) and R156-17b-310(2) may incur costs to store and label the

drugs. There would also be a cost to implement a patient medication profile and patient counseling including the use of preprinted pharmacotherapeutic pamphlets for the drugs dispensed. Also, should a physician choose to dispense HCG, the powder must be reconstituted/compounded in accordance with the USP-NF 797 standards for sterile compounding. This could include the use of a laminar flow hood which costs approximately \$10,000. Also, current studies indicate a short half-life for compounded HCG which will require more frequent visits to the physician's office for more medication at an additional cost to the patient and revenue for the physician. Exact estimates cannot be determined. However, because the dispensing of the drugs is a new permissible activity, the costs are elective.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible, but not likely, that a pharmacy could have a negative fiscal impact if physicians begin to dispense the listed drugs. However, the drugs involved are limited and the physicians who specialize in treating the conditions which require the approved drugs are also limited. It is doubtful that a general practitioner is going to make the necessary changes required to dispense HCG, given it must be reconstituted in a sterile manner under a laminar flow hood.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be a cost to a physician who chooses to dispense the listed drugs from his office. The costs most likely would be absorbed in the patient fee schedule. A physician who compounds HCG must follow the standards established in USP-NF 797 for sterile compounding which includes using a laminar flow hood when preparing sterile compounds. Exact estimates of costs cannot be determined due to a wide range of circumstances relating to physicians and their office settings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing implements recent statutory amendments which exempt physicians and osteopathic physicians from the Pharmacy Practice Act for dispensing cosmetic drugs or injectable weight loss drugs. No fiscal impact to businesses results from this rule filing beyond that already addressed in the passage of the statutory amendments.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Laura Poe by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 09/28/2010 01:00 PM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-17b. Pharmacy Practice Act Rule.**

R156-17b-310. Exemption from Licensure - Physicians Dispensing Cosmetic Drug or Injectable Weight Loss Drug.

(1) A cosmetic drug that can be dispensed by a physician licensed under either Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and in accordance with Subsection 58-17b-309(1)(a) includes:

(a) Latisse.

(2) An injectable weight loss drug that can be dispensed by a physician licensed under either Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and in accordance with Subsection 58-17b-309(1)(b) includes:

(a) human chorionic gonadotropin.

(3) In accordance with Subsection 58-17b-309(4)(c), a physician who chooses to dispense a cosmetic drug or injectable weight loss drug as listed in Subsections (1) and (2) to the physician's patients shall have a label securely affixed to the container indicating the following minimum information:

(a) the name, address and telephone number of the physician prescribing and dispensing the drug;

(b) the serial number of the prescription as assigned by the dispensing physician;

(c) the filling date of the prescription or its last dispensing date;

(d) the name of the patient;

(e) the directions for use and cautionary statements, if any, which are contained in the prescription order or are needed;

(f) the trade, generic or chemical name, amount dispensed and the strength of dosage form; and

(g) the beyond use date.

(4) A physician who chooses to dispense a cosmetic drug or an injectable weight loss drug as listed in Subsections (1) and (2) shall keep inventory records for each drug dispensed and a prescription dispensing medication profile for each patient receiving a drug dispensed by the physician. Those records shall be made available to the Division upon request by the Division.

(a) The general requirements for an inventory of drugs dispensed by a physician include:

(i) the physician shall be responsible for taking all required inventories, but may delegate the performance of taking the inventory to another person;

(ii) the inventory records must be maintained for a period of five years and be readily available for inspection;

(iii) the inventory records shall be filed separately from all other records;

(iv) the person taking the inventory and the physician shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the physician and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(v) the initial inventory shall be completed within three working days of the date on which the physician begins to dispense a drug under Section 58-17b-309; and

(vi) the annual inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs.

(b) A prescription dispensing medication profile shall be maintained for every patient receiving a drug that is dispensed by a physician in accordance with Section 58-17b-309 for a period of at least one year from the date of the most recent prescription fill or refill. The medication profile shall be kept as part of the patient's medical record and include, as a minimum, the following information:

(i) full name of the patient, address, telephone number, date of birth or age, and gender;

(ii) patient history where significant, including known allergies and drug reactions; and

(iii) a list of drugs being dispensed including:

(A) name of prescription drug;

(B) strength of prescription drug;

(C) quantity dispensed;

(D) prescription drug lot number and name of manufacturer;

(E) date of filling or refilling;

(F) charge for the prescription drug as dispensed to the patient;

(G) any additional comments relevant to the patient's drug use; and

(H) documentation that patient counseling was provided in accordance with Subsection (5).

(5) A physician who is dispensing a cosmetic drug or injectable weight loss drug listed in Subsections (1) and (2) in accordance with Subsection 58-17b-309(4)(c), shall include the following elements when providing patient counseling:

(a) the name and description of the prescription drug;

(b) the dosage form, dose, route of administration and duration of drug therapy;

(c) intended use of the drug and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

(i) action to be taken in the event of a missed dose;

(j) physician comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and

(k) the date after which the prescription should not be taken or used, or the beyond use date.

(6) In accordance with Subsection 58-17b(309)(4)(c), the medication storage standards that must be maintained by a physician who dispenses a drug under Subsection (1) and (2) provides that the storage space shall be:

(a) kept in an area that is well lighted, well ventilated, clean and sanitary;

(b) equipped to permit the orderly storage of prescription drugs in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the drug inventory;

(c) equipped with a security system to permit detection of entry at all times when the physician's office or clinic is closed;

(d) at a temperature which is maintained within a range compatible with the proper storage of drugs; and

(e) securely locked with only the physician having access when the physician's office or clinic is closed.

(7) In accordance with Subsection 58-17b-309(5), if a cosmetic drug or a weight loss drug listed in Subsections (1) and (2) requires reconstitution or compounding to prepare the drug for administration, the physician shall follow the USP-NF 797 standards for sterile compounding.

(8) In accordance with Subsection 58-17b-309(5), factors that shall be considered by the Utah State Board of Pharmacy, the Utah Physicians Licensing Board, and the Utah Osteopathic Physician and Surgeon's Licensing Board when determining if a drug may be dispensed by a physician, include whether:

(a)(i) the drug has FDA approval;

(ii)(A) is prescribed and dispensed for the conditions or indication for which the drug was approved to treat; or

(B) the physician takes full responsibility for prescribing and dispensing a drug for off-label use;

(b) the drug has been approved for self administration by the FDA;

(c) the stability of the drug is adequate for the supply being dispensed; and

(d) the drug can be safely dispensed by a practitioner.

KEY: pharmacists, licensing, pharmacies

Date of Enactment or Last Substantive Amendment: ~~August 2,~~ 2010

Notice of Continuation: February 23, 2010

Authorizing, and Implemented or Interpreted Law: 58-17b-101; 58-17b-601(1); 58-37-1; 58-1-106(1)(a); 58-1-202(1)

(a)

**Environmental Quality, Air Quality
R307-401-9
Small Source Exemption**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34051

FILED: 09/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 05/13/2010, the Environmental Protection Agency (EPA) issued a final rule that addresses greenhouse gas (GHG) emissions from stationary sources under the Clean Air Act permitting programs. This final rule sets thresholds for GHG emissions that define when permits are required for new and existing industrial facilities under the New Source Review Prevention of Significant Deterioration (PSD) and Title V Operating Permit programs. These changes must be incorporated into our rules in order to comply with the federal requirements. Additionally, these changes will allow Utah to obtain primacy for permitting sources of GHG in Utah.

SUMMARY OF THE RULE OR CHANGE: This rule amendment excludes sources from the requirement to obtain an Approval Order if their GHG emissions are below the thresholds established by EPA.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-108 and Subsection 19-2-104(3) (q)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No costs or savings are expected for state government because these revisions do not create new requirements for state government.
- ◆ **LOCAL GOVERNMENTS:** No costs or savings are expected for local governments because these revisions do not create new requirements for local governments.
- ◆ **SMALL BUSINESSES:** No costs or savings are expected for small business because these revisions do not create new requirements for small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No costs or savings are expected for persons other than small businesses, businesses, or local government entities because these revisions do not create new requirements for persons other than small businesses, businesses, or local government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No costs are expected for affected persons because these revisions do not create new requirements for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment does not create new requirements. Therefore, no additional costs are expected. Without this change, the EPA plans to issue a SIP call directing us to make these changes followed by the implementation of a

Federal Implementation Plan (FIP). This would make the EPA the permitting authority for Utah sources of GHG.

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

ENVIRONMENTAL QUALITY

AIR QUALITY

FOURTH FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116-3085

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kimberly Kreykes by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at kkreykes@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 10/07/2010 01:30 PM, DEQ Board Room (Room 1015), 195 N 1950 W, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2011

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

R307. Environmental Quality, Air Quality.**R307-401. Permit: New and Modified Sources.****R307-401-9. Small Source Exemption.**

(1) A small stationary source is exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM₁₀, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air contaminant not listed in (a) or (b) above and less than 2000 pounds per year of any combination of air contaminants not listed in (a) or (b) above.

(d) Air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later

than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) Small Source Exemption - Registration. The executive secretary will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the executive secretary. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

(5) A stationary source that is not required to obtain a permit under R307-405 for greenhouse gases, as defined in R307-405-3(9)(a), is not required to obtain an approval order for greenhouse gases under R307-401. This exemption does not affect the requirement to obtain an approval order for any other air contaminant emitted by the stationary source.

KEY: air pollution, permits, approval orders, greenhouse gases
Date of Enactment or Last Substantive Amendment: [February 8, 2008]2011

Notice of Continuation: July 13, 2007

Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(q); 19-2-108

Environmental Quality, Air Quality **R307-405-3** Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34052

FILED: 09/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 05/13/2010, the Environmental Protection Agency (EPA) issued a final rule that addresses greenhouse gas (GHG) emissions from stationary sources under the Clean Air Act permitting programs. This final rule sets thresholds for GHG emissions that define when permits are

required for new and existing industrial facilities under the New Source Review Prevention of Significant Deterioration (PSD) and Title V Operating Permit programs. These changes must be incorporated into our rules in order to comply with the federal requirements. Additionally, these changes will allow Utah to obtain primacy for permitting sources of GHG in Utah.

SUMMARY OF THE RULE OR CHANGE: This rule amendment incorporates changes for the New Source Review PSD program required by the 05/13/2010, EPA final rule. These changes include the addition of the definition of "subject to regulation".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

MATERIALS INCORPORATED BY REFERENCES:

◆ Adds 75 FR 25686, published by Government Printing Office, 05/07/2010

◆ Adds 74 FR 56395-96, published by Government Printing Office, 10/30/2009

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** While additional direct costs are not anticipated at this time, this rulemaking will add workload to permitting staff, resulting in longer permit issuance times as they address this new pollutant. Hence, fewer permits will be issued per unit of time than previously.

◆ **LOCAL GOVERNMENTS:** No costs or savings are expected for local government because these revisions do not create new requirements for local government.

◆ **SMALL BUSINESSES:** No costs or savings are expected for small businesses because these revisions do not create new requirements for small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No costs or savings are expected for persons other than small businesses, businesses, or local government entities because these revisions do not create new requirements for persons other than small businesses, businesses, or local government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs will increase for those sources (businesses) that are subject to this rulemaking as they will have to address this new pollutant in air permit applications and comply with any applicable requirements. These costs are unknown as they are costs incurred by the companies that they pay those who prepare their application (either in-house staff or contractors).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Costs will increase for those sources (businesses) that are subject to this rulemaking as they will have to address this new pollutant in air permit applications and comply with any applicable requirements. Without this change, the EPA plans to issue a SIP call directing us to make these changes followed by the implementation of a Federal Implementation

Plan (FIP). This would make the EPA the permitting authority for Utah sources of GHG.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kimberly Kreykes by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at kkreykes@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 10/07/2010 01:30 PM, DEQ Board Room (Room 1015), 195 N 1950 W, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2011

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

R307. Environmental Quality, Air Quality.

R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD).

R307-405-3. Definitions.

(1) Except as provided in (2) below, the definitions contained in 40 CFR 52.21(b) are hereby incorporated by reference.

(2)(a)(i) "Major Source Baseline Date" means:

(A) in the case of particulate matter:

(I) for Davis, Salt Lake, Utah and Weber Counties, the date that EPA approves the PM10 maintenance plan that was adopted by the Board on July 6, 2005;

(II) for all other areas of the State, January 6, 1975;

(B) in the case of sulfur dioxide:

(I) for Salt Lake County, the date that EPA approves the sulfur dioxide maintenance plan that was adopted by the Board on January 5, 2005;

(II) for all other areas of the State, January 6, 1975; and

(C) in the case of nitrogen dioxide, February 8, 1988.

(ii) "Minor Source Baseline Date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or R307-405 submits a complete application under the relevant regulations. The trigger date is:

(A) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(B) in the case of nitrogen dioxide, February 8, 1988.

(iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(A) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or R307-405; and

(B) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that the executive secretary shall rescind a minor source baseline date where it can be shown, to the satisfaction of the executive secretary, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM10 emissions.

(b) In the definition of "baseline area" in 40 CFR 52.21(b)(15)(ii)(b) insert the words "or R307-405" after "Is subject to 40 CFR 52.21".

(c) "Reviewing Authority" means the executive secretary.

(d)(i) The term "Administrator" shall be changed to "executive secretary" throughout R307-405, except as provided in (ii).

(ii) The term "Administrator" shall be changed to "EPA Administrator" in the following incorporated sections:

(A) 40 CFR 52.21(b)(17),

(B) 40 CFR 52.21(b)(37)(i),

(C) 40 CFR 52.21(b)(43),

(D) 40 CFR 52.21(b)(48)(ii)(c),

(E) 40 CFR 52.21(b)(50)(i),

(F) 40 CFR 52.21(l)(2),

(G) 40 CFR 52.21(p)(2), and

(H) 40 CFR 51.166(q)(2)(iv).

(e) The following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:

(i) in the definition major modification in 40 CFR 52.21(b)(2), the second sentence in subparagraph (iii)(a),

(ii) the definition of "process unit" in 40 CFR 52.21(b)(55),

(iii) the definition of "functionally equivalent component" in 40 CFR 52.21(b)(56),

(iv) the definition of "fixed capital cost" in 40 CFR 52.21(b)(57), and

(v) the definition of "total capital investment" in 40 CFR 52.21(b)(58).

(f) In the definition of "Regulated NSR pollutant" in 40 CFR 52.21(b)(50), subparagraph (iv) shall be changed to read, "Any pollutant that otherwise is subject to regulation under the Act." A new subparagraph (v) shall be added that reads, "The term regulated NSR pollutant shall not include any or all hazardous air pollutants either listed in section 112 of the federal Clean Air Act, or added to the list pursuant to section 112(b)(2) of the federal Clean Air Act, and which have not been delisted pursuant to section 112(b)(3) of the federal Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the federal Clean Air Act."

(3) "Air Quality Related Values," as used in analyses under 40 CFR 52.21 (p) that is incorporated by reference in R307-405-17, means those special attributes of a Class I area, assigned by a federal land manager, that are adversely affected by air quality.

(4) "Heat input" means heat input as defined in 40 CFR 52.01(g), that is hereby incorporated by reference.

(5) "Title V permit" means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to R307-415.

(6) "Title V Operating Permit Program" means R307-415.

(7) The definition of "Good Engineering Practice (GEP) Stack Height" as defined in R307-410 shall apply in this rule.

(8) The definition of "Dispersion Technique" as defined in R307-410 shall apply in this rule.

(9) "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) "Greenhouse gases (GHGs)," the air pollutant defined in 40 CFR 86.1818-12(a) (Federal Register, Vol. 75, Page 25686) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs (d) through (e) of this section.

(b) For purposes of paragraphs (c) through (e) of this section, the term "tons per year (tpy) CO₂ equivalent emissions (CO₂e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(i) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, that is hereby incorporated by reference (Federal Register, Vol. 74, Pages 56395-96).

(ii) Sum the resultant value from paragraph (b)(i) of this section for each gas to compute a tpy CO₂e.

(c) The term "emissions increase" as used in paragraphs (d) through (e) of this section shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21 (a)(2)(iv) that is incorporated by reference in R307-405-2) and a significant net emissions increase (as defined in paragraphs 40 CFR 52.21(b)(3) and (b)(23) that is incorporated by reference in R307-405-3) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO₂e instead of applying the value in paragraph 40 CFR 52.21(b)(23)(ii).

(d) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO₂e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will

have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO₂e or more; and.

(e) Beginning July 1, 2011, in addition to the provisions in paragraph (d) of this section, the pollutant GHGs shall also be subject to regulation.

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO₂e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more.

KEY: air pollution, PSD, Class I area, greenhouse gases

Date of Enactment or Last Substantive Amendment: ~~February 5, 2009~~ 2011

Notice of Continuation: February 5, 2009

Authorizing, and Implemented or Interpreted Law: 19-2-104

Environmental Quality, Air Quality R307-415-3 Definitions

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 34053
FILED: 09/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 05/13/2010, the Environmental Protection Agency (EPA) issued a final rule that addresses greenhouse gas (GHG) emissions from stationary sources under the Clean Air Act permitting programs. This final rule sets thresholds for GHG emissions that define when permits are required for new and existing industrial facilities under the New Source Review Prevention of Significant Deterioration (PSD) and Title V Operating Permit programs. These changes must be incorporated into our rules in order to comply with the federal requirements. Additionally, these changes will allow Utah to obtain primacy for permitting sources of GHG in Utah.

SUMMARY OF THE RULE OR CHANGE: This rule amendment incorporates changes for the Title V Operating Permit program required by the 05/13/2010, EPA final rule. These changes include the addition of the definitions of "regulated NSR pollutant" and "subject to regulation".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-10 and Section 19-2-109.1

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds 75 FR 56395-96, published by Government Printing Office, 10/30/2009
- ◆ Adds 75 FR 25686, published by Government Printing Office, 05/07/2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** While additional direct costs are not anticipated at this time, this rulemaking will add workload to permitting staff, resulting in longer permit issuance times as they address this new pollutant. Hence, fewer permits will be issued per unit of time than previously.
- ◆ **LOCAL GOVERNMENTS:** No costs or savings are expected for local governments because these revisions do not create new requirements for local governments.
- ◆ **SMALL BUSINESSES:** No costs or savings are expected for small business because these revisions do not create new requirements for small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No costs or savings are expected for persons other than small businesses, businesses, or local government entities because these revisions do not create new requirements for persons other than small businesses, businesses, or local government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs will increase for those sources (businesses) that are subject to this rulemaking as they will have to address this new pollutant in air permit applications and comply with any applicable requirements. These costs are unknown as they are costs incurred by the companies that they pay those who prepare their application (either in-house staff or contractors).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Costs will increase for those sources (businesses) that are subject to this rulemaking as they will have to address this new pollutant in air permit applications and comply with any applicable requirements. Without this change, the EPA plans to issue a SIP call directing us to make these changes followed by the implementation of a Federal Implementation Plan (FIP). This would make the EPA the permitting authority for Utah sources of GHG.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kimberly Kreykes by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at kkreykes@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 10/07/2010 01:30 PM, DEQ Board Room (Room 1015), 195 N 1950 W, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2011

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

R307. Environmental Quality, Air Quality.**R307-415. Permits: Operating Permit Requirements.****R307-415-3. Definitions.**

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the Executive Secretary offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the Executive Secretary that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other

than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation, including any major source of fugitive emissions or fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to any one of the following categories of stationary source:

- (i) Coal cleaning plants with thermal dryers;
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants, furnace process;
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or Section 112 of the Act.

(c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:

- (i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or

"moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;

(iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system), that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the Executive Secretary proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the Executive Secretary;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) "Greenhouse gases (GHGs)," the air pollutant defined in 40 CFR 86.1818-12(a) (Federal Register, Vol. 75, Page 25686) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year (tpy) CO₂ equivalent emissions.

(b) The term "tpy CO₂ equivalent emissions (CO₂e)" shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98--Global Warming Potentials, that is hereby incorporated by reference (Federal Register, Vol. 74, Pages 56395-96), and summing the resultant value for each to compute a tpy CO₂e.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

KEY: ~~air pollution, greenhouse gases[environmental protection], operating permit, emission fees~~

Date of Enactment or Last Substantive Amendment: ~~November 9, 2007~~ **2011**

Notice of Continuation: July 13, 2007

Authorizing, and Implemented or Interpreted Law: 19-2-109.1; 19-2-104

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1-7
Aliens

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34035

FILED: 09/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to remove language that unnecessarily incorporates federal law by reference.

SUMMARY OF THE RULE OR CHANGE: This change removes language that unnecessarily incorporates federal law by reference. It also makes other minor corrections.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no impact to the state budget because this change only clarifies and removes unnecessary language from the rule text. It neither affects Medicaid services nor does it affect Medicaid eligibility.
- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide Medicaid services and do not determine Medicaid eligibility.
- ◆ SMALL BUSINESSES: There is no impact to small businesses because this change only clarifies and removes unnecessary language from the rule text. It neither affects Medicaid services nor does it affect Medicaid eligibility.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid clients and to Medicaid providers because this change only clarifies and removes unnecessary language from the rule text. It neither affects Medicaid services nor does it affect Medicaid eligibility.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only clarifies and removes unnecessary language from the rule text. It neither affects Medicaid services nor does it affect Medicaid eligibility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This deletion of unnecessary language will have no fiscal impact on regulated business.

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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

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

R414-1. Utah Medicaid Program.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of ~~Public Law 104-193~~ Pub. L. No. 104 193, 110 Stat. 2105, may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services[;] as described in Section 1903(v) of the Social Security Act[~~, which is adopted and incorporated by reference~~].

(2) ~~Aliens~~ An alien who ~~are~~is prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on ~~their~~his Medical Identification Card[s], as noted in Rule R414-3A.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [May 1], 2010

Notice of Continuation: April 16, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 2[3]6-34-2

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-10
Physician Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34032

FILED: 09/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify service coverage for physician services.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies that Medicaid does not cover certain clinic services. It also makes other updates and corrections.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 42 CFR 441, Subpart F, published by Government Printing Office, 10/01/2009

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Department does not expect any impact to the state budget because this change only clarifies that Medicaid does not cover certain clinic services.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide physician services for Medicaid clients.
- ◆ **SMALL BUSINESSES:** The Department does not expect any impact to small businesses because this change only clarifies that Medicaid does not cover certain clinic services.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not expect any impact to Medicaid providers or to Medicaid clients because this change only clarifies that Medicaid does not cover certain clinic services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid client because this change only clarifies that Medicaid does not cover certain clinic services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This update to the rule will not reduce reimbursement to existing 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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-10. Physician Services.****R414-10-1. Introduction and Authority.**

(1) The Physician Services Program provides a scope of physician services to meet the basic medical needs of eligible Medicaid recipients. It encompasses the art and science of caring for those who are ill through the practice of medicine or osteopathy defined in Title 58, Chapter 12[~~UCA~~].

(2) Physician services are a mandatory Medicaid, Title XIX, program authorized by Sections 1901 and 1905(a)(1) of the Social Security Act, 42 CFR 440.50[~~October 1996 edition~~], and Sections 26-1-5 and 26-18-3[~~UCA~~].

R414-10-5. Service Coverage.

(1) Physician services involve direct patient care and securing and supervising appropriate diagnostic ancillary tests or services in order to diagnose the existence, nature, or extent of illness, injury, or disability. In addition, physician services involve establishing a course of medically necessary treatment designed to prevent or minimize the adverse effects of human disease, pain, illness, injury, infirmity, deformity, or other impairments to a client's physical or mental health.

(2) Physician services may be provided only within the parameters of accepted medical practice and are subject to limitations and exclusions established by the Department on the basis of medical necessity, appropriateness, and utilization control considerations.

(3) Program limitations and noncovered services are established by specific program policy maintained in the Physician Provider Manual and updated by notification through Medicaid Information Bulletins. Following is a general list of medical and health care services excluded from coverage:

- (a) Services rendered during a period the recipient was ineligible for Medicaid;
- (b) Services medically unnecessary or unreasonable;
- (c) Services which fail to meet existing standards of professional practice, or which are currently professionally unacceptable;
- (d) Services requiring prior authorization, but for which such authorization was not received;
- (e) Services, elective in nature, based on patient request or individual preference rather than medical necessity;

(f) Services fraudulently claimed;
 (g) Services which represent abuse or overuse;
 (h) Services rejected or disallowed by Medicare when the rejection was based upon any of the reasons listed above.

(i) Services for which third party payors are primarily responsible, e.g., Medicare, private health insurance, liability insurance. Medicaid may make a partial payment up to the Medicaid maximum if the limit has not been reached by a third party.

(j) If a procedure or service is not covered for any of the above reasons or because of specific policy exclusion, all related services and supplies, including institutional costs, are excluded for the standard post operative recovery period.

(4) Experimental or medically unproven physician services or procedures are excluded from coverage. Criteria established and approved by the Department staff and physician consultants are used to identify noncovered services and procedures. Policy statements developed by the Department of Health and Human Services, Health Care Financing Administration, Coverage Issues Bureau, are also used to determine Department policy for noncovered services.

(5) Certain services are excluded from coverage because medical necessity, appropriate utilization, and cost effectiveness of the services cannot be assured. A variety of lifestyle factors contribute to the "syndromes" associated with such services, and there is no specific therapy or treatment identified except for those that border on behavior modification, experimental, or unproven practices. ~~[Services include]~~ Medicaid does not cover:

(a) ~~[Sleep apnea or] sleep studies, [or both], in sleep centers or clinics that are not Department-approved;~~

(b) ~~services in pain clinics; [and]~~

(c) ~~services in [E]ating disorder[s] clinics[-]; and~~

(d) ~~services in wound clinics.~~

(6) When a service or procedure does not qualify for coverage under the Medicaid program because it is an elective cosmetic, reconstructive, or plastic surgery, all related services, supplies, and institutional costs are excluded from coverage.

(7) Medications for appetite suppression, surgical procedures, unproven or experimental treatments, or educational, nutritional support programs for the treatment of obesity or weight control, are excluded from coverage.

(8) Cognitive or Office Services:

(a) Cognitive services by a provider are limited to one service per client per day. These services are defined as office visits, hospital visits except for those following a package surgical procedure, therapy visits, and other types of nonsurgical services. When a second office visit for the same problem or a hospital admission occurs on the same date as another service, the physician shall combine the services as one service and select a procedure code that indicates the overall care given.

(b) Routine physical examinations, not part of an otherwise medically necessary service, are excluded from coverage, except in the following circumstances:

(i) Preschool and school age children, including those who are EPSDT (CHEC) eligible, participating in the ongoing CHEC program of scheduled services and follow-up care.

(ii) New patients seeing a physician for the first time with an initial complaint where a comprehensive physical examination, including a medical and social history, is necessary.

(iii) Medically necessary examinations associated with birth control medication, devices, and instructions.

(c) Family planning services may be provided only by or under the supervision of a physician and only to individuals of childbearing age, including sexually active minors. The following services are excluded from coverage as family planning services:

(i) Experimental or unproven medical procedures, practices, or medication.

(ii) Surgical procedures for the reversal of previous elective sterilization, both male and female.

(iii) Infertility studies.

(iv) In-vitro fertilization.

(v) Artificial insemination.

(vi) Surrogate motherhood, including all services, tests, and related charges.

(vii) Abortion, except where the life of the mother would be endangered if the fetus were carried to term, or where pregnancy is the result of rape or incest.

(d) After-hours service codes may be used only by a private physician, primary care provider, who responds to treat a patient in the physician's private office for a medical emergency, accident, or injury after regular office hours. Only one of the after hours CPT codes may be used per visit.

(e) Laboratory services provided by a physician in his office are limited to the waived tests or those types of laboratory tests identified by the federal Health Care Financing Administration for which each individual physician is CLIA certified to provide, bill, and receive Medicaid payment.

(f) A specimen collection fee is covered for service in a physician's office only when a specimen is to be sent to an outside laboratory, and the physician or one of his office staff under his personal supervision actually extracts the specimen from a patient, and only by one of the following tasks:

(i) Drawing a blood sample through venipuncture, i.e., inserting into a vein a needle with syringe or vacutainer to draw the specimen; or

(ii) Collecting a urine sample by catheterization.

(iii) A drawing fee for finger, heel, or ear sticks is limited to only infants under the age of two years.

(g) Eye examinations are covered, but only once each calendar year.

(h) Contact lenses are covered only for aphakia, nystagmus, keratoconus, severe corneal distortion, cataract surgery, and in those cases where visual acuity cannot be corrected to at least 20/70 in the better eye.

(9) Psychiatric Services:

(a) Psychiatric services or psychosocial diagnosis and counseling are specialty medical services. Psychiatric services, whether in a private office, a group practice, or private clinic setting, may only be provided directly and documented and billed to the Department by the private physician. Charting and documentation must clearly reflect the private physician's direct provision of care.

(b) Nonphysician psychosocial counseling services are excluded from coverage as a Medicaid benefit. The personal supervision policy, Rule R414-45, may not be applied to psychiatric services.

(c) Admission to a general hospital for psychiatric care by a physician requires prior authorization and is limited to those cases

determined by established criteria and utilization review standards to be of a severity that appropriate intensity of service cannot be provided in any alternate setting.

(d) Coverage for treatment of organic brain disease is limited to that provided by the primary care provider.

(10) Laboratory and Radiology Services:

(a) Physicians prepared in a highly specialized field of practice, e.g., neurology or neurosurgery, who provide consultation and diagnostic radiology services in an independent setting at the request of a private physician may bill for both the technical and professional component of the radiology service.

(b) Dermatologists with specialized preparation in pathology services specifically for the skin may provide and bill for those services.

(11) Hospital Services:

(a) A patient hospitalized for nonsurgical services may require more than one visit per day because of the patient's condition and treatment needs. Since physician visits are limited to one per day, the physician shall select one procedure code to define the overall care given. If intensive care services are provided, or critical care service codes are used to define service provided, the Department requires additional documentation from the physician. The medical record must show documentation of medical necessity and result of the additional service.

(b) If, for the convenience of the physician and not for medical necessity, a patient is transferred between physicians within the same hospital or from one hospital to another hospital, both physicians may only use subsequent hospital care service codes to define and bill for services provided. Under this policy limitation, services associated with the following codes are excluded from coverage as a Medicaid benefit:

(i) Consultation; and

(ii) Initial hospital care services.

(c) Treatment of alcoholism or drug dependency in an inpatient setting is limited to acute care for detoxification only.

(d) Services for pregnant women who do not meet United States residency requirements (undocumented aliens) are limited to only hospital admission for labor and delivery. Medicaid does not cover prenatal services.

(12) Abortion, Sterilization and Hysterectomy:

(a) Abortion procedures are limited to:

(i) those where the pregnancy is the result of rape or incest; or

(ii) a case with medical certification of necessity where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Sterilization and hysterectomy procedures are limited to those which meet the requirements of 42 CFR 441, Subpart F, October [1996]2009 edition, which is adopted and incorporated by reference.

(13) Cosmetic, Plastic, or Reconstructive Services:

(a) Cosmetic, plastic, or reconstructive surgery procedures may only be covered when medically necessary to:

(i) correct a congenital anomaly;

(ii) restore body form or function following an accidental injury; or

(iii) revise severe disfiguring and extensive scarring resulting from neoplastic surgery.

(14) Surgical Services:

(a) Surgical procedures defined and coded in the CPT Manual are limited by Utah Medicaid policy to prior authorization, or are excluded from coverage. Limitations are documented on the Medical and Surgical Procedures Prior Authorization List, reviewed and revised yearly and maintained in the Physician Provider Manual through notification by Provider Bulletins.

(b) Surgical procedures are "package" services. The package service includes:

(i) the preoperative examination, initiation of the hospital record, and development of a treatment program either in the physician's office on the day before admission, or in the hospital or the physician's office on the same day as admission to the hospital;

(ii) the operation;

(iii) any topical, local, or regional anesthesia; and

(iv) the normal, uncomplicated follow-up care covering the period of hospitalization and office follow-up for progress checks or any service directly related to the surgical procedure for up to six weeks post surgery.

(c) Interpretation of "package" services:

(i) A physician may not bill for an office visit the day prior to surgery, for preadmission or admission workup, or for subsequent hospital care while the patient is being prepared, hospitalized, or under care for a "package" surgical service.

(ii) Consultation services may be billed by the consulting physician only when consultation and no other service is provided. When a consulting physician admits and follows a patient, independently or concurrently with the primary physician, only admission codes and subsequent care codes may be used.

(iii) Office visits for up to six weeks following the hospitalization which relate to the same diagnosis are part of the "package" service. The only exception to either inpatient or office service is for service related to complications, exacerbations, or recurrence of other diseases or problems requiring additional or separate service.

(d) Procedures exempt from the "package" definition are identified in the CPT Manual by an asterisk. The CPT Manual outlines the surgical guidelines which apply to documentation and billing of procedures marked by an asterisk.

(e) Complications, exacerbations, recurrence, or the presence of other diseases or injuries requiring services concurrent with the initial surgical procedure during the listed period of normal follow-up care, may warrant additional charges only when the record shows extensive documentation and justification of additional services.

(f) When an additional surgical procedure is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods continue concurrently to their normal terminations.

(g) Preoperative examination and planning are covered as separate services only in the following circumstances:

(i) When the preoperative visit is the initial visit for the physician and prolonged detention or evaluation is required to establish a diagnosis, determine the need for a specific surgical procedure, or prepare the patient;

(ii) When the preoperative visit is a consultation and the consulting physician does not assume care of the patient; or

(iii) When diagnostic procedures, not part of the basic surgical procedure, e.g., bronchoscopy prior to chest surgery, are provided during the immediate preoperative period.

(h) Exploratory laparotomy procedures confirm a diagnosis and determine the extent of necessary treatment. A physician may request payment only if the exploratory procedure is the only procedure done during an operative session.

(i) The services of an assistant surgeon are specialty services to be provided only by a licensed physician, and are covered only on very complex surgical procedures. Procedures not authorized for assistant surgeon coverage are listed in the Physician Provider Manual and updated by Medicaid Provider Bulletins as necessary. Medicare guidelines for limitation of assistant surgeon coverage are used, since those decisions are made at the national level with physician consultation.

(j) Medicaid does not cover surgical procedures, experimental therapies, or educational, nutritional, support programs for treatment of obesity or weight control.

(15) Diagnostic and Therapeutic Procedures:

(a) Diagnostic needle procedures, e.g., lumbar puncture, thoracentesis, and jugular, femoral vein, or subdural taps, when performed as part of a necessary workup for a serious medical illness or injury, are covered in addition to other medical care on the same day.

(b) Diagnostic "oscopy" procedures, e.g., endoscopy, bronchoscopy, and laparoscopy, are covered separately from any major surgical procedure. However, when an "oscopy" procedure is done the same day or at the same operative session as another procedure, the "oscopy" procedure may only be covered as a multiple procedure.

(c) Magnetic resonance imaging (MRI) is covered only for service to the brain, spinal cord, hip, thigh and abdomen.

(d) Therapeutic needle procedures, e.g., scalp vein insertion, injections into cavities, nerve blocks, are covered in addition to other medical care on the same day.

(e) Puncture of a cavity or joint for aspiration followed by injection of a medication is covered as one procedure and identified by specific CPT code.

(16) Anesthesia Services:

Anesthesia services are covered only when administered by a licensed anesthesiologist or nurse anesthetist who remains in attendance for the sole purpose of rendering general anesthesia services. Standby or monitoring by the anesthesiologist or anesthetist during local anesthesia is not a covered Medicaid anesthesia service.

(17) Transplant Services:

Except for kidney and cornea transplants, Medicaid limits organ transplant services to those procedures for which selection criteria have been approved and documented in [Rule R414-10A](#).

(18) Modifiers:

Modifiers may be used only, as defined in the CPT Manual, to show that a service or procedure has been altered to some degree but not changed in definition or code. The following limitations apply:

(a) The professional component, modifier 26, may be used only with laboratory and radiology service codes and only when direct analysis, interpretation, and written report of findings are provided by a physician on a laboratory or radiology procedure.

(b) Unusual services are identified by use of modifier 22, along with the appropriate CPT code. A prepayment review of unusual services shall be completed by Medicaid professional staff or physician consultants. A report of the service and any important supporting documentation must be submitted with the claim for review.

(c) Anesthesia by surgeon is identified by use of modifier 47. The operating surgeon may not use modifier 47 in addition to the basic procedure code. Anesthesia provided by the surgeon is part of the basic procedure being provided.

(d) Mandated services as defined by CPT and identified by modifier 32 are noncovered services.

(e) Reference laboratory services identified by modifier 90 are noncovered services.

(19) Medications:

(a) Drugs and biologicals are limited to those approved by the Food and Drug Administration (FDA), or those approved by the Drug Utilization Review Board (DUR) for off-label use, which is use for a condition different from that initially intended for the drug or biological. Medicaid coverage of drugs and biologicals is based on individual need and orders written by a physician when the drug is given in accordance with accepted standards of medical practice and within the protocol of accepted use for the drug.

(i) Generic drugs shall be used whenever a generic product approved by the FDA is available. If the physician determines that a brand name drug is medically necessary, the physician may override the generic requirement by writing on the prescription in his own hand writing "name brand medically necessary". Preprinted messages, abbreviations, or notations by a second party, do not meet the override requirement. The pharmacist shall fill the prescription with the generic equivalent product if the override procedure is not followed.

(ii) Injectable medications approved in HCPCS are identified in the "J" code list published by the Health Care Financing Administration or the Department, or both. The list is reviewed and revised yearly and maintained in the Physician Provider Manual by notification and update through Medicaid Provider Bulletins.

(iii) The "J" code covers only the cost of an approved product.

(iv) Office visits only for administration of medication are excluded from coverage. However, an injection code which covers the cost of the syringe, needle and administration of the medication may be used with the "J" code when medication administration is the only reason for an office call.

(v) When an office service is provided for other purposes, in addition to medication administration, only the office visit and a "J" code may be used to bill for the service provided.

(vi) The office visit code and injection code may never be used together. Only one of the codes may be used to define the service provided.

(vii) Vitamin B-12 is limited to use only in treating conditions where physiological mechanisms produce pernicious anemia. Use of Vitamin B-12 in treating any unrelated condition is excluded from coverage.

(b) Vitamins may be provided only for:

(i) Pregnant women: Prenatal vitamins with 1 mg folic acid.

(ii) Children through age five: Children's vitamins with fluoride.

(iii) Children through age one: multiple vitamin (A, C, and D) without fluoride.

(iv) Children through age 15: Fluoride supplement.

(c) Human growth stimulating hormones are limited to CHEC eligible children under the age of 15 who meet the established internal criteria for coverage that has been published and is available in the Provider Manual.

(d) Methylphenidates, amphetamines, and other central nervous system stimulants require prior authorization and may be provided only for treatment of Attention Deficit Disorder (ADD).

(e) Medications for appetite suppression are not a covered service.

(f) Non-prescription, over-the-counter items are limited, and notification of changes consistent with this rule is made by Provider Bulletin and Provider Manual updates.[

~~(g) Nutrients may be provided only as established in R414-71-6.]~~

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [May 1, 2010

Notice of Continuation: January 26, 2007

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

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-50
Dental, Oral and Maxillofacial Surgeons**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34047

FILED: 09/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to remove language that unnecessarily incorporates federal law by reference.

SUMMARY OF THE RULE OR CHANGE: This change removes language that unnecessarily incorporates federal law by reference.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only removes unnecessary language from the rule text.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide Medicaid services to Medicaid clients.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only removes unnecessary language from the rule text.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid clients and to Medicaid providers because this change only removes unnecessary language from the rule text.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only removes unnecessary language from the rule text.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removal of unnecessary language should not have a fiscal impact on any regulated business.

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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

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

R414-50. Dental, Oral and Maxillofacial Surgeons.

R414-50-1. Introduction and Authority.

(1) The Medicaid Oral and Maxillofacial Surgery Program provides a scope of oral and maxillofacial surgery services to meet the basic needs of Medicaid clients. This includes services

by both oral and maxillofacial surgeons and general dentists if surgery is performed by a general dentist in an emergency situation and an oral and maxillofacial surgeon is not available.

(2) Oral and maxillofacial surgery services are authorized by 42 USC 1396d(a)(5)[~~which is adopted and incorporated by reference~~].

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~July 1, 2009~~ 2010

Notice of Continuation: October 21, 2009

Authorizing, and Implemented or Interpreted Law: 26-1-4.1; 26-1-5; 26-18-3

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-61
Home and Community-Based Services
Waivers**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34033

FILED: 09/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to incorporate by reference changes to the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, effective 07/01/2010, and to incorporate by reference changes to the Waiver for Individuals Age 65 or Older, effective 07/01/2010.

SUMMARY OF THE RULE OR CHANGE: This amendment incorporates by reference changes to the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, effective 07/01/2010, and also incorporates by reference changes to the Waiver for Individuals Age 65 or Older, effective 07/01/2010. The Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions clarifies that any appeal decision that the Department of Human Services (DHS) makes through the fair hearing process is the final decision. This waiver also amends the professional medication monitoring service to permit limited medication administration. In addition, this waiver allows the Department to explain quality improvement strategies in further detail. The Waiver for Individuals Age 65 or Older adds three services that include community transition, personal budget assistance, and financial management (previously offered only as an administrative service). It also modifies seven

existing services to improve their functionality. In addition, changes for home and community-based services allow the Department to explain quality improvement strategies in greater detail that relate to participant direction of services, participant rights, participant safeguards, and systems improvements.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Waiver for Individuals Age 65 or Older, published by Division of Medicaid and Health Financing, 07/01/2010
- ◆ Updates Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, published by Division of Medicaid and Health Financing, 07/01/2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Department estimates an increased cost of \$1,500,000 (state funds) in the first year of the waiver renewal for the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions. The state funds for this program are seeded by DHS. On the other hand, the Department estimates no cost or savings in the first year of the waiver renewal for the Waiver for Individuals Age 65 or Older. The state funds for this program are also seeded by DHS.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide waiver services for Medicaid clients.
- ◆ **SMALL BUSINESSES:** The Department estimates that Medicaid providers will receive \$5,000,000 in increased annual revenue under the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions. On the other hand, the Department estimates no cost or savings in the first year of the waiver renewal for the Waiver for Individuals Age 65 or Older.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department estimates that Medicaid providers will receive \$5,000,000 in increased annual revenue under the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions. On the other hand, the Department estimates no cost or savings in the first year of the waiver renewal for the Waiver for Individuals Age 65 or Older.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because there are only increases in revenue for all Medicaid providers. In addition, these changes only result in savings to Medicaid clients.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This update to the rule will generate additional revenue to providers and have a positive fiscal impact.

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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

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

R414-61. Home and Community-Based Services Waivers.

R414-61-1. Introduction and Authority.

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

R414-61-2. Incorporation by Reference.

The Department incorporates by reference the following home and community-based services waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, Effective July 1, 2003;

(2) Waiver for Individuals Age 65 or Older, Effective July 1, 20[05]10;

(3) Waiver for Individuals with Acquired Brain Injuries, Effective July 1, 2004;

(4) Waiver for Individuals with Physical Disabilities, Effective July 1, 2006;

(5) Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, Effective July 1, 20[05]10;

(6) New Choices Waiver, Effective April 1, 2007.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Health Care Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~June 26, 2007~~]2010

Notice of Continuation: February 24, 2010

Authorizing, and Implemented or Interpreted Law: 26-18-3

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-61
Home and Community-Based Services
Waivers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34034

FILED: 09/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to incorporate by reference changes to the Waiver for Technology Dependent/Medically Fragile Individuals, and changes to the Waiver for Individuals with Acquired Brain Injuries.

SUMMARY OF THE RULE OR CHANGE: This amendment incorporates by reference changes to the Waiver for Technology Dependent/Medically Fragile Individuals, effective 07/01/2008. One of these changes clarifies that the Division of Medicaid and Health Financing is responsible for the administration and operation of the waiver program. The waiver also clarifies that the Maternal and Child Health Title V Agency provides essential day-to-day administrative support for the waiver under an interagency memorandum of agreement. The waiver also adds an existing interagency memorandum of agreement between the Long Term Care Bureau and the Bureau of Health Facility Licensing, Certification and Residence Assessment. It further prioritizes admission criteria for applicants dependent on Bi-level Positive Airway Pressure (Bi-PAP), increases the number of recipients who may receive waiver services, adds reserved capacity slots for terminally ill children, and adds new family directed services that include financial management services, family directed support services, and family directed skilled nursing respite care services. In addition, the waiver adds home health certified nursing assistant services to allow these services to be provided on the same day and during the same time as home health agency nursing services. It also adds extended private duty nursing services for recipients when they reach the age of 21. Further, the waiver replaces the service of nutritional evaluation and in-home based treatment with in-home feeding therapy, and amends the current provider qualifications to add individual licensed speech therapists and occupational therapists. It also limits qualified Medicaid and Medicare certified home health agency employees to the same licensed professionals and eliminates the service of in-home respiratory care. This amendment also incorporates by reference changes to the Waiver for Individuals with Acquired Brain Injuries, effective 07/01/2009. These changes include several additional services such as occupational therapy, speech therapy,

cognitive retraining, physical therapy, environmental adaptations, specialized medical equipment and supplies, and living start up costs. Previously unbundled services that remain available and are unbundled at this time include behavior consultation, professional medication monitoring, personal budget assistance, residential habilitation services, extended living supports, and supported living. In addition, changes in the waiver application for home and community-based services allow the Department to explain quality improvement strategies in greater detail in relation to participant direction of services, participant rights, participant safeguards, and systems improvements.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Waiver for Individuals with Acquired Brain Injuries, published by Division of Medicaid and Health Financing, 07/01/2009
- ◆ Updates Waiver for Technology Dependent/Medically Fragile Individuals, published by Division of Medicaid and Health Financing, 07/01/2008

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The Department estimates that annual service expenditures under the Waiver for Technology Dependent/Medically Fragile Individuals increased \$38,000 (state funds) in the first year as a result of the service changes in the waiver changes. In addition, the Department estimates a cost increase of \$90,000 (state funds) in the first year of the waiver renewal for the Waiver for Individuals with Acquired Brain Injuries. The state funds for this program are seeded by the Department of Human Services.
- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide waiver services for Medicaid clients.
- ◆ SMALL BUSINESSES: The Department estimates that Medicaid providers will receive \$126,667 (state and federal funds) in increased revenue annually under the Waiver for Technology Dependent/Medically Fragile Individuals. In addition, the Department estimates Medicaid providers will receive \$300,000 (state and federal funds) in increased revenue annually under the Waiver for Individuals with Acquired Brain Injuries.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department estimates that Medicaid providers will receive \$126,667 (state and federal funds) in increased revenue annually under the Waiver for Technology Dependent/Medically Fragile Individuals. In addition, the Department estimates Medicaid providers will receive \$300,000 (state and federal funds) in increased revenue annually under the Waiver for Individuals with Acquired Brain Injuries.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because there are only increases in revenue for all Medicaid providers. In addition, these changes only result in savings to Medicaid clients.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This update to the rule will generate additional revenue to providers as waiver services are marginally increased.

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

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THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

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

R414-61. Home and Community-Based Services Waivers.

R414-61-1. Introduction and Authority.

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

R414-61-2. Incorporation by Reference.

The Department incorporates by reference the following home and community-based services waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, [E]effective July 1, 200[3]8;

(2) Waiver for Individuals Age 65 or Older, [E]effective July 1, 2005;

(3) Waiver for Individuals with Acquired Brain Injuries, [E]effective July 1, 200[4]9;

(4) Waiver for Individuals with Physical Disabilities, [E]effective July 1, 2006;

(5) Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, [E]effective July 1, 2005;

(6) New Choices Waiver, [E]ffective April 1, 2007.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Medicaid and Health [Care] Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~June 26, 2007~~ **2010**

Notice of Continuation: February 24, 2010

Authorizing, and Implemented or Interpreted Law: 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-306-4

Effective Date of Eligibility

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34048

FILED: 09/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify when eligibility may begin for an individual who is leaving a public institution or Institution for Mental Disease.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies when Medicaid eligibility may begin for an individual who is leaving a public institution or Institution for Mental Disease.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 435.1009 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Department does not anticipate any cost or savings to the state budget because this change does not affect Medicaid services and does not change eligibility criteria.

♦ **LOCAL GOVERNMENTS:** The Department does not anticipate any impact to local governments because they do not fund or provide Medicaid services to Medicaid clients.

♦ **SMALL BUSINESSES:** The Department does not anticipate any cost or savings to small businesses because this change does not affect Medicaid services and does not change eligibility criteria.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any cost or savings to Medicaid providers and to Medicaid clients because this

change does not affect Medicaid services and does not change eligibility criteria.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid client because this change does not affect Medicaid services and does not change eligibility criteria. An individual who resides in a public institution or Institution for Mental Disease may become eligible for Medicaid upon leaving either one of these institutions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This clarification of the eligibility date upon release from a public institution is not expected to change the reimbursement to any provider.

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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

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

R414-306. Program Benefits and Date of Eligibility.

R414-306-4. Effective Date of Eligibility.

(1) Subject to the exceptions in Subsection R414-306-4(3), eligibility for any Medicaid program, and for the Specified Low-income Medicare Beneficiary (SLMB) or Qualified Individual (QI) programs begins the first day of the application month if the individual is determined to meet the eligibility criteria for that month.

(2) An applicant for Medicaid, SLMB or QI benefits may request medical coverage for the retroactive period. The retroactive period is the three months immediately preceding the month of application.

(a) An applicant may request coverage for one or more months of the retroactive period.

(b) Subject to the exceptions in Subsection R414-306-4(3), eligibility for retroactive medical coverage begins

no earlier than the first day of the month that is three months before the application month.

(c) The applicant must receive medical services during the retroactive period and be determined eligible for the month he receives services.

(3) To determine the date eligibility for medical assistance may begin for any month, the following requirements apply:

(a) Eligibility of an individual cannot begin any earlier than the date the individual meets the state residency requirement defined in Section R414-302-2;

(b) Eligibility of a qualified alien subject to the five-year bar on receiving regular Medicaid services cannot begin earlier than the date that is five years after the date the person became a qualified alien, or the date the five-year bar ends due to other events defined in statute;

(c) Eligibility of a qualified alien not subject to the five-year bar on receiving regular Medicaid services can begin no earlier than the date the individual meets qualified alien status.

(d) An individual who is ineligible for Medicaid while residing in a public institution or an Institution for Mental Disease (IMD) may become eligible on the date the individual is no longer a resident of either one of these institutions. If an individual is under the age of 22 and is a resident of an IMD, the individual remains a resident of the IMD until he is unconditionally released.

(4) If an applicant is not eligible for the application month, but requests retroactive coverage, the agency will determine eligibility for the retroactive period based on the date of that application.

(5) The agency may use the same application to determine eligibility for the month following the month of application if the applicant is determined ineligible for both the retroactive period and the application month. In this case, the application date changes to the date eligibility begins. The retroactive period associated with the application changes to the three months preceding the new application date.

(6) Medicaid eligibility for certain services begins when the individual meets the following criteria:

(a) Eligibility for coverage of institutional services cannot begin before the date that the individual has been admitted to a medical institution and meets the level of care criteria for admission. The medical institution must provide the required admission verification to the Department within the time limits set by the Department in Rule R414-501. Medicaid eligibility for institutional services does not begin earlier than the first day of the month that is three months before the month of application for Medicaid coverage of institutional services.

(b) Eligibility for coverage of home and community-based services under a Medicaid waiver cannot begin before the first day of the month the client is determined by the case management agency to meet the level of care criteria and home and community-based services are scheduled to begin within the month. The case management agency must verify that the individual meets the level of care criteria for waiver services. Medicaid eligibility for waiver services does not begin earlier than the first day of the month that is three months before the month of application for Medicaid coverage of waiver services.

(7) An individual determined eligible for QI benefits in a calendar year is eligible to receive those benefits throughout the remainder of the calendar year, if the individual continues to meet the eligibility criteria and the program still exists. Receipt of QI benefits in one calendar year does not entitle the individual to QI benefits in any succeeding year.

(8) After being approved for Medicaid, a client may later request coverage for the retroactive period associated with the approved application if the following criteria are met:

(a) The client did not request retroactive coverage at the time of application; and

(b) The agency did not make a decision about eligibility for medical assistance for that retroactive period; and

(c) The client states that he received medical services and provides verification of his eligibility for the retroactive period.

(9) A client cannot request coverage for the retroactive period associated with a denied application. The client, however, may reapply and a new retroactive coverage period is considered based on the new application date.

KEY: effective date, program benefits, medical transportation
Date of Enactment or Last Substantive Amendment: [February 22], 2010

Notice of Continuation: January 25, 2008

Authorizing, and Implemented or Interpreted Law: 26-18

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-308-4** Verification of Eligibility and Information Exchange

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34049

FILED: 09/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to include verification requirements for the electronic match system that the Department uses to verify an applicant's citizenship and identity.

SUMMARY OF THE RULE OR CHANGE: This amendment adds verification requirements for the electronic match system that the Department uses to verify an applicant's citizenship and identity.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 U.S.C. 1396a(ee)(1)(B) and Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The Department does not anticipate any new costs or savings to the state budget because Medicaid applicants who declare United States Citizenship will continue to receive Medicaid services during the verification process.

◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not determine Medicaid eligibility.

◆ SMALL BUSINESSES: There is no budget impact because this change does not impose any new requirements on small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no budget impact because this change does not impose any new requirements on Medicaid providers and clients. In addition, Medicaid applicants who declare United States Citizenship will continue to receive Medicaid services during the verification process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change does not impose any new requirements on a single Medicaid provider or client. In addition, a Medicaid applicant who declares United States Citizenship will continue to receive Medicaid services during the verification process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This clarification of the citizenship verification process is not expected to change the reimbursement to any provider.

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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

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

R414-308. Application, Eligibility Determinations and Improper Medical Assistance.

R414-308-4. Verification of Eligibility and Information Exchange.

(1) Medical assistance applicants and recipients must verify all eligibility factors requested by the eligibility agency to establish or to redetermine eligibility. Medical assistance applicants and recipients must provide identifying information that the eligibility agency needs to meet the requirements of 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

(a) The eligibility agency will provide the client a written request of the needed verification[s].

(b) The client has at least 10 calendar days from the date the eligibility agency gives or mails the verification request to the client to provide verification[s].

(c) The due date for returning verification[s], forms or information requested by the eligibility agency is the close of business on the date the eligibility agency sets as the due date in a written request to the client, but not less than 10 calendar days from the date such request is given to or mailed to the client.

(d) The eligibility agency shall allow[s] the client additional time to provide verification[s] if the client requests additional time by the due date. [~~The agency will set a new due date that is at least 10 days from the date the client asks for more time to provide the verifications, forms or information.~~] The eligibility agency shall set a new due date based on what the client needs to do to obtain the verification and whether the client shows a good faith effort to obtain the verification.

(e) If a client has not provided required verification[s] by the due date, and has not contacted the eligibility agency to ask for more time to provide verification[s], the eligibility agency shall deny[ies]y the application, [~~re-certification~~] review, or end[s] eligibility.

(f) If the eligibility agency receives all necessary verification[s] during the 30 days after denying an application for lack of verification[s], the date the eligibility agency receives all the verification[s] is the new application date. If the eligibility agency receives verification[s] more than 30 days after the application has been denied, the client will need to reapply for medical assistance.

(2) The eligibility agency must receive verification of an individual's income, both unearned and earned. To be eligible under [~~Section 1902(a)(10)(A)(ii)(XIII)~~], the Medicaid Work Incentive program, the eligibility agency may require proof such as paycheck stubs showing deductions of FICA tax[;], self-employment tax filing documents[;], or for newly self-employed individuals who have not filed tax forms yet, a written business plan and verification of gross receipts and business expenses, to verify that the income is earned income.

(3) If an applicant's citizenship and identity do not match through the Social Security electronic match process and the eligibility agency cannot resolve this consistency, the agency shall request the applicant to provide verification of his citizenship and identity in accordance with 42 U.S.C. 1396a(ee)(1)(B).

(a) The applicant must provide verification to resolve the inconsistency or provide original documentation to verify his citizenship and identity within 90 days of the request.

(b) The eligibility agency shall continue to provide medical assistance during the 90-day period if the individual meets all other eligibility criteria.

(c) If the applicant fails to provide verification, eligibility ends within 30 days after the 90-day period. The eligibility agency cannot extend or repeat the verification period.

(d) An individual who provides false information to receive medical assistance is subject to investigation of Medicaid fraud and penalties as outlined in 42 CFR 455.13 through 455.23.

KEY: public assistance programs, application, eligibility, Medicaid

Date of Enactment or Last Substantive Amendment: [January 4], 2010

Notice of Continuation: January 31, 2008

Authorizing, and Implemented or Interpreted Law: 26-18

**Health, Health Systems Improvement,
Child Care Licensing
R430-50
Residential Certificate Child Care**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34031

FILED: 09/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: New rules for Residential Certificate Care Providers went into effect in September of 2008. Since that time all providers have now had at least one inspection under the new rules. The purpose of this amendment is to address questions and issues that have arisen as the new rules have been implemented.

SUMMARY OF THE RULE OR CHANGE: This rule change: 1) clarifies that "over-the-counter" medication include vitamins and herbal supplements; 2) moves the requirements for swimming pools, wading pools, hot tubs, and trampolines from the Outdoor Environment section of the rule to the Injury Prevention section of the rule to better clarify that the requirements apply whether the pool, trampoline, etc. is indoors or outdoors; 3) clarifies that the requirement that there be no strangulation, crush, shearing, and sharp edge hazards within the use zone of outdoor play equipment includes the equipment itself; 4) clarifies that the required annual training hours must be in child care related training; 5) clarifies that CPR certification must include a hands-on testing component; 6) clarifies the requirement for indoor and outdoor supervision of children; 7) clarifies the requirements

related to tripping hazards, locking of firearms, and strangulation hazards; 8) makes the rules related to smoking more closely parallel the Utah Indoor Clean Air Act; 9) clarifies that children cannot be served foods they are allergic to, or foods brought in for another child; 10) removes the requirement for handwashing after touching a pet; 11) clarifies the medication training requirement and requires the child's name to be on the medication authorization form if a child is to be given medication; and 12) clarifies the requirement for washing toys that have been placed in a child's mouth.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Training on these rules and implementation on the standards can be handled in the normal course of business. Therefore, the Division does not anticipate any cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** No local governments operate in-home child care programs, therefore the Division does not anticipate either a cost or a savings to local governments.

♦ **SMALL BUSINESSES:** All child care programs are small businesses. The proposed rule changes have been reviewed with our Advisory Committee. There may be an anticipated savings to some providers who would no longer have to have ASTM-approved cushioning material underneath their outdoor play equipment. The Division does not anticipate any other significant costs or savings.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Since all child care programs regulated by this rule are small businesses, this rule is inapplicable for this category and there is no anticipated cost or savings to any of these entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule changes have been reviewed with our Advisory Committee, and no anticipated costs or savings were identified.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This update to the rule will generate potential small savings for regulated business as requirements are simplified.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE 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:

♦ Teresa Whiting by phone at 801-538-6320, by FAX at 801-538-6325, or by Internet E-mail at twhiting@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2011

AUTHORIZED BY: David Sundwall, MD, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-50. Residential Certificate Child Care.

R430-50-1. Legal Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. This rule establishes standards for the operation and maintenance of residentially certified child care providers who care for one to eight children in their home. It establishes minimum requirements for the health and safety of children in the care of residentially certified providers.

R430-50-2. Definitions.

- (1) "Body fluid" means blood, urine, feces, vomit, mucus, saliva, or breast milk.
- (2) "Certificate holder" means the person holding a Department of Health child care certificate.
- (3) "Department" means the Utah Department of Health.
- (4) "Emotional abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.
- (5) "Health care provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.
- (6) "Inaccessible to children" means:
 - (a) locked, such as in a locked room, cupboard or drawer;
 - (b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;
 - (c) behind a properly secured child safety gate;
 - (d) located in a cupboard or on a shelf more than 36 inches above the floor; or
 - (e) not in any location in a bathroom where a child could reach, including by climbing on a toilet, bathtub, or counter.
- (7) "Infant" means a child aged birth through 11 months of age.
- (8) "Infectious disease" means an illness that is capable of being spread from one person to another.
- (9) "Over-the-counter medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.
- (10) "Parent" means the parent or legal guardian of a child in care.
- (11) "Physical abuse" means causing nonaccidental physical harm to a child.
- (12) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.
- ~~(13) "Protective cushioning" means stationary play equipment cushioning material that is approved by the American Society for Testing and Materials or the Consumer Products Safety~~

~~Commission. For example, sand, pea gravel, engineered wood fibers, shredded tires, or unitary cushioning material, such as rubber mats or poured rubber-like material.~~

~~(14)(13) "Protrusion hazard" means a component or piece of hardware that could impale or cut a child if the child falls against it.~~

~~(15)(14) "Provider" means the certificate holder or a substitute.~~

~~(16)(15) "Related children" means children for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.~~

~~(17)(16) "Sanitize" means to reduce the number of germs on a surface to such a level that disease transmission by that surface is unlikely.~~

~~(18)(17) "School age" means kindergarten and older age children.~~

~~(19)(18) "Sexual abuse" means abuse as provided in Utah Code, Section 76-5-404.1.~~

~~(20)(19) "Sexually explicit material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).~~

~~(21)(20) "Sleeping equipment" means a cot, mat, crib, bassinet, porta-crib, play pen, or bed.~~

~~(22)(21) "Stationary play equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:~~

~~(a) a sandbox;~~

~~(b) a stationary circular tricycle;~~

~~(c) a sensory table; or~~

~~(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.~~

~~(23)(22) "Strangulation hazard" means something on a component of playground equipment on which a child's clothes or something around a child's neck could become caught [on a component of playground equipment]. For example, bolt ends that extend more than two threads beyond the face of the nut, hardware configurations that form a hook or leave a gap or space between components, and open "S" type hooks.~~

~~(24)(23) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.~~

~~(25)(24) "Substitute" means a person who assumes the certificate holder's duties under this rule when the certificate holder is not present. This includes emergency substitutes.~~

~~(26)(25) "Toddler" means a child aged 12 months but less than 24 months.~~

~~(27)(26) "Unrelated children" means children who are not related children.~~

~~(28)(27) "Use zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.~~

~~(29)(28) "Volunteer" means a person who provides direct care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio.~~

R430-50-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) For certificate holders who receive an initial certificate after 1 September 2008, the outdoor play area shall have at least 40 square feet of space for each child using the space at one time.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or within a solid natural barrier that is at least 4 feet high if:

(a) the certificate holder's home is located on a street with a speed limit higher than 25 miles per hour, or within half a mile of a street with a speed limit higher than 25 miles per hour; or

(b) the certificate holder's home is located on a street with more than two lanes of traffic, or within half a mile of a street with more than two lanes of traffic.

(4) If any of the following hazards exist, they must be located behind a 4 foot high fence, wall, or solid barrier that separates the hazard from the children's outdoor play area:

(a) livestock on the certificate holder's property or within 50 yards of the certificate holder's property line;

(b) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on the certificate holder's property or within 100 yards of the certificate holder's property line;

(c) dangerous machinery, such as farm equipment, on the certificate holder's property or within 50 yards of the certificate holder's property line;

(d) a drop-off of more than 5 feet on the certificate holder's property or within 50 yards of the certificate holder's property line; or

(e) barbed wire within 30 feet of the children's play area.

(5) The outdoor play area shall be free of poisonous plants, harmful objects, toxic or hazardous substances, and standing water.

(6) When in use by children, the outdoor play area shall be free of trash and animal excrement.

~~[(7) If a wading pool is used:~~

~~(a) a provider must be at the pool supervising each child whenever there is water in the pool;~~

~~(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;~~

~~(c) the pool shall be emptied and sanitized after each use; and~~

~~(d) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.~~

~~(8) If there is a swimming pool on the premises that is not emptied after each use:~~

~~(a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;~~

~~(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;~~

~~(c) the certificate holder shall ensure that children are protected from unintended access to the pool in one of the following ways:~~

~~(i) the pool is enclosed within a fence or other solid barrier at least four feet high that is kept locked whenever the pool is not in use by any child in care; or~~

~~(ii) the pool has a properly working power safety cover that meets ASTM Standard F1346, and the power safety cover is in place whenever the pool is not in use by any child in care;~~

~~(d) the certificate holder shall maintain the pool in a safe manner;~~

~~(e) the certificate holder shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;~~

~~(f) if the pool is over six feet deep, there shall be a Red Cross-certified life guard on duty, or a lifeguard certified by another agency that the certificate holder can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and~~

~~(g) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.~~

~~(9) If there is a hot tub on the premises with water in it, the certificate holder shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:~~

~~(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or~~

~~(b) it shall be surrounded by a four foot fence.~~

~~(10)(7) If a fence or barrier is required in Subsections [(3), (4) or (9)(b)];(3) or (4) above, or in Subsection 12(10)(c) below, there shall be no gap greater than five inches in the fence or barrier, nor shall any gap between the bottom of the fence or barrier and the ground be greater than five inches.~~

~~[(11)](8) Certificate holders who were issued a certificate prior to 1 September 2008 who do not have a fence as required by Subsections (3), (4), or (9)(b) shall have until 1 September 2011 to meet this requirement.~~

~~[(12)](9) The outdoor play area shall have a shaded area to protect each child from excessive sun and heat.~~

~~[(13)](10) An outdoor source of drinking water, such as individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to each child whenever the outside temperature is 75 degrees or higher.~~

~~[(14) If there is a trampoline on the premises that is accessible to any child in care, the certificate holder shall ensure compliance with the following requirements:~~

~~(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.~~

~~(b) Only one person at a time may use a trampoline.~~

~~(c) No child in care shall be allowed to do somersaults or flips on the trampoline.~~

~~(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.~~

~~(e) The trampoline must be placed at least 6 feet away from any structure, including playground equipment, trees, and fences.~~

~~(f) There shall be no ladders near the trampoline.~~

~~(g) No child in care shall be allowed to play under an above-ground trampoline when it is in use.~~

~~(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.~~

~~(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame.~~

~~_____ (15) Outdoor stationary play equipment used by any child in care shall be located over grass or 6" of protective cushioning. If sand, gravel, or shredded tires are used as protective cushioning, the certificate holder shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the required depth. (11) Stationary play equipment used by any child in care shall not be located over hard surfaces such as cement, asphalt, or packed dirt.~~

(12) The certificate holder shall ensure that children using outdoor play equipment use it safely and in the manner intended by the manufacturer.

~~[(16)](13)~~ There shall be no openings of a size greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment where the feet of any child in care whose head is entrapped in the opening cannot touch the ground.

~~[(17)](14)~~ There shall be no ~~[protrusion hazard or]~~ strangulation hazard on, within the use zone of, [in] or adjacent to the use zone of any piece of stationary play equipment.

~~[(18)](15)~~ There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, [in] or adjacent to the use zone of any piece of stationary play equipment.

~~[(19)](16)~~ The certificate holder shall ensure that outdoor play areas and outdoor play equipment are maintained to protect each child's safety.

R430-50-7. Personnel.

(1) The certificate holder and all substitutes must:

- (a) be at least 18 years of age; and
- (b) have knowledge of and comply with all applicable laws and rules.

(2) The certificate holder may make arrangements for a substitute who is at least 18 years old and who is capable of providing care, supervising children, and handling emergencies in the absence of the certificate holder.

(3) Substitutes who care for children an average of 10 hours per week or more shall meet the training, first aid and CPR, and TB screening requirements of this rule.

(4) In an unforeseeable emergency, such as a medical emergency requiring immediate care at a hospital or at an urgent care center or a lost child, the certificate holder may assign an emergency substitute who has not had a criminal background screening to care for the children. The certificate holder may use an emergency substitute for up to 24 hours for each emergency event.

(a) The emergency substitute shall be at least 18 years of age.

(b) The emergency substitute is not required to meet the training, first aid and CPR, and TB screening requirements of this rule.

(c) The emergency substitute cannot be a person who has been convicted of a felony or misdemeanor or has been investigated for abuse or neglect by any federal, state, or local government agency. The emergency substitute must provide a signed, written declaration to the certificate holder that he or she is not disqualified under this subsection.

(d) During the term of the emergency, the emergency substitute may be counted as a provider for the purpose of maintaining the required provider to child ratios.

(e) The certificate holder shall make reasonable efforts to minimize the time that the emergency substitute has unsupervised contact with the children in care.

(5) Any new non-emergency substitute or volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the individual's file and shall include the following topics:

- (a) specific job responsibilities;
- (b) the certificate holder's emergency and disaster plan;
- (c) the current child care certificate rules found in Sections R430-50-11 through 24;
- (d) introduction and orientation to the children in care;
- (e) a review of the information in the health assessment for each child in care;
- (f) procedure for releasing children to authorized individuals only;
- (g) proper clean up of body fluids;
- (h) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- (i) obtaining assistance in emergencies; and
- (j) if the certificate holder accepts infants or toddlers for care, orientation training topics shall also include:
 - (i) preventing shaken baby syndrome and coping with crying babies; and
 - (ii) preventing sudden infant death syndrome.

(6) Substitutes who care for children an average of 10 hours per week or more and the certificate holder shall complete a minimum of 10 hours of child care training each year, based on the certificate date. A minimum of 5 hours of the required annual training shall be face-to-face instruction.

(a) Documentation of annual training shall be kept in each individual's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(b) All non-emergency substitutes who begin employment partway through the certificate year shall complete a proportionate number of training hours based on the number of months worked prior to the certificate renewal date.

(c) Annual training hours shall include the following topics at least once every two years:

- (i) a review of all of the current child care certificate rules found in Sections R430-50-11 through 24;
- (ii) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- (iii) principles of child growth and development, including development of the brain; and
- (iv) positive guidance; and
- (d) if the certificate holder accepts infants or toddlers for care, required training topics shall also include:
 - (i) preventing shaken baby syndrome and coping with crying babies; and
 - (ii) preventing sudden infant death syndrome.

R430-50-10. Emergency Preparedness.

(1) The certificate holder shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near the telephone.

(2) The certificate holder and all substitutes who care for children an average of 10 hours per week or more shall maintain a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The certificate holder shall maintain first aid supplies in the home, including at least antiseptic, band-aids, and tweezers.

(4) The certificate holder shall have an emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) procedures to be followed if a child is missing;

(e) the name and phone number of a substitute to be called in the event the certificate holder must leave the home for any reason; and

(f) an emergency relocation site where children will be housed if the certificate holder's home is uninhabitable.

(5) The certificate holder shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(6) The certificate holder shall conduct fire evacuation drills semi-annually. Drills shall include complete exit of all children and staff from the home.

(7) The certificate holder shall document all fire drills, including:

(a) the date and time of the drill;

(b) the number of children participating;

(c) the total time to complete the evacuation; and

(d) any problems encountered.

(8) The certificate holder shall conduct drills for disasters other than fires at least once every 12 months.

(9) The certificate holder shall document all disaster drills, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, or tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(10) The certificate holder shall vary the days and times on which fire and other disaster drills are held.

R430-50-11. Supervision and Ratios.

(1) The certificate holder or a substitute shall be physically present on-site and provide care and direct supervision of each child at all times, both indoors and outdoors. Direct care and supervision of each child includes:

(a) awareness of and responsibility for each child in care, including being near enough to intervene if needed; ~~and~~

(b) ensuring that there is a provider present inside the home when a child in care is inside the home, and a provider present in the outdoor play area when a child in care is outdoors, except as allowed in subsection (2) below for school age children, and

(c) monitoring of each sleeping infant in one of the following ways:

(i) by placing each infant for sleep in a location where the infant is within sight and hearing of a provider;

(ii) by in person observation of each sleeping infant at least once every 15 minutes; or

(iii) by using a Department-approved infant sleep monitoring device.

(2) A provider shall actively supervise each child during outdoor play to minimize the risk of injury to a child. A provider may allow only school age children to play outdoors while the provider is indoors, if:

(a) a provider can hear the children playing outdoors; and

(b) the children playing outdoors are in an area completely enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(3) The certificate holder may permit a child to participate in supervised out of the home activities without the certificate holder if:

(a) the certificate holder has prior written permission from the child's parent for the child's participation; and

(b) the certificate holder has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts responsibility for the care and supervision of the child throughout the period of the out of home activity.

(4) The maximum allowed number of children in care at any one time is eight children, including no more than two children under the age of two. The number of children in care includes the providers' own children under the age of four.

(5) The total number of children in care may be further limited based on square footage, as found in Subsection R430-50-4(7) through (9).

R430-50-12. Injury Prevention.

(1) The certificate holder shall ensure that the home, outdoor play area, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The certificate holder shall ensure that the indoor environment is free of tripping hazards such as unsecured flooring or cords in walkways.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that a child could pull down on himself or herself.

(4) The following items shall be inaccessible to each child in care:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a ~~locked~~-cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, open containers of alcohol, illegal substances, and sexually explicit material;

(c) when in use: portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, ~~and~~ cords, chains, and wires long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The certificate holder shall ensure that all toxic or hazardous chemicals are stored in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) If a wading pool is used:

(a) a provider must be at the pool supervising each child whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the pool shall be emptied and sanitized after each use; and

(d) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.

(10) If there is a swimming pool on the premises that is not emptied after each use:

(a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the certificate holder shall ensure that children are protected from unintended access to the pool in one of the following ways:

(i) the pool is enclosed within a fence or other solid barrier at least four feet high that is kept locked whenever the pool is not in use by any child in care; or

(ii) the pool has a properly working power safety cover that meets ASTM Standard F1346, and the power safety cover is in place whenever the pool is not in use by any child in care;

(d) the certificate holder shall maintain the pool in a safe manner;

(e) the certificate holder shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;

(f) if the pool is over six feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the certificate holder can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and

(g) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.

(11) If there is a hot tub on the premises with water in it, the certificate holder shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:

(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or

(b) it shall be surrounded by a four foot fence.

(12) If there is a trampoline on the premises that is accessible to any child in care, the certificate holder shall ensure compliance with the following requirements:

(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.

(b) Only one person at a time may use a trampoline.

(c) No child in care shall be allowed to do somersaults or flips on the trampoline.

(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.

(e) The trampoline must be placed at least 6' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences. If the trampoline is completely enclosed within properly installed netting that is in good repair and is at least 6' tall, and that is used as specified by the manufacturer, the trampoline must be placed at least 3' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences.

(f) There shall be no ladders near the trampoline.

(g) No child in care shall be allowed to play under the trampoline when it is in use.

(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.

(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame.

R430-50-14. Child Health.

(1) The certificate holder shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All providers shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of ~~tobacco,~~ alcohol, illegal substances, or sexually explicit material on the premises or in vehicles used to transport children is prohibited any time that a child is in care.

(4) At any time when a child is in care, the provider shall ensure that tobacco is not used:

(a) in the home, garage, or any other building used by a child in care;

(b) in any vehicle that is being used to transport a child in care;

(c) within 25 feet of any entrance to the home, garage, or any other building occupied by a child in care; or

(d) in any outdoor area where a child in care plays, or within 25 feet of any outdoor area where a child in care plays.

~~(4)~~(5) The certificate holder shall not enroll any child for care without documentation of:

(a) proof of current immunizations, as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

~~[(5)](6)~~ The certificate holder shall not ~~[shall not]~~ provide ongoing care to a child without documentation of:

(a) proof of current immunizations as required by Utah law; or

(b) written documentation of an immunization exemption due to personal, medical or religious reasons.

~~[(6)](7)~~ The certificate holder shall not admit any child for care without the following written health information from the parent:

- (a) known allergies;
- (b) known food sensitivities;
- (c) acute and chronic medical conditions;
- (d) instructions for special or non-routine daily health care;

(e) current medications; and,
 (f) any other special health instructions for the certificate holder.

(8) If the parent of a child in care has informed the provider that his or her child has a food allergy or sensitivity, that child shall not be given the food or beverage they are allergic to.

~~[(7)](9)~~ The certificate holder shall ensure that each child's parent reviews, updates, and signs or initials the child's health information at least annually.

R430-50-15. Child Nutrition.

(1) If food service is provided:

(a) The certificate holder shall ensure that his or her meal service complies with local health department food service regulations.

(b) The current week's menu shall be available for parent review.

(2) The certificate holder shall ensure that each child in care is offered a meal or a snack at least once every three hours.

(3) Providers shall serve each child's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the child's hands. The provider shall not place food on a bare table.

(4) The certificate holder shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name or another unique identifier, and refrigerated if needed. Children in care shall not be served food or beverages that were brought in for another child.

R430-50-16. Infection Control.

(1) All providers and volunteers shall wash their hands with soap and running water at the following times:

- (a) before handling or preparing food or bottles;
- (b) before and after eating meals and snacks or feeding a child;

(c) after diapering each child;
 (d) after using the toilet or helping a child use the toilet;
 (e) after coming into contact with any body fluid, including breast milk;

(f) after playing with or handling animals;

(g) when coming in from outdoors; and

(h) before administering medication.

(2) The certificate holder shall ensure that each child washes his or her hands with soap and running water at the following times:

(a) before and after eating meals and snacks;

(b) after using the toilet;

(c) after coming into contact with any body fluid; and

~~[(d) after playing with animals; and~~

~~_____ (e)](d)~~ when coming in from outdoors.

(3) During outdoor play time, the requirements of Subsections (1) and (2) may be met by having each provider, volunteer, and child clean his or her hands with individual disposable wet wipes and hand sanitizer.

(4) The certificate holder shall ensure that toilet paper is accessible to each child, and that it is kept in a dispenser.

(5) The certificate holder shall ensure that children are taught proper hand washing techniques, and shall oversee hand washing whenever possible.

(6) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by a provider on more than one child. Each child's items shall be stored so that they do not touch another child's items.

(7) The certificate holder shall ensure that all washable toys and materials are cleaned and sanitized after each 5 days of use, or more often if needed.

(8) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The certificate holder shall ensure that all stuffed animals, cloth dolls, dress-up clothes, and pillows or covers are washed after each 5 days of use, or more often if needed.

(9) If a water play table or tub is used, the certificate holder shall ensure that the table or tub is washed and sanitized daily, and that each child washes his or her hands prior to engaging in the activity.

(10) All providers who provide care an average of 10 hours or more each week shall be tested for tuberculosis (TB) using a testing method and follow-up that is acceptable to the Department. Testing shall take place prior to certification, and for each substitute within two weeks of assuming duties.

(11) If the TB test is positive, the person shall provide documentation from a health care provider detailing:

- (a) the reason for the positive reaction;
- (b) whether the person is contagious; and
- (c) if needed, how the person is being treated.

(12) Persons with contagious TB shall not work with, assist with, or be present with any child in care.

(13) An individual having a medical condition which contra-indicates a TB test must provide documentation from a health care provider indicating the individual is exempt from testing, with an associated time frame, if applicable. The certificate holder shall maintain this documentation in the individual's file.

(14) A provider shall promptly change a child's clothing if the child has a toileting accident.

(15) If a child's clothing is wet or soiled from any body fluid, the certificate holder shall ensure that:

- (a) the clothing is washed and dried; or

(b) the clothing is placed in a leakproof container, labeled with the child's name, and returned to the parent.

(16) If a child uses a potty chair, the certificate holder shall ensure that it is cleaned and sanitized after each use.

(17) Except for diaper changes, which are covered in Section R430-50-23, and children's clothing that is soiled from a toileting accident, which is covered in Subsection R430-50-16(15), the certificate holder shall ensure that the following precautions are taken when cleaning up blood, urine, feces, vomit, and breast milk.

(a) The person cleaning up the substance shall wear waterproof gloves;

(b) the surface shall be cleaned using a detergent solution;

(c) the surface shall be rinsed with clean water;

(d) the surface shall be sanitized;

(e) if disposable materials such as paper towels or other absorbent materials are used to clean up the body fluid, they shall be disposed of in a leakproof plastic bag;

(f) if non-disposable materials, such as a cleaning cloth, mop, or re-usable rubber gloves are used to clean up the body fluid, they shall be washed and sanitized before reuse; and

(g) the person cleaning up the fluid shall wash his or her hands after cleaning up the body fluid.

(18) The certificate holder shall ensure that any child who is ill with an infectious disease is separated from any other children in care in a safe, supervised location.

(19) The certificate holder shall ensure that a parent of any child who becomes ill after arrival is contacted as soon as the illness is observed or suspected.

(20) The certificate holder shall ensure that the parents of every child in care are informed when any person in the home or child in care has an infectious disease or parasite. Parents shall be notified the day the infectious disease or parasite is discovered.

R430-50-17. Medications.

(1) Only a provider trained in the administration of medications as specified in this rule may administer medication to a child in care.

(2) All over-the-counter and prescription medications shall:

(a) be labeled with the child's name;

(b) be kept in the original or pharmacy container;

(c) have the original label; and,

(d) have child-safety caps.

(3) The certificate holder shall ensure that all non-refrigerated over-the-counter and prescription medication is inaccessible to children. The certificate holder shall ensure that all refrigerated over-the-counter and prescription medication is placed in a waterproof container to avoid contamination between food and medication.

(4) The certificate holder shall have a written medication permission form completed and signed by the parent prior to the administering of any over-the-counter or prescription medication brought in by a parent for his or her child. The permission form must include:

(a) the name of the child;

~~(a)~~(b) the name of the medication;

~~(b)~~(c) written instructions for administration; including:

(i) the dosage;

(ii) the method of administration;

(iii) the times and dates to be administered; and

(iv) the disease or condition being treated; and

~~(e)~~(d) the parent signature and the date signed.

(5) If the certificate holder keeps over-the-counter medication that is not brought in by a parent for his or her child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

(a) prior written consent; or

(b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent signs upon picking up the child.

(6) When administering medication, the person administering the medication shall:

(a) wash his or her hands;

(b) if the parent supplies the medication, check the medication label to confirm the child's name;

(c) if the parent supplies the medication, compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;

(d) if the certificate holder supplies the medication, check the product package to ensure that a child is not given a dosage larger than that recommended by the manufacturer;

(e) administer the medication; and

(f) immediately record the following information:

(i) the date, time, and dosage of the medication given;

(ii) the signature or initials of the provider who administered the medication; and,

(iii) any errors in administration or adverse reactions.

(7) The certificate holder shall ensure that any adverse reaction to a medication or any error in administration is reported to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

(8) The certificate holder shall not keep medications in the home for any child who is no longer enrolled.

R430-50-20. Activities.

(1) The certificate holder shall offer daily activities to support each child's healthy physical, social-emotional, and cognitive-language development.

(2) The certificate holder shall ensure that the toys and equipment necessary to carry out the activities are accessible to children.

(3) If off-site activities are offered:

(a) the certificate holder shall obtain parental consent for off-site activities in advance;

(b) the certificate holder shall accompany the children and shall take a copy of each child's admission form as specified in R430-50-9(2)(a).

(c) the certificate holder shall maintain required provider to child ratios and direct supervision during the activity;

(d) at least one provider present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification~~[-]~~. Equivalent CPR certification must include hands-on testing. [a]And

(e) the certificate holder shall ensure that there is a way for each provider, volunteer, and child to wash his or her hands as specified in R430-50-16(1) and (2). If there is no source of running water, providers, volunteers, and children may clean their hands with individual disposable wet wipes and hand sanitizer.

(4) If off-site swimming activities are offered, providers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the provider to child ratio.

R430-50-24. Infant and Toddler Care.

If the certificate holder cares for infants or toddlers, the following applies:

(1) If an infant is not able to sit upright and hold his or her own bottle, a provider shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) A provider shall clean and sanitize high chair trays prior to each use.

(3) A provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. A provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) If there is more than one infant or toddler in care, baby food, formula, and breast milk for each child that is brought from home must be labeled with the child's name or another unique identifier.

(5) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:

(a) kept refrigerated if needed; and

(b) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(6) The certificate holder shall ensure that formula and milk, including breast milk, is discarded after each feeding, or within two hours of initiating a feeding.

(7) To prevent burns, a provider shall shake each heated bottle and test it for temperature before the bottle is fed to a child.

(8) If there is more than one infant or toddler in care, pacifiers and bottles shall be:

(a) labeled with each child's name or another unique identifier; or

(b) washed and sanitized after each individual use, before use by another child.

(9) The certificate holder shall ensure that only one infant or toddler occupies any one piece of equipment, such as a crib, playpen, stroller, or swing, at any time, unless the equipment has individual seats for more than one child.

(10) The certificate holder shall ensure that infants sleep in equipment designed for sleep, such as a crib, bassinet, porta-crib or play pen. The certificate holder shall ensure that infants are not placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment, unless the certificate holder has written permission from the infant's parent.

(11) The certificate holder shall ensure that each crib used by a child in care:

(a) has a tight fitting mattress;

(b) has slats spaced no more than 2-3/8 inches apart;

(c) has at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance; and

(d) does not have strings, cords, ropes, or other entanglement hazards strung upon the crib rails or within reach of the child.

(12) The certificate holder shall ensure that infants are not placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(13) The certificate holder shall ensure that each infant and toddler is allowed to follow his or her own pattern of sleeping and eating.

(14) Infant walkers with wheels are prohibited.

(15) The certificate holder shall ensure that infants and toddlers do not have access to objects made of styrofoam.

(16) The certificate holder shall ensure that a provider responds as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(17) The certificate holder shall ensure that awake infants and toddlers receive positive physical stimulation and positive verbal interaction with a provider at least once every 20 minutes.

(18) The certificate holder shall ensure that awake infants and toddlers are not confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(19) The certificate holder shall ensure that mobile infants and toddlers have freedom of movement in a safe area.

(20) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. The certificate holder shall ensure that there are enough toys for each child in the group to be engaged in play with toys.

(21) The certificate holder shall ensure that all toys used by infants and toddlers are cleaned and sanitized:

(a) weekly;

(b) after being put in a child's mouth before another child uses it; and

(c) after being contaminated by any body fluid.

KEY: child care facilities

Date of Enactment or Last Substantive Amendment:
[September 1, 2008]2010

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Health, Health Systems Improvement, Child Care Licensing

R430-90

Licensed Family Child Care

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34030

FILED: 09/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: New rules for Licensed Family Child Care Providers went into effect in September of 2008. Since that time all providers have now had at least one inspection under the new rules. The purpose of this amendment is to address questions and issues that have arisen as the new rules have been implemented.

SUMMARY OF THE RULE OR CHANGE: This rule change: 1) clarifies that "over-the-counter" medication include vitamins and herbal supplements; 2) removes the requirement that there be ASTM approved cushioning material under outdoor play equipment; 3) moves the requirements for swimming pools, wading pools, hot tubs, and trampolines from the Outdoor Environment section of the rule to the Injury Prevention section of the rule to better clarify that the requirements apply whether the pool, trampoline, etc. is indoors or outdoors; 4) clarifies that the requirement that there be no strangulation, crush, shearing, and sharp edge hazards within the use zone of outdoor play equipment includes the equipment itself; 5) clarifies that the required annual training hours must be in child care related training; 6) clarifies that CPR certification must include a hands-on testing component; 7) allows a second caregiver, if the Licensee has one, to document fire and disaster drills; 8) clarifies the requirement for indoor and outdoor supervision of children; 9) clarifies the requirements related to tripping hazards, locking of firearms, and strangulation hazards; 10) replaces the requirement for child sign-in and sign-out records with a more simple daily attendance record; 11) makes the rules related to smoking more closely parallel the Utah Indoor Clean Air Act; 12) clarifies that children cannot be served foods they are allergic to, or foods brought in for another child; 13) removes the requirement for handwashing after touching a pet; 14) clarifies the medication training requirement and requires the child's name to be on the medication authorization form if a child is to be given medication; 15) allows a second qualified caregiver, if the Licensee has one, to take children on field trips; and 16) clarifies the requirement for washing toys that have been placed in a child's mouth.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Training on these rules and implementation on the standards can be handled in the normal course of business. Therefore, the Division does not anticipate any cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** No local governments operate in-home child care programs, therefore neither a cost or a savings is anticipated to local governments.
- ◆ **SMALL BUSINESSES:** All child care programs are small businesses. The proposed rule changes have been reviewed with our Advisory Committee. There may be an anticipated savings to some providers who would no longer have to have ASTM-approved cushioning material underneath their

outdoor play equipment. The Division does not anticipate any other significant costs or savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Since all child care programs regulated by this rule are small businesses, this rule is inapplicable for this category and there is no anticipated cost or savings to any of these entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be an anticipated savings to some providers who would no longer have to have ASTM-approved cushioning material underneath their outdoor play equipment. The Division does not anticipate any other significant costs or savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This update to the rule will generate potential small savings for regulated business as requirements are simplified.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE 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:

- ◆ Teresa Whiting by phone at 801-538-6320, by FAX at 801-538-6325, or by Internet E-mail at twhiting@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2011

AUTHORIZED BY: David Sundwall, MD, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-90. Licensed Family Child Care.

R430-90-1. Legal Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. This rule establishes standards for the operation and maintenance of licensed family child care providers who care for one to 16 children in their home. It establishes minimum requirements for the health and safety of children in the care of licensed family providers.

R430-90-2. Definitions.

(1) "Body fluid" means blood, urine, feces, vomit, mucus, saliva, or breast milk.

(2) "Caregiver" means a person in addition to the licensee or substitute, including an assistant caregiver, who provides direct care to a child in care.

(3) "Department" means the Utah Department of Health.

(4) "Emotional abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(5) "Health care provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(6) "Inaccessible to children" means:

(a) locked, such as in a locked room, cupboard or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf more than 36 inches above the floor; or

(e) not in any location in a bathroom where a child could reach, including by climbing on a toilet, bathtub, or counter.

(7) "Infant" means a child aged birth through 11 months of age.

(8) "Infectious disease" means an illness that is capable of being spread from one person to another.

(9) "Licensee" means the person holding a Department of Health child care license.

(10) "Over-the-counter medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.

(11) "Parent" means the parent or legal guardian of a child in care.

(12) "Physical abuse" means causing nonaccidental physical harm to a child.

(13) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

~~[(14)](14) "Protective cushioning" means stationary play equipment cushioning material that is approved by the American Society for Testing and Materials or the Consumer Products Safety Commission. For example, sand, pea gravel, engineered wood fibers, shredded tires, or unitary cushioning material, such as rubber mats or poured rubber-like material.~~

~~[(15)](15) "Protrusion hazard" means a component or piece of hardware that could impale or cut a child if the child falls against it.~~

~~[(16)](14) "Provider" means the licensee, a substitute, a caregiver, or an assistant caregiver.~~

~~[(17)](15) "Related children" means children for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.~~

~~[(18)](16) "Sanitize" means to reduce the number of germs on a surface to such a level that disease transmission by that surface is unlikely.~~

~~[(19)](17) "School age" means kindergarten and older age children.~~

~~[(20)](18) "Sexual abuse" means abuse as provided in Utah Code, Section 76-5-404.1.~~

~~[(21)](19) "Sexually explicit material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).~~

~~[(22)](20) "Sleeping equipment" means a cot, mat, crib, bassinet, porta-crib, play pen, or bed.~~

~~[(23)](21) "Stationary play equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring~~

rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

~~[(24)](22) "Strangulation hazard" means something on a component of playground equipment on which a child's clothes or something around a child's neck could become caught[~~—on a component of playground equipment~~]. For example, bolt ends that extend more than two threads beyond the face of the nut, hardware configurations that form a hook or leave a gap or space between components, and open "S" type hooks.~~

~~[(25)](23) "Substitute" means a person who assumes either the licensee's or a caregiver's duties under this rule when the licensee or caregiver is not present. This includes emergency substitutes.~~

~~[(26)](24) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.~~

~~[(27)](25) "Toddler" means a child aged 12 months but less than 24 months.~~

~~[(28)](26) "Unrelated children" means children who are not related children.~~

~~[(29)](27) "Use zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.~~

~~[(30)](28) "Volunteer" means a person who provides direct care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio.~~

R430-90-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the space at one time.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or within a solid natural barrier that is at least 4 feet high if:

(a) the licensee's home is located on a street with a speed limit higher than 25 miles per hour, or within half a mile of a street with a speed limit higher than 25 miles per hour; or

(b) the licensee's home is located on a street with more than two lanes of traffic, or within half a mile of a street with more than two lanes of traffic.

(4) If any of the following hazards exist, they must be located behind a 4 foot high fence, wall, or solid barrier that separates the hazard from the children's outdoor play area:

(a) livestock on the licensee's property or within 50 yards of the licensee's property line;

(b) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on the licensee's property or within 100 yards of the licensee's property line;

(c) dangerous machinery, such as farm equipment, on the licensee's property or within 50 yards of the licensee's property line;

(d) a drop-off of more than five feet on the licensee's property or within 50 yards of the licensee's property line; or

(e) barbed wire within 30 feet of the children's play area.

(5) The outdoor play area shall be free of poisonous plants, harmful objects, toxic or hazardous substances, and standing water.

(6) When in use by a child in care, the outdoor play area shall be free of trash and animal excrement.

~~[(7) If a wading pool is used:~~

~~(a) a provider must be at the pool supervising each child whenever there is water in the pool;~~

~~(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;~~

~~(c) the pool shall be emptied and sanitized after each use; and~~

~~(d) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.~~

~~(8) If there is a swimming pool on the premises that is not emptied after each use:~~

~~(a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;~~

~~(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;~~

~~(c) the licensee shall ensure that children in care are protected from unintended access to the pool in one of the following ways:~~

~~(i) the pool is enclosed within a fence or other solid barrier at least four feet high that is kept locked whenever the pool is not in use by any child in care; or~~

~~(ii) the pool has a properly working power safety cover that meets ASTM Standard F1346, and the power safety cover is in place whenever the pool is not in use by any child in care;~~

~~(d) the licensee shall maintain the pool in a safe manner;~~

~~(e) the licensee shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;~~

~~(f) if the pool is over six feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and~~

~~(g) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.~~

~~(9) If there is a hot tub on the premises with water in it, the licensee shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:~~

~~(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or~~

~~(b) it shall be surrounded by a four foot fence.~~

~~[(10)](7) If a fence or barrier is required in Subsections [(3), (4) or (9)(b)];(3) or (4) above, or Subsection 12(10)(c) below, there shall be no gap greater than five inches in the fence or barrier, nor shall any gap between the bottom of the fence or barrier and the ground be greater than five inches.~~

~~[(11)](8) Licensees licensed prior to 1 September 2008 who do not have a fence as required by Subsections (3), (4), or (9) (b) shall have until 1 September 2011 to meet this requirement.~~

~~[(12)](9) The outdoor play area shall have a shaded area to protect each child from excessive sun and heat.~~

~~[(13)](10) An outdoor source of drinking water, such as individually labeled water bottles or a pitcher of water and individual cups that are taken outside, shall be available to each child whenever the outside temperature is 75 degrees or higher.~~

~~[(14) If there is a trampoline on the premises that is accessible to any child in care, the licensee shall ensure compliance with the following requirements:~~

~~(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.~~

~~(b) Only one person at a time may use a trampoline.~~

~~(c) No child in care shall be allowed to do somersaults or flips on the trampoline.~~

~~(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.~~

~~(e) The trampoline must be placed at least 6 feet away from any structure, including playground equipment, trees, and fences.~~

~~(f) There shall be no ladders near the trampoline.~~

~~(g) No child in care shall be allowed to play under an above ground trampoline when it is in use.~~

~~(h) A parent of each child in care who uses the trampoline shall sign a Department approved permission form before his or her child uses the trampoline.~~

~~(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame.~~

~~(15) Outdoor stationary play equipment used by any child in care shall be located over grass or 6" of protective cushioning, in a 3' use zone.~~

~~(a) If sand, gravel, or shredded tires are used as protective cushioning, the licensee shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the required depth.~~

~~(b) The licensee shall have until 1 September 2013 to meet the 3' use zone requirement.](11) Stationary play equipment used by any child in care shall not be located over hard surfaces such as cement, asphalt, or packed dirt, and shall have a 3' use zone. The licensee shall have until 1 September 2013 to meet the 3' use zone requirement.~~

~~(12) The licensee shall ensure that children using outdoor play equipment use it safely and in the manner intended by the manufacturer.~~

~~[(16)](13) There shall be no openings of a size greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on or within the use zone of any piece of stationary play equipment where the feet of any child in care whose head is entrapped in the opening cannot touch the ground.~~

~~[(17)](14) There shall be no [protrusion hazard or] strangulation hazard on, within the use zone of, [in] or adjacent to the use zone of any piece of stationary play equipment.~~

~~[(18)](15) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, [in] or adjacent to the use zone of any piece of stationary play equipment.~~

~~[(19)](16) There shall be no tripping hazards, such as concrete footings, tree stumps, exposed tree roots, or rocks within the use zone of any piece of stationary play equipment.~~

~~[(20)](17) The licensee shall ensure that outdoor play areas and outdoor play equipment are maintained to protect each child's safety.~~

R430-90-7. Personnel.

- (1) The licensee and all substitutes and caregivers must:
- be at least 18 years of age; and
 - have knowledge of and comply with all applicable laws and rules.
- (2) All assistant caregivers shall:
- be at least 16 years of age;
 - work under the immediate supervision of a provider who is at least 18 years of age; and
 - have knowledge of and comply with all applicable laws and rules.
- (3) Assistant caregivers may be included in provider to child ratios, but only if there is also another provider present in the home who is 18 years of age or older.
- (4) Assistant caregivers shall meet the training and TB screening requirements of this rule.
- (5) The licensee may make arrangements for a substitute who is at least 18 years old and who is capable of providing care, supervising children, and handling emergencies in the absence of the licensee.
- (6) Substitutes who care for children an average of 10 hours per week or more shall meet the training, first aid and CPR, and TB screening requirements of this rule.
- (7) In an unforeseeable emergency, such as a medical emergency requiring immediate care at a hospital or at an urgent care center or a lost child, the licensee may assign an emergency substitute who has not had a criminal background screening to care for the children. A licensee may use an emergency substitute for up to 24 hours for each emergency event.
- The emergency substitute shall be at least 18 years of age.
 - The emergency substitute is not required to meet the training, first aid and CPR, and TB screening requirements of this rule.
 - The emergency substitute cannot be a person who has been convicted of a felony or misdemeanor or has been investigated for abuse or neglect by any federal, state, or local government agency. The emergency substitute must provide a signed, written declaration to the licensee that he or she is not disqualified under this subsection.
 - During the term of the emergency, the emergency substitute may be counted as a provider for the purpose of maintaining the required provider to child ratios.
 - The licensee shall make reasonable efforts to minimize the time that the emergency substitute has unsupervised contact with the children in care.
- (8) Any new caregiver, volunteer, or non-emergency substitute shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the individual's file and shall include the following topics:
- specific job responsibilities;
 - the licensee's written policies and procedures;
 - the licensee's emergency and disaster plan;
 - the current child care licensing rules found in Sections R430-90-11 through 24;
 - introduction and orientation to the children in care;
 - a review of the information in the health assessment for each child in care;

- procedure for releasing children to authorized individuals only;
- proper clean up of body fluids;
- signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- obtaining assistance in emergencies; and
- if the licensee accepts infants or toddlers for care, orientation training topics shall also include:
 - preventing shaken baby syndrome and coping with crying babies; and
 - preventing sudden infant death syndrome.
- Substitutes who care for children an average of 10 hours per week or more, the licensee, and all caregivers shall complete a minimum of 20 hours of child care training each year, based on the license date. A minimum of 10 hours of the required annual training shall be face-to-face instruction.
 - Documentation of annual training shall be kept in each individual's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.
 - All caregivers and non-emergency substitutes who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the relicensure date.
 - Annual training hours shall include the following topics at least once every two years:
 - a review of all of the current child care licensing rules found in Sections R430-90-11 through 24;
 - a review of the licensee's written policies and procedures and emergency and disaster plan, including any updates;
 - signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
 - principles of child growth and development, including development of the brain; and
 - positive guidance; and
 - if the licensee accepts infants or toddlers for care, required training topics shall also include:
 - preventing shaken baby syndrome and coping with crying babies; and
 - preventing sudden infant death syndrome.

R430-90-10. Emergency Preparedness.

- (1) The licensee shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near the telephone.
- (2) The licensee and all substitutes who care for children an average of 10 hours per week or more shall maintain a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.
- (3) The licensee shall maintain first-aid supplies in the home, including at least antiseptic, band-aids, and tweezers.
- (4) The licensee shall have a written emergency and disaster plan which shall include at least the following:
- procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

- (b) procedures for responding to fire, earthquake, flood, power failure, and water failure;
 - (c) the location of and procedure for emergency shut off of gas, electricity, and water;
 - (d) procedures to be followed if a child is missing;
 - (e) the name and phone number of a substitute to be called in the event the licensee must leave the home for any reason;
 - (f) an emergency relocation site where children will be housed if the licensee's home is uninhabitable;
 - (g) provisions for emergency supplies, including at least food, water, a first aid kit, and diapers if the licensee accepts diapered children for care; and
 - (h) procedures for ensuring adequate supervision of children during emergency situations, including while at the emergency relocation site.
- (5) The licensee shall ensure that the emergency and disaster plan is followed in the event of an emergency.
- (6) The licensee shall review the emergency and disaster plan annually, and update it as needed. The licensee shall note the date of reviews and updates to the plan on the plan.
- (7) The emergency and disaster plan shall be available for immediate review by parents and the Department during business hours.
- (8) The licensee shall conduct fire evacuation drills quarterly. Drills shall include complete exit of all children and staff from the home.
- (9) ~~The licensee~~ A provider shall document all fire drills, including:
- (a) the date and time of the drill;
 - (b) the number of children participating;
 - (c) the total time to complete the evacuation; and
 - (d) any problems encountered.
- (10) The licensee shall conduct drills for disasters other than fires at least once every 12 months.
- (11) ~~The licensee~~ A provider shall document all disaster drills, including:
- (a) the type of disaster, such as earthquake, flood, prolonged power outage, or tornado;
 - (b) the date and time of the drill;
 - (c) the number of children participating;
 - (d) the total time to complete the evacuation; and
 - (e) any problems encountered.
- (12) The licensee shall vary the days and times on which fire and other disaster drills are held.

R430-90-11. Supervision and Ratios.

- (1) The licensee or a substitute shall be physically present on-site and provide care and direct supervision of each child at all times, both indoors and outdoors. Direct care and supervision of each child includes:
- (a) awareness of and responsibility for each child in care, including being near enough to intervene if needed; ~~and~~
 - (b) ensuring that there is a provider present inside the home when a child in care is inside the home, and there is a provider present in the outdoor play area when a child in care is outdoors, except as allowed in subsection (2) below for school age children; and
 - (c) monitoring of each sleeping infant in one of the following ways:

- (i) by placing each infant for sleep in a location where the infant is within sight and hearing of a provider;
 - (ii) by in person observation of each sleeping infant at least once every 15 minutes; or
 - (iii) by using a Department-approved infant sleep monitoring device.
- (2) A provider shall actively supervise each child during outdoor play to minimize the risk of injury to a child. A provider may allow only school age children to play outdoors while the provider is indoors, if:
- (a) a provider can hear the children playing outdoors; and
 - (b) the children playing outdoors are in an area completely enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.
- (3) The licensee may permit a child to participate in supervised out of the home activities without the licensee if:
- (a) the licensee has prior written permission from the child's parent for the child's participation; and
 - (b) the licensee has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts responsibility for the care and supervision of the child throughout the period of the out of home activity.
- (4) The maximum allowed capacity for a licensed family child care facility is 16 children, including providers' own children under age four.
- (5) The licensee shall maintain a provider to child ratio of one provider for up to eight children in care, and two providers for nine to sixteen children in care.
- (a) Children in care include the providers' own children under the age of four.
 - (b) Providers who are included in the provider to child ratio must meet all of the requirements of this rule.
- (6) There shall be no more than four children under the age of two in care with two providers; and no more than two children under the age of two in care with one provider, except that if there are six or fewer children in care, there may be up to three children under the age of two in care.
- (7) The total number of children in care may be further limited based on square footage, as found in Subsections R430-90-4(7) through (9).
- (8) The licensee shall not exceed the maximum group sizes found in Table 1 and Table 2.

TABLE 1

MAXIMUM GROUP SIZE WITH 1 PROVIDER

# of Providers' Related Children Ages 4-12 Present in the Home During Child Care Hours	Maximum Allowed Number of Children in Care, Including the Providers' Children Under Age 4	Total # of All Children Through Age 12 Present in the Home During Child Care Hours
0-4	8 children	12
5	7 children	12
6	6 children	12
7	5 children	12
8	4 children	12
9	3 children	12
10	2 children	12
11	1 child	12

TABLE 2
MAXIMUM GROUP SIZE WITH 2 PROVIDERS

# of Providers' Related Children Ages 4-12 Present in the Home During Child Care Hours	Maximum Allowed Number of Children in Care, Including the Providers' Children Under Age 4	Total # of All Children Through Age 12 Present in the Home During Child Care Hours
0-8	16 children	24
9	15 children	24
10	14 children	24
11	13 children	24
12	12 children	24
13	11 children	24
14	10 children	24
15	9 children	24
16	8 children	24
17	7 children	24
18	6 children	24
19	5 children	24
20	4 children	24
21	3 children	24
22	2 children	24
23	1 child	24

R430-90-12. Injury Prevention.

(1) The licensee shall ensure that the home, outdoor play area, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The licensee shall ensure that the indoor environment is free of tripping hazards such as unsecured flooring or cords in walkways.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that a child could pull down on himself or herself.

(4) The following items shall be inaccessible to each child in care:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a ~~locked~~-cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, open containers of alcohol, illegal substances, and sexually explicit material;

(c) when in use: portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, ~~and~~ cords, chains, and wires long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The licensee shall ensure that all toxic or hazardous chemicals are stored in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) If a wading pool is used:

(a) a provider must be at the pool supervising each child whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the pool shall be emptied and sanitized after each use; and

(d) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.

(10) If there is a swimming pool on the premises that is not emptied after each use:

(a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the licensee shall ensure that children in care are protected from unintended access to the pool in one of the following ways:

(i) the pool is enclosed within a fence or other solid barrier at least four feet high that is kept locked whenever the pool is not in use by any child in care; or

(ii) the pool has a properly working power safety cover that meets ASTM Standard F1346, and the power safety cover is in place whenever the pool is not in use by any child in care;

(d) the licensee shall maintain the pool in a safe manner;

(e) the licensee shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;

(f) if the pool is over six feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and

(g) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.

(11) If there is a hot tub on the premises with water in it, the licensee shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:

(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or

(b) it shall be surrounded by a four foot fence.

(12) If there is a trampoline on the premises that is accessible to any child in care, the licensee shall ensure compliance with the following requirements:

(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.

(b) Only one person at a time may use a trampoline.

(c) No child in care shall be allowed to do somersaults or flips on the trampoline.

(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.

(e) The trampoline must be placed at least 6' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences. If the trampoline is completely enclosed within properly installed netting that is in good repair and is at least 6' tall, and that is used as specified by the manufacturer, the trampoline must be placed at least 3' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences.

(f) There shall be no ladders near the trampoline.

(g) No child in care shall be allowed to play under the trampoline when it is in use.

(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.

(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame.

R430-90-13. Parent Notification and Child Security.

(1) The licensee shall either post or, upon enrollment, give each parent a copy of the Department's child care guide.

(2) At all times when their child is in care, parents shall have access to those areas of the licensee's home and outdoor area that are used for child care.

(3) [The licensee shall ensure that either a provider or the parent signs each child in and out daily, including the date and the time the child arrives and leaves and when the child goes to and returns from school, and the signature or initials of the person signing the child in and out.]The licensee shall ensure that a daily attendance record is maintained each day there is a child in care, to document each child's attendance.

(4) Only parents or persons with written authorization from the parent may pick up any child. In an emergency, a provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(5) The licensee shall ensure that parents are given a written report of every serious incident, accident, or injury involving their child on the day of occurrence. A provider and the person picking up the child shall sign the report to acknowledge that he or she has received it.

(6) The licensee shall ensure that parents are notified verbally of minor accidents and injuries on the day of occurrence.

(7) In the case of a life threatening incident or injury to a child, or an incident or injury that poses a threat of the loss of vision, hearing, or a limb, a provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, a provider shall attempt to contact the child's emergency contact person.

(8) If a child is injured and the injury appears serious but not life threatening, a provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

R430-90-14. Child Health.

(1) The licensee shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All providers shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of ~~to~~alcohol, illegal substances, or sexually explicit material on the premises or in vehicles used to transport children is prohibited any time that a child is in care.

(4) At any time when a child is in care, the provider shall ensure that tobacco is not used:

(a) in the home, garage, or any other building used by a child in care;

(b) in any vehicle that is being used to transport a child in care;

(c) within 25 feet of any entrance to the home, garage, or any other building occupied by a child in care; or

(d) in any outdoor area where a child in care plays, or within 25 feet of any outdoor area where a child in care plays.

[(4)](5) The licensee shall not enroll any child for care without documentation of:

(a) proof of current immunizations as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

[(5)](6) The licensee shall not provide ongoing care to a child without documentation of:

(a) proof of current immunizations as required by Utah law; or

(b) written documentation of an immunization exemption due to personal, medical or religious reasons.

[(6)](7) The licensee shall not admit any child for care without the following written health information from the parent:

(a) known allergies;

(b) known food sensitivities;

(c) acute and chronic medical conditions;

(d) instructions for special or non-routine daily health care;

(e) current medications; and

(f) any other special health instructions for the licensee.

(8) If the parent of a child in care has informed the provider that his or her child has a food allergy or sensitivity, that child shall not be given the food or beverage they are allergic to.

[(7)](9) The licensee shall ensure that each child's parent reviews, updates, and signs or initials the child's health information at least annually.

R430-90-15. Child Nutrition.

(1) If food service is provided:

(a) The licensee shall ensure that his or her meal service complies with local health department food service regulations.

(b) Foods served by license holders not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, current menus provided by the CACFP, or menus approved by a registered dietician. Dietitian

approval shall be noted and dated on the menus, and shall be current within the past 5 years.

(c) License holders not currently participating and in good standing with the CACFP shall keep a one week record of foods served at each meal or snack.

(d) The current week's menu shall be available for parent review.

(2) The licensee shall ensure that each child in care is offered a meal or a snack at least once every three hours.

(3) Providers shall serve each child's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the child's hands. Providers shall not place food on a bare table.

(4) The licensee shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name or another unique identifier, and refrigerated if needed. Children in care shall not be served food or beverages that were brought in for another child.

R430-90-16. Infection Control.

(1) All providers and volunteers shall wash their hands with soap and running water at the following times:

- (a) before handling or preparing food or bottles;
- (b) before and after eating meals and snacks or feeding a child;

(c) after diapering each child;

(d) after using the toilet or helping a child use the toilet;

(e) after coming into contact with any body fluid, including breast milk;

- (f) after playing with or handling animals;
- (g) when coming in from outdoors; and
- (h) before administering medication.

(2) The licensee shall ensure that each child washes his or her hands with soap and running water at the following times:

- (a) before and after eating meals and snacks;
- (b) after using the toilet;
- (c) after coming into contact with any body fluid; and
- ~~(d) after playing with animals; and~~
- ~~(e)~~(d) when coming in from outdoors.

(3) During outdoor play time, the requirements of Subsections (1) and (2) may be met by having each provider, volunteer, and child clean his or her hands with individual disposable wet wipes and hand sanitizer.

(4) Only single-use paper towels or individually labeled cloth towels shall be used to dry a child's hands. If cloth towels are used, they shall not be shared by children, providers, or volunteers, and a provider shall wash the towels daily.

(5) The licensee shall ensure that toilet paper is accessible to each child, and that it is kept in a dispenser.

(6) The licensee shall ensure that children are taught proper hand washing techniques, and shall oversee hand washing whenever possible.

(7) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by a provider on more than one child. Each child's items shall be stored so that they do not touch another child's items.

(8) The licensee shall ensure that all washable toys and materials are cleaned and sanitized after each 5 days of use, or more often if needed.

(9) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The licensee shall ensure that all stuffed animals, cloth dolls, dress-up clothes, and pillows or covers are washed after each 5 days of use, or more often if needed.

(10) If a water play table or tub is used, the licensee shall ensure that the table or tub is washed and sanitized daily, and that each child washes his or her hands prior to engaging in the activity.

(11) All providers who provide care an average of 10 hours or more each week shall be tested for tuberculosis (TB) using a testing method and follow-up that is acceptable to the Department. Testing shall take place prior to licensure, and for each substitute or caregiver within two weeks of assuming duties.

(12) If the TB test is positive, the person shall provide documentation from a health care provider detailing:

- (a) the reason for the positive reaction;
- (b) whether the person is contagious; and
- (c) if needed, how the person is being treated.

(13) Persons with contagious TB shall not work with, assist with, or be present with any child in care.

(14) An individual having a medical condition which contra-indicates a TB test must provide documentation from a health care provider indicating the individual is exempt from testing, with an associated time frame if applicable. The licensee shall maintain this documentation in the individual's file.

(15) A provider shall promptly change a child's clothing if the child has a toileting accident.

(16) If a child's clothing is wet or soiled from any body fluid, the licensee shall ensure that:

- (a) the clothing is washed and dried; or
- (b) the clothing is placed in a leakproof container, labeled with the child's name, and returned to the parent.

(17) If a child uses a potty chair, the licensee shall ensure that it is cleaned and sanitized after each use.

(18) Except for diaper changes, which are covered in Section R430-90-23, and children's clothing that is soiled from a toileting accident, which is covered in Subsection R430-90-16(16), the licensee shall ensure that the following precautions are taken when cleaning up blood, urine, feces, vomit, and breast milk.

(a) The person cleaning up the substance shall wear waterproof gloves;

(b) the surface shall be cleaned using a detergent solution;

- (c) the surface shall be rinsed with clean water;
- (d) the surface shall be sanitized;

(e) if disposable materials such as paper towels or other absorbent materials are used to clean up the body fluid, they shall be disposed of in a leakproof plastic bag;

(f) if non-disposable materials, such as a cleaning cloth, mop, or re-usable rubber gloves are used to clean up the body fluid, they shall be washed and sanitized before reuse; and

(g) the person cleaning up the fluid shall wash his or her hands after cleaning up the body fluid.

(19) The licensee shall ensure that any child who is ill with an infectious disease is separated from any other children in care in a safe, supervised location.

(20) The licensee shall ensure that a parent of any child who becomes ill after arrival is contacted as soon as the illness is observed or suspected.

(21) The licensee shall ensure that the parents of every child in care are informed when any person in the home or child in care has an infectious disease or parasite. Parents shall be notified the day the infectious disease or parasite is discovered.

R430-90-17. Medications.

(1) Only a provider trained in the administration of medications as specified in this rule may administer medication to a child in care.

(2) All over-the-counter and prescription medications shall:

- (a) be labeled with the child's name;
- (b) be kept in the original or pharmacy container;
- (c) have the original label; and,
- (d) have child-safety caps.

(3) The licensee shall ensure that all non-refrigerated over-the-counter and prescription medication is inaccessible to children. The licensee shall ensure that all refrigerated over-the-counter and prescription medication is placed in a waterproof container to avoid contamination between food and medication.

(4) The licensee shall have a written medication permission form completed and signed by the parent prior to the administering of any over-the-counter or prescription medication brought in by a parent for his or her child. The permission form must include:

- (a) the name of the child;
- ~~(a)~~(b) the name of the medication;
- ~~(b)~~(c) written instructions for administration; including:
 - (i) the dosage;
 - (ii) the method of administration;
 - (iii) the times and dates to be administered; and
 - (iv) the disease or condition being treated; and
- ~~(c)~~(d) the parent's signature and the date signed.

(5) If the licensee keeps over-the-counter medication that is not brought in by a parent for his or her child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

- (a) prior written consent; or
- (b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent signs upon picking up the child.

(6) When administering medication, the person administering the medication shall:

- (a) wash his or her hands;
- (b) if the parent supplies the medication, check the medication label to confirm the child's name;
- (c) if the parent supplies the medication, compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;

(d) if the licensee supplies the medication, check the product package to ensure that a child is not given a dosage larger than that recommended by the manufacturer;

- (e) administer the medication; and
- (f) immediately record the following information:

(i) the date, time, and dosage of the medication given;

(ii) the signature or initials of the provider who administered the medication; and,

(iii) any errors in administration or adverse reactions.

(7) The licensee shall ensure that any adverse reaction to a medication or any error in administration is reported to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

(8) The licensee shall not keep medications in the home for any child who is no longer enrolled.

R430-90-20. Activities.

(1) The licensee shall develop a daily activity plan that offers activities to support each child's healthy physical, social-emotional, and cognitive-language development.

(2) The licensee shall ensure that the toys and equipment needed to carry out the activity plan are accessible to children.

(3) If off-site activities are offered:

(a) the licensee shall obtain parental consent for off-site activities in advance;

(b) ~~the licensee~~ a provider who meets all of the caregiver requirements of this rule shall accompany the children and shall take a copy of each child's admission form as specified in Subsection R430-90-9(2)(a).

(c) ~~the licensee~~ a provider shall maintain required provider to child ratios and direct supervision during the activity;

(d) at least one provider present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification[;]. Equivalent CPR certification must include hands-on testing. ~~[a]~~ And

(e) ~~the licensee~~ a provider shall ensure that there is a way for each provider, volunteer, and child to wash his or her hands as specified in R430-90-16(1) and (2). If there is no source of running water, providers, volunteers, and children may clean their hands with individual disposable wet wipes and hand sanitizer.

(4) If off-site swimming activities are offered, providers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the provider to child ratio.

R430-90-21. Transportation.

(1) Any vehicle used for transporting any child in care shall:

- (a) be enclosed;
- (b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;
- (c) be maintained in a safe condition and have a current vehicle registration and safety inspection;
- (d) be maintained in a clean condition;
- (e) maintain temperatures between 60-90 degrees Fahrenheit when in use; and

(f) contain first aid supplies, including at least antiseptic, band-aids, and tweezers.

(2) At least one adult in each vehicle transporting any child in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The adult transporting any child in care shall:

(a) have and carry with him or her a current valid Utah driver's license for the type of vehicle being driven whenever he or she is transporting any child in care;

(b) have with him or her a copy of each child's admission form as specified in Subsection R430-90-9(2)(a);

(c) ensure that each child in care being transported is wearing an appropriate individual safety restraint;

(d) ensure that each child is always attended by an adult while in the vehicle;

(e) ensure that all children remain seated while the vehicle is in motion;

(f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and,

(g) ensure that the vehicle is locked during transport.

R430-90-24. Infant and Toddler Care.

If the licensee accepts infants or toddlers for care, the following applies:

(1) If an infant is not able to sit upright and hold his or her own bottle, a provider shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) A provider shall clean and sanitize high chair trays prior to each use.

(3) A provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. A provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) If there is more than one infant or toddler in care, baby food, formula, and breast milk for each child that is brought from home must be labeled with the child's name or another unique identifier.

(5) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:

(a) kept refrigerated if needed; and

(b) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(6) The licensee shall ensure that formula and milk, including breast milk, is discarded after each feeding, or within two hours of initiating a feeding.

(7) To prevent burns, a provider shall shake each heated bottle and test it for temperature before the bottle is fed to a child.

(8) If there is more than one infant or toddler in care, pacifiers and bottles shall be:

(a) labeled with each child's name or another unique identifier; or

(b) washed and sanitized after each individual use, before use by another child.

(9) The licensee shall ensure that only one infant or toddler occupies any one piece of equipment, such as a crib, playpen, stroller, or swing, at any time, unless the equipment has individual seats for more than one child.

(10) The licensee shall ensure that infants sleep in equipment designed for sleep, such as a crib, bassinet, porta-crib or play pen. The licensee shall ensure that infants are not placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment, unless the licensee has written permission from the infant's parent.

(11) The licensee shall ensure that each crib used by a child in care:

(a) has a tight fitting mattress;

(b) has slats spaced no more than 2-3/8 inches apart;

(c) has at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance; and

(d) does not have strings, cords, ropes, or other entanglement hazards strung upon the crib rails or within reach of the child.

(12) The licensee shall ensure that infants are not placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(13) The licensee shall ensure that each infant and toddler is allowed to follow his or her own pattern of sleeping and eating.

(14) Infant walkers with wheels are prohibited.

(15) The licensee shall ensure that infants and toddlers do not have access to objects made of styrofoam.

(16) The licensee shall ensure that a provider responds as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(17) The licensee shall ensure that awake infants and toddlers receive positive physical stimulation and positive verbal interaction with a provider at least once every 20 minutes.

(18) The licensee shall ensure that awake infants and toddlers are not confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(19) The licensee shall ensure that mobile infants and toddlers have freedom of movement in a safe area.

(20) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. The licensee shall ensure that there are enough toys for each child in the group to be engaged in play with toys.

(21) The licensee shall ensure that all toys used by infants and toddlers are cleaned and sanitized:

(a) weekly;

(b) after being put in a child's mouth before another child uses it; and

(c) after being contaminated by any body fluid.

KEY: child care facilities

Date of Enactment or Last Substantive Amendment:
[September 1, 2008]2010

Notice of Continuation: June 6, 2008

Authorizing, and Implemented or Interpreted Law: 26-39

**Housing Corporation (Utah),
Administration
R460-3
Programs of UHC**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34019

FILED: 08/26/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for the amendment to this rule is to eliminate obsolete practices and add clarifying language to define more clearly the scope and administration of Utah Housing Corporation's (UHC) current program offerings. The amendment reflects changes in the mortgage loan and low-income housing tax credit industries as well as efforts made to streamline and increase efficiencies in administering UHC's various programs.

SUMMARY OF THE RULE OR CHANGE: Section R460-3-1 changes include: 1) the term "servicer" has been removed when referring to any lender with whom Utah Housing Corporation (UHC) conducts business. This reflects the fact that UHC services 100% of its own loans; 2) the rule is updated to reflect the use of current technology and to eliminate obsolete practices; 3) the rule contains deletions, clarifications, and updates to terminology and procedures utilized in conjunction with the reservation, commitment, and mortgage review process; and 4) clarification of what constitutes "Program Documents", as well as the procedures to be followed by UHC and the lenders with whom it conducts business in the sale and purchase of eligible mortgage loans. Section R460-3-2 changes include: 1) clarification that UHC does not have a standard multifamily mortgage program. Rather, UHC relies on developer's to engage qualified professionals to properly structure a multifamily housing project. UHC retains the right to approve or disapprove the terms of any proposed project; 2) elimination of obsolete practices regarding multifamily mortgage lenders; 3) clarify that publicly offered bonds for multifamily projects must be rated by a national rating service. The bonds may also be privately placed if approved by UHC; and 4) eliminates the section on multifamily mortgage lending as UHC no longer provides mortgage loans for multifamily projects. Section R460-3-3 verbiage has been completely deleted because UHC does not currently a home improvement loan program. The section is now "reserved". Section R460-3-4 changes include: 1) minor wording clarifications; 2) clarification that UHC may forward-allocate federal and state low income housing tax credits to complete a credit reservation, bringing in-line with the qualified allocation plan which provides administrative procedures for the tax credit program; and 3)

added clarifying language regarding the establishment and collection of tax credit program fees as well as defining the consequences of a developer being considered "not in good standing". Section R460-3-5 changes include: 1) clarification that UHC may, when conducting its due diligence, interview individuals who have been involved with a project sponsor on a previous housing development; 2) added language to allow for UHC to obtain security for repayment of a loan in any form and amount as is reasonably necessary; 3) added language to clarify that any UHC loan funded by or subject to any state or federal program will be consistent with the rules of such program; and 4) clarification that UHC may require income limits for certain projects that may be lower than the maximum income limits. In Section R460-3-6, added language to clarify that state low-income housing tax credits may be allocated to a project in conjunction with an application for federal low-income housing tax credits or at a later date, as necessary.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 9-4-910(1) and Subsection 9-4-910(5) and Subsection 9-4-911(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the rule does not apply to the state budget because Subsection 9-4-902(11)(b) states that UHC is a "financially independent body" and therefore, receives no state appropriation. Furthermore, the changes made to this rule are merely clarifying in nature and do not entail any additional program requirements.

◆ **LOCAL GOVERNMENTS:** There is no cost or savings to any local government because the changes made to this rule are merely clarifying in nature. While there is clarifying language regarding fees that may be charged to developers who participate in the Low-Income Housing Tax Credit program (including local government entities such as housing authorities), no fees have been added or deleted beyond the program documents already in place and in use for the past few years.

◆ **SMALL BUSINESSES:** There is no cost or savings to any small businesses because the changes made to this rule are merely clarifying in nature. While there is clarifying language regarding fees that may be charged to developers who participate in the Multifamily Loan Program and/or the Low-Income Housing Tax Credit program, no fees have been added or deleted beyond those specified in the program documents already in place and in use for the past few years in those programs.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost or savings to any other persons because the changes made to this rule are merely clarifying in nature. While there is clarifying language regarding fees that may be charged to developers who participate in the Multifamily Loan Program and/or the Low-Income Housing Tax Credit program, no fees have been added or deleted beyond the program documents already in place and in use for the past few years in those programs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated additional compliance costs (in addition to existing compliance costs) for persons affected by this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While there may be no demonstrable savings to be realized from the implementation of these changes, the efficiencies gained by UHC business partners through the elimination of obsolete practices and the increased use of technology may bring some incremental savings to those entities. At the least, the changes will make it easier for UHC and its business partners to more effectively fulfill UHC's mission of providing Utahns with financing for affordable housing.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HOUSING CORPORATION (UTAH)
ADMINISTRATION
2479 LAKE PARK BLVD
WEST VALLEY CITY, UT 84120
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at jhanks@uthc.org

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: Grant Whitaker, Senior Vice President

R460. Housing Corporation, Administration.

R460-3. Programs of UHC.

R460-3-1. Single-Family Mortgage Program.

(1) Eligible mortgage lender~~[and servicer]~~.

(a) To be eligible to participate in the single-family mortgage program, a mortgage lender ~~[or servicer]~~ must have as one of its principal purposes the origination of mortgage loans in its usual and regular course of business~~[- and must be, or must be affiliated with, an eligible servicer under criteria established by UHC in its program documents]~~.

(b) UHC may establish criteria that mortgage lenders ~~[and servicers]~~ must meet relating to approved mortgagee status by the Federal Housing Administration, Rural Housing Service or Department of Veterans Affairs, the financial condition of the mortgage lender~~[or servicer]~~, the number of mortgage loan originations during a period specified by UHC, the length of time a mortgage loan origination office has been maintained in the state, seller/servicer approval by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation~~[- the servicing history of the mortgage lender or servicer]~~, and other criteria as UHC deems necessary to maintain a safe and sound program and to establish that mortgage loans are a part of a mortgage lender's ~~[or servicer's]~~ usual and regular business

activities and that the mortgage lender ~~[or servicer]~~ possesses the capability to make ~~[and to service]~~ and to have adequate financial resources to fund [single-family] mortgage loans.

(c) UHC may require that mortgage lenders, ~~from time to time, [and servicers]~~ furnish to UHC ~~[a certificate of qualification and other]~~ evidence as UHC may request to confirm a mortgage lender's ~~[or servicer's]~~ eligibility to participate in the single-family mortgage program.

(d) A ~~[n-eligible]~~ mortgage lender ~~[and servicer]~~ shall employ and maintain qualified personnel to carry out the obligations arising under contracts with UHC.

(e) All transactions between a mortgage lender and UHC shall be subject to the relevant single-family mortgage program contract documents which may include the following: participation agreement, selling supplement, mortgage purchase agreement ("MPA"), notice of availability of funds, MPA request, and other documents deemed necessary by UHC ("Program Documents").

~~_____ (2) [Invitation to participate or notice of availability of funds;] Mortgage purchase agreement request; mortgage purchase agreement.~~

(a) UHC may distribute to ~~[eligible]~~ mortgage lenders via any electronic, digital, or written means, any interest rate and/or program changes affecting single-family mortgage loans ~~[invitations to participate, notices of availability of funds, or other similar documents, relating to the single-family mortgage program in anticipation of the availability of funds. Each invitation or notice may indicate any limitations on the aggregate principal amount of mortgages that may be offered to UHC and the approximate date that UHC expects to have funds available to finance mortgages].~~

(b) Mortgage lenders may submit one or more mortgage purchase agreement requests to UHC via electronic, digital or written means as specified by UHC, in which an amount of funds is requested for a specific mortgage loan that the mortgage lender is processing. ~~[Accompanying each invitation shall be an application agreement, or other similar document, to be completed by mortgage lenders and returned to UHC within the time limit specified.]~~

(c) UHC may require that each ~~[application agreement]~~ mortgage purchase agreement request submitted by a mortgage lender be accompanied by an application or other fee in an amount specified ~~[in the application agreement]~~ by UHC in its Program Documents. The fee shall not be refunded or accrue interest payable by UHC, unless otherwise specified by UHC in the ~~[invitation to participate]~~ Program Documents.

(d) Upon receipt of a mortgage purchase agreement request, UHC may deliver to the mortgage lender a mortgage purchase agreement confirming UHC's commitment to purchase the specified mortgage loan. The ~~[application]~~ mortgage purchase agreement ~~[and the obligations arising thereunder may not be revoked or withdrawn without the consent of UHC, but -]~~ shall terminate automatically if ~~[a notice of acceptance or similar document is not mailed, as evidenced by postmark, or delivered to]~~ the mortgage lender ~~[by]~~ fails to deliver all necessary Program Documents with respect to the mortgage loan to UHC on or prior to the date specified in the [application agreement] Program Documents.

~~_____ (e) UHC shall specify in its notice of acceptance the aggregate principal amount of mortgages that it agrees to finance, which amount shall constitute the commitment. If the financing of~~

mortgage loans is to be funded from the proceeds of the sale of UHC bonds, all commitments are subject to the sale of bonds by UHC.

~~(f) The mortgage lender and UHC shall confirm the commitment by executing a mortgage purchase agreement and the mortgage lender shall pay a commitment fee to UHC as specified in the invitation to participate. The mortgage purchase agreement shall be executed and delivered to UHC on or before the date specified in the notice of acceptance.~~

~~(g) When a notice of availability of funds is distributed to eligible mortgage lenders in lieu of an invitation to participate, each notice of availability of funds shall be accompanied by reservation procedures, or other similar document, setting forth the procedures by which an eligible mortgage lender may reserve funds for the purchase of mortgage loans.~~

~~(h) The reservation procedures may require that each mortgage lender, within a period of time to be designated by UHC, provide to UHC documentation with respect to a mortgage loan accompanied by a commitment fee in an amount specified by UHC, to preserve the reservation of funds. Upon receipt of such documentation, UHC may deliver to the mortgage lender a mortgage purchase agreement for each commitment reservation made.]~~

(3) Single-family mortgage loans.

(a) ~~[For each]From time to time, UHC may develop individualized single-family mortgage programs designed to meet the needs of certain populations. In such cases, UHC shall establish maximum fees that may be charged or collected, final mortgage delivery date, interest rate, and loan term. Fee requirements shall be uniformly applied to all mortgage lenders, without preference of one mortgage lender over another.~~

(b) All mortgage loans shall be made to finance single-family residential housing located in the state which conform to the requirements of the ~~[applicable]single-family mortgage program or any other requirements specified in the Program Documents.~~ ~~[All transactions between the mortgage lender and UHC shall be subject to the relevant program documents which may include the following: invitation to participate, notice of availability of funds, application agreement, notice of acceptance, reservation procedures, mortgage purchase agreement, selling agreement, servicing agreement and accounting and reporting agreement, and other program documents deemed necessary by UHC, applicable to the particular program.]~~

(c) ~~[UHC may allocate available funds among one or more participating mortgage lenders.] UHC may provide priority allocations to make mortgage financing available to persons qualified for any of UHC's single-family programs or in targeted, rural, inner city or other areas experiencing difficulty securing mortgage loans to make housing available to persons of low and moderate income.~~

(d) ~~[All mortgage loans shall conform to the requirements contained in the mortgage purchase agreement between UHC and the mortgage lender. All mortgage loans shall be secured or collateralized as required in the mortgage purchase agreement.]Each mortgage loan purchased by UHC shall conform to the credit underwriting, property valuation, hazard insurance, title insurance, mortgage insurance, security and collateralization, and all other requirements of the Program Documents. Closings or deliveries~~

~~must occur on or before the date established in Program Documents.~~ UHC shall have the right to decline to finance any mortgage loan if, in the reasonable opinion of UHC, the mortgage loan does not meet all requirements of the ~~[mortgage purchase agreement]Program Documents.~~

~~[(e) The mortgage lender shall close and deliver eligible mortgage loans to UHC for financing until the amount of the commitment has been reached. Closings or deliveries must occur on or before the date established in the mortgage purchase agreement.~~

~~(f) Each mortgage loan financed by UHC shall conform to the credit underwriting, property valuation, hazard insurance, title insurance, mortgage insurance, and all other requirements of the applicable mortgage purchase agreement.~~

~~[(4) Income limits of [mortgagors]borrowers.~~

UHC shall establish and may amend maximum income limits for low and moderate income persons eligible as ~~[mortgagors]borrowers.~~ The limits shall not exceed 140% of median income as determined by UHC. UHC shall establish and may amend the limits in open public meetings of UHC for which UHC shall give public notice as required by state law. UHC shall make information concerning the limits available to interested persons, including potential ~~[mortgagors and loan applicants]borrowers,~~ and shall incorporate the limits as terms of the ~~[mortgage purchase agreements]Program Documents.~~

(5) Acquisition cost ~~[and appraised value]limits.~~

UHC shall establish and may amend maximum acquisition cost ~~[and appraised value]limits~~ for residential housing qualified for UHC financing. The acquisition cost of residential housing is the cost of acquiring a completed residential housing unit and shall include all amounts paid in cash or in kind for all structures, fixtures, improvements, and land. ~~[The appraised value limits shall not exceed the applicable acquisition cost limits by more than \$4,000.]~~UHC shall establish and may amend the limits in open public meetings of UHC for which UHC shall give public notice as required by state law. UHC shall make information concerning the maximum acquisition cost ~~[and appraised value]limits~~ available to interested persons including loan applicants and potential mortgagors, and shall incorporate the limits as terms of the ~~[mortgage purchase agreements]Program Documents.~~

(6) Assumption of single-family mortgage loans.

(a) UHC shall establish and may amend conditions and requirements for the assumption of mortgage loans. The conditions and requirements for the assumption of mortgage loans may vary between the different series of bonds and mortgage insurers or guarantors under which the various mortgage loans have been ~~[financed]purchased.~~

(b) Conditions and requirements for the assumption of mortgage loans may include the following: acquisition cost limits for the residential housing; income limits for the assuming purchaser; the establishment of a limit, expressed as a percentage of the assuming purchaser's income, of the purchaser's monthly housing expenses; a requirement that the purchaser not own any other properties financed under any other UHC program; and any other requirements and qualifications deemed necessary or advisable by UHC. Purchasers, who assume mortgage loans, shall generally be required to satisfy the same requirements that applied to the original borrower.

(c) UHC may impose limits on the maximum amount of assumption fees that may be charged ~~[by servicers]~~ in connection with the assumption of mortgage loans.

(d) UHC may require the continuing liability of the original borrowers in connection with the assumption of mortgage loans.

(e) The required documentation for the assumption of mortgage loans may include documents deemed necessary by UHC, applicable to the particular program.

(7) Limitation of frequency of loan applications.

UHC may establish limitations on the frequency with which a Mortgage Lender, on behalf of a particular mortgage applicant or co-applicant, may request a mortgage purchase agreement~~[commitment reservation]~~ or otherwise apply for a reservation of mortgage loan funds if UHC deems a limitation to be necessary to ensure the efficient and equitable allocation of funds.

(8) Definitions.

(a) As used herein, "Mortgage Lender" shall mean a mortgage lender that UHC has determined to be an eligible mortgage lender in accordance with this Rule.

(b) As used herein, "Mortgage Loan" shall mean a loan secured by a deed of trust or mortgage on a single-family residence that UHC has determined to be an eligible mortgage loan in accordance with this Rule.

R460-3-2. Multifamily Mortgage Programs.

(1) ~~[Eligible mortgage lender and servicer]~~No Standard Program.

(a) ~~UHC does not have a standard financing program for bond financed multifamily rental housing. It is the developer's responsibility to engage professionals to assist in obtaining adequate bond credit enhancement and in structuring a sale or placement of the bonds. UHC, as issuer, reserves the right to approve or disapprove the terms of any proposed project or the bond financing enhancement or structure.~~[To be eligible to participate in the multifamily programs, a mortgage lender or servicer must have as one of its principal purposes the origination of mortgage loans in its usual and regular course of business and must be, or must be affiliated with, an eligible servicer under criteria established by UHC in its program documents.]

(b) ~~The sole source of repayment of the bonds, including all interest and any premiums, for a multifamily rental housing project shall be the revenue sources related to the project financed by the bonds. Neither the bonds nor any interest or premium shall constitute a general indebtedness of UHC.~~[UHC may establish criteria that mortgage lenders and servicers must meet, relating to approved mortgagee status by the Federal Housing Administration, Rural Housing Service or Department of Veterans Affairs, the financial condition of the mortgage lender or servicer, the number of mortgage loan originations during a period specified by UHC, the length of time a mortgage loan origination office has been maintained in the state, seller/servicer approval by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, the servicing history of the mortgage lender or servicer, and other criteria as UHC deems necessary to maintain a safe and sound program, and to establish that mortgage loans are a part of the mortgage lender's or servicer's usual and regular business activities and that the mortgage lender or servicer possesses the

~~capability to make and service mortgage loans on multifamily developments.]~~

(c) One or more national rating services must rate publicly offered bonds issued by UHC. A minimum rating as determined by UHC is required, unless specifically waived for good cause. A type of credit enhancement backing the bonds must be in place to increase the probability that the bond holders will be repaid even if the project and its underlying mortgage loan defaults. UHC reserves the right to approve all forms of credit enhancement for the bonds. With certain restrictions, UHC may permit bonds privately placed with institutional investors to be unrated.~~[UHC may require that mortgage lenders and servicers furnish to UHC a certificate of qualification and other evidence as UHC may request to confirm a mortgage lender's or servicer's eligibility to participate in the multifamily mortgage program.]~~

(d) Publicly offered bonds issued by UHC shall be sold to underwriter(s) with the financial backing and capability to generate cash at closing equal to the amount of the bonds, regardless of whether the bonds have been resold to investors. UHC may appoint underwriters requested by the developer; however, UHC reserves the right to approve any underwriter, and may appoint co-underwriters, as it deems appropriate.~~[An eligible mortgage lender and servicer shall employ and maintain qualified personnel to carry out the obligations arising under contracts with UHC.]~~

(2) ~~[Invitation to participate or notice of availability of funds; contracts]~~Legal Opinions.

(a) UHC appoints bond counsel to render any opinion with respect to the tax exemption of the interest on the bonds.~~[UHC may distribute to eligible mortgage lenders invitations to participate, notices of availability of funds or other similar documents relating to the multifamily programs in anticipation of the availability of funds. Each invitation may indicate any limitations on the aggregate principal amount of mortgage loans that may be financed under UHC's program and the approximate date that UHC expects to have funds available to finance mortgage loans.]~~

(b) ~~[Accompanying each invitation shall be an application agreement to be completed by eligible mortgage lenders and returned to UHC within the time limit specified]~~Any other opinions regarding UHC that may be required by other parties to a bond transaction will be rendered by counsel appointed by UHC but paid for by the developer.

~~[e] UHC may require that each application agreement submitted by an eligible mortgage lender be accompanied by an application fee in an amount specified by UHC in the application agreement. The fee shall not be refunded or accrue interest payable by UHC unless otherwise specified in the invitation to participate.~~

(d) ~~The application agreement and the obligations arising thereunder may not be revoked or withdrawn by the mortgage lender without the consent of UHC but shall terminate automatically if a notice of acceptance or similar document is not mailed, as evidenced by postmark, or delivered to the mortgage lender by UHC on or prior to the date as specified in the application agreement.~~

(e) ~~UHC shall specify in its notice of acceptance the aggregate principal amount of mortgage loans that it agrees to finance, which amount shall constitute the commitment. All commitments are subject to the sale of bonds by UHC.~~

~~(f) The mortgage lender and UHC shall confirm the commitment by executing a binding contract, and the mortgage lender shall pay a commitment fee to UHC as specified in the invitation to participate. The contract shall be executed and delivered to UHC on or before the date specified in the notice of acceptance.~~

~~(3) [Multifamily mortgage loans.~~

~~(a) For each multifamily program, UHC shall establish fees, final mortgage delivery or closing date, interest rate and loan terms. Fee requirements shall be uniformly applied to all mortgage lenders or residential housing development, without preference of one mortgage lender or development over another.~~

~~(b) All mortgage loans must be made to provide financing for multifamily developments located in the state which conform to the requirements of the applicable multifamily program. All transactions between the mortgage lender and UHC shall be subject to the relevant program documents and contracts which may include the following: invitation to participate, application agreement, mortgage purchase agreement, servicing agreement, accounting and reporting agreement, deposit agreement, housing development agreement and other program documents applicable to the particular program approved by UHC.~~

~~(c) UHC may allocate available funds among one or more participating mortgage lenders. UHC may provide priority allocations to make mortgage loan financing available in targeted, rural, inner city and other areas experiencing difficulty securing mortgage loans to make rental housing available to persons of low and moderate income.~~

~~(d) All multifamily developments must conform to the requirements contained in the relevant program documents. UHC may establish priorities for number of units, number of rooms, amenities and other characteristics of residential rental housing to be financed by UHC. UHC shall have the right to eliminate any multifamily development from financing if, in the reasonable opinion of UHC, the development does not meet all conditions or priorities of the relevant program documents.~~

~~(e) The mortgage lender shall close and deliver eligible mortgage loans to UHC until the amount of the commitment has been reached. Closings or deliveries must occur on or before the final date established in the contract between UHC and the mortgage lender.~~

~~(f) Each mortgage loan shall conform to the credit underwriting, property valuation, hazard insurance, title insurance, mortgage insurance, and all other requirements of the applicable contract between the mortgage lender and UHC.~~

~~(4)]Income limits of qualifying tenants.~~

UHC shall establish and may amend maximum income limits for low and moderate income persons eligible as qualifying tenants of multifamily developments. The limits shall not exceed 130% of median income as determined by UHC. UHC shall establish and may amend the limits in open public meetings of UHC for which UHC shall give public notice as required by state law. UHC shall make information concerning the limits available to interested persons including potential renters and [development owners]developers and shall incorporate the limits into appropriate [program]documents.

~~(4)5] Eligible [mortgagors]developers/owners.~~

(a) To be eligible to participate in the multifamily [programs]financings, the mortgagor/owner may be an individual, a

[proprietorship]limited liability company, a partnership or a corporation having the legal capacity and authority to borrow money for the purposes of constructing, owning and operating a multifamily development.

(b) UHC may establish criteria relating to the credit worthiness and the financial, construction and operating capacity of the [mortgagor]developer/owner as UHC deems necessary to maintain a secure program and to provide decent, safe and sanitary rental housing. Alternatively, in situations where UHC will be issuing bonds the proceeds of which will be loaned to the developer/owner, UHC may rely on the due diligence of the underwriters or purchasers of the bonds and/or the issuer of the credit enhancement for the bonds in making the determination that the developer/owner possesses sufficient creditworthiness and sufficient financial, construction and operating capacity.

(5) Fees and Expenses.

The developer shall be responsible for all fees and expenses incurred in connection with the issuance of any bonds. UHC may charge a developer a fee for issuing the bonds or for performing any services required by UHC.

R460-3-3. Home Improvement Loan Programs. (Reserved)

~~(1) [Eligible lender and servicer.]Reserved.~~

~~(a) To be eligible to participate in the home improvement programs, a lender must be a mortgage lender or other entity which has as one of its principal purposes the origination and servicing of home improvement loans in its regular, usual and normal course of business.~~

~~(b) UHC may establish criteria that lenders must meet, as UHC deems necessary to maintain a safe and sound program, and UHC may establish criteria to determine that making and servicing mortgage loans or home improvement loans are a part of the lender's usual and regular business activities and that the lender possesses the capability to make and service home improvement loans.~~

~~(c) The lender or servicer shall employ and maintain qualified personnel to carry out the obligations arising under contracts with UHC.~~

~~(2) Invitation to participate or notice of availability of funds; contracts.~~

~~(a) UHC may distribute to eligible lenders invitations to participate, notices of availability of funds or other similar documents relating to the home improvement program. Each invitation may indicate any limitations on the aggregate principal amount of loans that may be financed under UHC's program and the approximate date that UHC expects to have funds available to finance the loans.~~

~~(b) Accompanying each invitation shall be an application agreement or other similar document, to be completed by lenders and returned to UHC within the time limit specified.~~

~~(c) UHC may require that each application agreement submitted by a lender be accompanied by an application fee in an amount specified by the agency in the application agreement. The fee shall not be refunded or accrued interest payable by UHC unless otherwise specified by UHC in the invitation to participate.~~

~~(d) The application agreement and the obligations arising thereunder may not be revoked or withdrawn by the lender without the consent of UHC but shall terminate automatically if a notice of acceptance or similar document is not mailed, as evidenced by~~

postmark, or delivered to the lender by UHC on or prior to the date as specified in the application agreement.

~~(e) UHC shall specify in its notice of acceptance, or other similar document, the aggregate principal amount of home improvement loans that it agrees to finance, which amount shall constitute the commitment. If the financing of home improvement loans is to be funded from the proceeds of the sale of UHC bonds, all commitments are subject to the sale of bonds by UHC.~~

~~(f) The lender and UHC shall confirm the commitment by executing a binding contract; and the lender shall pay a commitment fee to UHC as specified in the invitation to participate. The contract shall be executed and delivered to UHC on or before the date specified in the notice of acceptance.~~

~~(3) Home improvement loans:~~

~~(a) For each home improvement program, UHC shall establish fees, final loan delivery or closing date, loan interest rate, loan security and loan term pursuant to contracts with the lenders. Fee requirements shall be uniformly applied to all lenders, without preference of one lender over another.~~

~~(b) All home improvement loans shall be made to provide improvements to residential housing located in the state, which conform to the requirements of the applicable program. All transactions between the lender and UHC shall be subject to the relevant program documents and contracts, which may include the following: invitation to participate, application agreement, notice of acceptance, loan purchase agreement, selling agreement, servicing agreement, accounting and reporting agreement and other program documents applicable to, the particular program approved by UHC.~~

~~(c) UHC may allocate available funds among several participating lenders or may allocate funds to only one lender. UHC may provide priority allocations to make financing available in targeted, rural, inner city or other areas experiencing difficulty securing loans.~~

~~(d) All home improvement loans shall conform to the requirements contained in the relevant program documents. UHC shall have the right to refuse to fund any home improvement loan if, in the reasonable opinion of UHC, the loan does not meet all the requirements of the relevant program documents.~~

~~(e) A lender shall close and deliver eligible loans to UHC until the amount of the commitment has been reached. Closings or deliveries must occur on or before the final date established in the contract between UHC and the lender.~~

~~(f) Each home improvement loan shall conform to the credit underwriting, property valuation, hazard insurance, title insurance, loan insurance, and all other requirements of the applicable contract between the lender and UHC.~~

~~(4) Eligible borrower/owner.~~

~~(a) To be eligible to participate in the home improvement program, a borrower/owner may be one or more related or unrelated individuals provided that the unit, or one unit in cases of two to four family residences, for which financing under the program is made available, is occupied as the principal residence of the borrower/owner as long as there remains an unpaid balance on the home improvement loan.~~

~~(b) UHC may establish criteria relating to the credit worthiness and the financial and operating capacity of the borrower/owner as UHC deems necessary to maintain a secure program and to provide decent, safe and sanitary housing.~~

~~(5) Income limits of borrowers and qualifying tenants:~~

~~UHC shall establish and may amend maximum income limits for persons eligible as participating borrowers, and qualifying tenants of two to four family residences. The limits shall not exceed 140% of median income as determined by UHC. UHC shall establish and may amend the limits in open public meetings of UHC for which UHC shall give public notice as required by state law. UHC shall make information concerning the limits available to interested persons including loan applicants and shall incorporate them into the terms of the contracts with the lenders.]~~

R460-3-4. Low-Income Housing Tax Credit Program.

(1) Application procedures.

(a) UHC shall prepare a low-income housing tax credit allocation plan that provides the administration procedures, allocation procedures, and compliance monitoring procedures that UHC will follow in administering the low income housing tax credit program for the state. The allocation plan may be amended by UHC as is necessary to comply with amendments to section 42 of the code or as deemed necessary by UHC to maintain a sound program. UHC shall prepare an application form that shall be used to request an allocation of both federal and state low income housing tax credits for a proposed residential housing development. The allocation plan and application form shall be made available electronically via UHC's website or upon request.

(b) UHC may establish and collect fees payable by low income housing tax credit applicants to cover administrative and legal expenses of UHC incurred in processing and reviewing applications, allocating tax credits, ~~[and]~~ monitoring compliance with the provisions of section 42 of the code, and other program requirements.

(2) Reservation of credits.

(a) UHC shall score and rank all applications according to the procedures set forth in the allocation plan. A reservation of low income housing tax credits allocated to an applicant shall be in an amount determined by UHC and shall be based upon the facts, ~~[and]~~ circumstances, and representations made by the applicant in [of] the application.

(b) UHC may condition a reservation of low-income housing tax credits to an applicant upon any restrictions and conditions UHC believes are consistent with the purpose and intent of the program, and those which will ensure the completion of the residential housing development.

(c) No reservation of low-income housing tax credits may be transferred by an applicant unless the specific written approval of UHC is obtained before the proposed transfer. Any transfer shall be made in writing, with copies of all written documents provided to UHC.

(d) Applicants shall provide UHC with any information that may be requested by UHC in performing its duties and responsibilities required under the low-income housing tax credit program and the allocation plan.

(3) Allocation.

(a) UHC shall enter into an agreement for the carry-over allocation of low-income housing tax credits, or make a final allocation of low-income housing tax credits, to applicants who have received a reservation of low-income housing tax credits upon satisfaction to UHC of all of the conditions to the reservation of the low-income housing tax credits and satisfaction of all other requirements under section 42 of the code and the allocation plan.

(b) UHC may disclose the application materials, or any allocating documents, to the Rural Housing Service, Department of Housing and Urban Development or other state or federal agency as is necessary to comply with state or federal law requiring the review of financial subsidies to low-income housing developments.

(c) As a condition to making any allocation of low-income housing tax credits, UHC may require an applicant to make a deposit, or provide other guarantees of performance, in an amount and manner as determined by UHC to ensure the completion of the residential housing development. Circumstances under which deposits or performance guarantees will be returned or forfeited, in whole or in part, shall be made known to applicants in the allocation plan before the collection of the deposit or performance guarantee.

(d) UHC may reserve or allocate low-income housing tax credits in amounts that are less than amounts requested by housing credit applicants. UHC may also forward-reserve credits from the following calendar year to complete the reservation of credits for an applicant that scored well enough to receive a partial reservation of the current year credits.

(4) Compliance monitoring.

(a) UHC shall prepare a compliance monitoring plan which satisfies the requirements of section 42 of the code.

(b) Recipients of low-income housing tax credits shall provide to UHC documentation, certifications and other evidences of compliance with the provisions of section 42 of the code as required in the compliance monitoring plan or other guidance issued by the IRS.

(c) UHC may establish and collect fees payable by recipients of low income housing tax credits to cover administrative and legal expenses of UHC incurred in on-site and/or office-based physical and file compliance reviews, associated documentation review and data input, internal and external reporting of compliance results, maintenance and updating of IT systems which support the program, or other requirements required under section 42 of the code.

(d) If an applicant for low income housing tax credits is considered not in good standing, as detailed in the allocation plan, UHC may disallow any application in which a disqualified individual or entity is participating in any way. UHC may bar individuals or entities considered not in good standing from submitting low income housing tax credit applications for a period of time not to exceed two continuous tax-credit cycles.

R460-3-5. Housing Development Program.

(1) Financial assistance to housing sponsors.

UHC may provide financial assistance to a housing sponsor for the purpose of financing the construction, development, rehabilitation, purchase or operations of residential housing.

(a) UHC shall determine that the project proposed by the housing sponsor increases or maintains the supply of affordable, well-planned, well-designed, permanent, temporary transitional or emergency housing for low and moderate income persons.

(b) The housing sponsor shall agree to provide a specified number of units of residential housing for persons whose income do not exceed the maximum income limits established by UHC. The limits shall not exceed 120% of area median income as determined by UHC. UHC shall establish and may amend the limits in open public meetings of UHC for which UHC shall give public notice as

required by state law. UHC may require that the income limits for a project be lower than the maximum income limits.

(c) The amount of the financial assistance shall not exceed the amount required to achieve financial feasibility in ~~which UHC determines will~~ providing^[e] affordable housing for the intended occupants of the residential housing development.

(d) In determining the amount of financial assistance, UHC shall determine that the costs, including developer fees and reserves, incurred by the housing sponsor with respect to a residential housing development, are not excessively greater than similar housing developments.

(e) The housing sponsor shall agree to the controls and procedures required by UHC to ensure that the financial assistance is used only for the approved purposes.

(f) The housing sponsor shall agree to the continued availability and affordability of the residential housing to low and moderate income persons, pursuant to an enforceable covenant running with the land which is prepared by UHC and recorded with the real estate records of the county in which the residential housing is located.

(g) UHC shall determine that the housing sponsor has the necessary competence, experience and financial capability to complete or operate the residential housing development through an internal review of a sponsor's previous projects and/or through interviews of individuals involved with the sponsor in previous projects.

(h) UHC shall require security for any loan in a form and amount as UHC determines is reasonably necessary to secure repayment. The security shall include a lien on the project property and may also include an irrevocable letter of credit, personal guarantees, security interests in unrelated real or personal property of the developer, assignments of contract rights and interests related to proposed development of the project, and/or power of attorney to replace manager, general partner or other principals of the developer. The lien on the project property may be subordinate to other financing of the project. Loans to non-profit or governmental entities are not required to be secured by personal guarantees.

(i) In the event that UHC makes a loan that is funded by or subject to any federal or state program, the terms of the loan shall be consistent with the requirements of the applicable program, notwithstanding any inconsistency with this Rule.

(j) As used herein, the "amount of financial assistance" means the principal amount of the loan together with the benefit of loan terms that are not typically available in the market, such as low (or no) interest rate, a long maturity date and/or a deferred (or no) amortization period.

(2) Financial assistance to low and moderate income persons.

UHC may provide financial assistance to low and moderate income persons for the purpose of construction, rehabilitation, ~~or~~ purchase, and/or financing of residential housing.

(a) UHC shall determine that, in order to make homeownership feasible for certain ~~specified categories of~~ low and moderate income persons, financial assistance is necessary to reduce the cost of constructing, rehabilitating, purchasing and/or financing the residential housing.

(b) UHC shall establish and may amend maximum income limits for low and moderate income persons eligible to

receive the financial assistance. The limits shall not exceed 120% of median income as determined by UHC. UHC shall establish and may amend the limits in open public meetings of UHC for which UHC shall give public notice as required by state law. UHC may require that the income limits for a project be lower than the maximum income limits.

(c) The financial assistance will be provided only to assist with the construction, rehabilitation, purchase, and/or financing of residential housing which does not exceed the maximum acquisition cost and appraised value limits established by UHC. The acquisition cost of residential housing is the cost of acquiring a completed residential housing unit and shall include all amounts paid in such or in kind for all structures, fixtures, and land. UHC shall establish and may amend the limits in open public meetings of UHC for which UHC shall have given public notice as required by state law.

(d) UHC may condition the financial assistance provided to the home-buyer upon its repayment, with or without interest, to UHC.

(3) UHC may agree to provide any financial assistance pursuant to such additional conditions, terms and restrictions to ensure that the financial assistance is used as specified by UHC.

(4) UHC may establish application procedures and forms of applications and may collect fees payable by housing sponsors and/or low and moderate income persons to cover administrative and legal expenses of UHC incurred in processing and reviewing applications.

(5) UHC may provide financial assistance only if sufficient funds exist for that purpose and the financial assistance can be provided without jeopardizing the financial self-sufficiency of UHC.

(6) UHC may provide financial assistance to any subsidiary of UHC for any of the purposes set forth in this rule provided the applicable conditions for such financial assistance are satisfied.

(7) For financial assistance provided under a program established by the Trustees of UHC, the general terms of the financial assistance shall be consistent with the requirements of the program and the specific terms shall be determined by the President or another officer designated by the President. For all other financial assistance, the general terms shall be determined by the Trustees and the specific terms shall be determined by the President consistent with the terms determined by the Trustees.

R460-3-6. State Low-Income Housing Tax Credit Program.

(1) Application procedures.

(a) UHC shall incorporate in the low-income housing tax credit allocation plan prepared by UHC pursuant to R460-3-4 criteria and allocation procedures that UHC will follow in administering ~~[the]state low-income housing tax credits[~~program~~ for the state].~~

(b) UHC shall designate the form of application which shall be used to request an allocation of ~~[the]state low-income housing tax credits[~~for a proposed residential development~~].~~

(2) Reservation of credits.

(a) UHC shall evaluate all applications according to the procedures set forth in the allocation plan, however, the applications will not be scored and ranked for purposes of ~~[allocating]reserving~~ ~~[the]state low-income housing tax credits.~~ A reservation of state

low-income housing tax credits allocated to an applicant shall be in an amount determined by UHC and shall be based upon the facts, ~~[and]circumstances, and representations contained in[~~of~~] the application.~~ UHC may reserve state low-income housing tax credits to projects either in conjunction with the reservation of federal low-income housing tax credits or at a later date to a project not yet placed-in-service that previously received a reservation of federal low-income housing tax credits.

(b) UHC may condition a reservation of state low-income housing tax credits to an applicant upon any restrictions and conditions UHC believes are consistent with the purpose and intent of the program, and those which will ensure the completion of the residential housing development.

(c) No reservation of state low-income housing tax credits may be transferred by an applicant unless the specific written approval of UHC is obtained before the proposed transfer. Any transfer shall be made in writing, with copies of all written documents provided to UHC.

(d) Applicants shall provide UHC with any information that may be requested by UHC in performing its duties and responsibilities required under the ~~[state]~~low-income housing tax credit program and the allocation plan.

(3) Allocation.

(a) UHC shall enter into an agreement for the carry-over allocation of state low-income housing tax credits, or make a final allocation of state low-income housing tax credits, to applicants who have received a reservation of state low-income housing tax credits upon satisfaction to UHC of all of the conditions to the reservation of the state and federal low-income housing tax credits.

(b) As a condition to making any allocation of state low-income housing tax credits, UHC may require an applicant to make a deposit, or provide other guarantees of performance, in an amount and manner as determined by UHC to ensure the completion of the residential housing development. Circumstances under which deposits or performance guarantees will be returned or forfeited, in whole or in part, shall be made known to applicants before the collection of the deposit or performance guarantee.

(c) UHC may reserve or allocate state low-income housing tax credits in amounts that are less than amounts requested by applicants.

KEY: housing finance

Date of Enactment or Last Substantive Amendment: ~~[1993]2010~~

Notice of Continuation: October 15, 2007

Authorizing, and Implemented or Interpreted Law: 9-4-910; 9-4-911

Insurance, Administration
R590-93
Replacement of Life Insurance and
Annuities

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34026

FILED: 08/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Members of the life insurance industry have requested there be a change in the trigger to complete the replacement notice.

SUMMARY OF THE RULE OR CHANGE: The following changes are being proposed. In Section R590-93-3, clarifies that a financed purchase is a replacement. In Sections R590-93-4 and R590-93-5, require that a replacement question be asked on the application and if the answer is "Yes" then the replacement notice is to be completed. Currently the trigger to completing the replacement notice is if there is existing insurance. In Section R590-93-9, an additional example of a violation has been added.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-23a-402

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Most life insurance applications include the new question. Insurers that have not included this question in their application will need to add it and then file the application form with the Insurance Department. This will create a very small increase in the department's workload.
- ◆ **LOCAL GOVERNMENTS:** This rule and its changes will have no effect on local governments since they deal solely with the relationship between the department and their life insurance licensees and their insureds and producers.
- ◆ **SMALL BUSINESSES:** The changes to this rule will have an impact on the insurance agencies in Utah that sell life insurance. It is likely to reduce time and paperwork involved in completing a replacement form.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Fewer replacement forms will need to be completed because in the past a replacement form was to be completed every time the insured applied for insurance when they already had existing coverage. Now the insured will only need to complete the replacement form when their existing coverage is being replaced. This would be a savings in time and materials for the applicant, the producer and the insurer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Applicants, producers, and insurers will not need to complete the replacement form as often as is necessary now, which will be a small savings in time and materials.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have minimal impact on those affected by it. What impact is felt will be a small savings in time and paperwork.

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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.**R590-93. Replacement of Life Insurance and Annuities.****R590-93-3. Definitions.**

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule.

(1) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

(2) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

(3) "Existing policy or contract" means an individual life insurance policy, herein referred to as policy, or annuity contract, herein referred to as contract, in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

(4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in Subsection R590-93-5(1)(e). A financed purchase is a replacement.

(5) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in R590-177, Life Insurance Illustrations Rule.

(6) "Notice" means Appendix A and Appendix C, Important Notice: Replacement of Life Insurance or Annuities, and

Appendix B, Notice Regarding Replacement, from the National Association of Insurance Commissioners, dated 2006 and which are incorporated herein by reference. The notice is to be made available by the replacing insurer and must be imprinted with the name, address, and telephone number of the replacing insurer.

(7)(a) "Policy summary" for policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:

- (i) current death benefit;
- (ii) annual contract premium;
- (iii) current cash surrender value;
- (iv) current dividend;
- (v) application of current dividend; and
- (vi) amount of outstanding loan.

(b) "Policy summary" for universal life policies, means a written statement that shall contain at least the following information:

- (i) the beginning and end date of the current report period;
- (ii) the policy value at the end of the previous report period and at the end of the current report period;
- (iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, e.g., interest, mortality, expense and riders;
- (iv) the current death benefit at the end of the current report period on each life covered by the policy;
- (v) the net cash surrender value of the policy as of the end of the current report period; and
- (vi) the amount of outstanding loans, if any, as of the end of the current report period.

(8) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

(9) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(10) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

- (a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
- (b) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (c) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (d) reissued with any reduction in cash value; or
- (e) used in a financed purchase.

(11) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract holder related to the policy or contract purchased.

R590-93-4. Duties of Producers.

(1) ~~[A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by the applicant as to whether the applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.]~~ In connection with or as part of each application for insurance, the applicant shall complete and the producer shall submit to the insurer the statements required in Subsection R590-93-5(3) as to:

(a) whether the applicant has existing policies or contracts; and

(b) whether the proposed insurance will replace, discontinue, or change an existing policy or contract.

(2) If the applicant answered "yes" to the question regarding ~~[existing coverage]~~ replacement, discontinuance, or change of an existing policy or contract referred to in Subsection (1), the producer shall present ~~[and read]~~ to the applicant, not later than at the time of taking the application, the Notice regarding replacements in the form as described in Appendix A or other substantially similar document filed with the commissioner. However, a filing shall not be required when amendments to the Notice are limited to the omission of references not applicable to the product being sold or replaced. The Notice shall be signed by both the applicant and the producer attesting that the Notice has been read aloud by the producer or that the applicant did not wish the Notice to be read aloud, in which case the producer need not have read the Notice aloud, and left with the applicant. With respect to an electronically completed application and Notice, the producer is not required to leave a copy of the electronically completed Notice with the applicant.

(3) The Notice shall list each existing policy or contract contemplated to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(4) In connection with a replacement transaction the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract holder in printed form no later than at the time of policy or contract delivery.

(5) Except as provided in Subsection R590-93-6(3), in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

R590-93-5. Duties of Insurers that Use Producers.

Each insurer shall:

(1) maintain a system of supervision and control to insure compliance with the requirements of this rule that shall include at least the following:

(a) inform its producers of the requirements of this rule and incorporate the requirements of this rule into all relevant producer training manuals prepared by the insurer;

(b) provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;

(c) a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Subsection (b) above;

(d) procedures to confirm that the requirements of this rule have been met;

(e) procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;

(2) have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the department. The capacity to monitor shall include the ability to produce records for each producer's:

(a) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

(b) number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;

(c) annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

(d) number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection R590-93-5(1)(e); and

(e) replacements, indexed by replacing producer and existing insurer;

(3) require with or as a part of each application for life insurance or an annuity a signed statement by the applicant as to:

(a) whether the applicant has existing policies or contracts; and

(b) whether the proposed insurance will replace, discontinue, or change an existing policy or contract;

(4) require with each application for life insurance or annuity that indicates the replacement, discontinuance, or change of an existing policy or contract, a completed Notice regarding replacements as contained in Appendix A;

(5) when the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Subsection R590-93-4(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;

(6) ascertain that the sales material and illustrations required by Subsection R590-93-4(5) of this rule meet the

requirements of this rule and are complete and accurate for the proposed policy or contract;

(7) if an application does not meet the requirements of this rule, notify the producer and applicant and fulfill the outstanding requirements; and

(8) maintain records in any media or by any process that accurately reproduces the actual document.

R590-93-9. Violations and Penalties.

(1) Any failure to comply with this rule shall be considered a violation of 31A-23a-402. Examples of violations include:

(a) any deceptive or misleading information set forth in sales material;

(b) failing to ask the applicant in completing the application the pertinent questions regarding existing policies or contracts and whether the proposed insurance will replace, discontinue, or change an existing policy or contract;

(c) the intentional incorrect recording of an answer;

(d) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; ~~or~~

(e) advising a policy or contract holder to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company; or

(f) advising a policy or contract holder to obtain policy values from an existing policy or contract with the intent to replace the policy or contract.

(2) Policy and contract holders have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract holders of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this rule.

(3) Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policy holder an in force illustration if available or a policy summary for the replacement policy or disclosure document for the replacement contract and the appropriate Notice regarding replacements in Appendix A or C.

(4) Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at the legal rate as provided in Title 15 of the Utah Code on the amount refunded in cash.

R590-93-12. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 calendar days after the effective date.

KEY: life insurance, annuity replacement

Date of Enactment or Last Substantive Amendment: [~~August 8, 2007~~2010]

Notice of Continuation: April 15, 2009

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402

**Judicial Performance Evaluation
Commission, Administration
R597-2
Administration of the Commission**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 33987

FILED: 08/24/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Because the Commission was only established in 2008, it is promulgating this rule to articulate the guidelines that will govern the Commission's operations.

SUMMARY OF THE RULE OR CHANGE: The rule provides for promulgating internal operating procedures. It also defines the conditions under which commissioners should disclose, recuse, or disqualify themselves from a judicial evaluation based on a conflict of interest. It articulates a requirement for reporting improper attempts to influence an evaluation. Finally, the rule articulates a requirement for confidentiality about the Commission's evaluation of a particular judge or justice.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-201 through 78A-12-206

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Because the rule addresses commissioner conduct and internal operating procedures for the Commission, there is not anticipated cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Because the Commission has no authority with respect to local government, there is no anticipated cost or savings to local government.

◆ **SMALL BUSINESSES:** Because the Commission has no authority with respect to small businesses, there is no anticipated cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because the Commission has no authority with respect to persons other than small businesses, businesses, or local

government entities, there is no anticipated cost or savings to such entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Commission assumes all statutory compliance costs. Affected persons do not assume any compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because the Commission does not regulate businesses, there is no fiscal impact on businesses.

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

JUDICIAL PERFORMANCE EVALUATION
COMMISSION
ADMINISTRATION
ROOM B-330 SENATE BUILDING
420 N STATE ST
SENATE BUILDING B-330
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: V. Lowry Snow, Chair

R597. Judicial Performance Evaluation Commission, Administration.

R597-2. Administration of the Commission.

R597-2-1. Internal Operating Procedures.

(1) The commission may adopt procedures governing internal operations relating to judicial performance evaluation and meeting protocol, consistent with state statute and these rules.

(2) Proposed amendments to internal operating procedures shall be submitted in writing to all members of the commission in advance of the next regular meeting, at which time a majority of the commission is required for the adoption of the amendment. Amendments become effective immediately upon ratification.

R597-2-2. Disclosure, Recusal, and Disqualification.

(1) Disclosure.

(a) Commissioners shall make disclosures at the monthly commission meeting prior to the first scheduled meeting at which the retention evaluation reports for a given class of judges will be discussed or, in any event, no later than the beginning of the meeting at which a particular judge's evaluation is considered.

(b) Each commissioner shall disclose to the commission any professional or personal relationship with a judge that may affect an unbiased evaluation of the judge.

(c) Relationships that may affect an unbiased evaluation of the judge include any contact or association that might influence a commissioner's ability to fairly and reasonably evaluate the performance of any judge or to assess that judge without bias or prejudice, including but not limited to:

(i) family relationships to a state, municipal, or county judge within the third degree (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(ii) any business relationship between the commissioner and the judge.

(iii) any personal litigation directly or indirectly involving the judge and the commissioner, the commissioner's family or the commissioner's business;

(d) A commissioner exhibits bias or prejudice when the commissioner is predisposed to decide a cause or an issue in a way that does not leave the commissioner's mind open to exercising the commissioner's duties impartially in a particular case.

(2) Recusal.

(a) As used in this rule, recusal is a voluntary act of self-disqualification by a commissioner.

(b) Recusal encompasses exclusion both from participating in the commission's evaluation of judge and from voting on whether to recommend the judge for retention.

(c) After making a disclosure, a commissioner may voluntarily recuse if the commissioner believes the relationship with the judge will affect an unbiased evaluation of the judge.

(3) Disqualification.

(a) A commissioner may move to vote on the disqualification of another commissioner if:

(i) the other commissioner makes a disclosure and does not voluntarily recuse, and that commissioner's impartiality might reasonably be questioned; or

(ii) the other commissioner does not make a disclosure, but known circumstances suggest that the commissioner's impartiality might reasonably be questioned.

(b) A motion to disqualify must be seconded in order to proceed.

(c) During the discussion concerning possible disqualification, any commissioner may raise any facts concerning another commissioner's ability to fairly and reasonably evaluate the performance of any judge without bias or prejudice.

(d) A two-thirds vote of those present is required to disqualify any commissioner.

(e) Disqualification encompasses exclusion both from participating in the commission's evaluation of a judge and from voting on whether to recommend the judge for retention.

R597-2-3. Reporting Improper Attempts to Influence.

A commissioner shall report to the executive committee any form of communication that attempts to influence the evaluation process by improper means, including but not limited to undue pressure, duress, or coercion.

R597-2-4. Confidentiality.

(1) The commission enacts this rule to avoid the risk of inconsistent statements by commissioners and to maintain the credibility of the commission and the integrity of its work product.

(2) Only the commission's designated spokesperson may publicly discuss the evaluation of any particular judge or justice.

(3) No commissioner may publicly advocate for or against the retention of any particular judge or justice.

(4) Notwithstanding other provisions of this subsection, commissioners may publicly discuss the evaluation process, including but not limited to discussion of respondent groups, survey instruments, and the operation of the commission.

KEY: internal operating procedures, reporting improper attempts to influence, conflicts of interest, confidentiality
Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law:
78A-12-201 through 78A-12-206

Judicial Performance Evaluation Commission, Administration **R597-3** Judicial Performance Evaluations

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 33961
FILED: 08/17/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being changed to incorporate what the Commission has learned from the administration of pilot evaluation surveys and a pilot courtroom observation program.

SUMMARY OF THE RULE OR CHANGE: The rule explains in detail the sampling methodology for attorney survey respondents; articulates a new procedure for surveying jurors; refines the definition of litigant respondents, eliminates provisions concerning witnesses, who have been statutorily eliminated as a survey respondent group; and articulates standards to govern a courtroom observation program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-101 through 78A-12-206

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Because the rule only refines and articulates elements of a program that is already established

by statute, there are no anticipated costs or savings to the state budget. While witnesses have been eliminated as a survey respondent group, there is no cost savings because the rule previously established an additional respondent group. The cost of the witness survey will pay for the additional group, resulting in no change to the budget.

♦ LOCAL GOVERNMENTS: Because the commission has no authority with respect to local government, there is no anticipated cost or savings to local government.

♦ SMALL BUSINESSES: Because the commission has no authority with respect to small businesses, there is no anticipated cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because the commission has no authority with respect to persons other than small businesses, businesses, or other local government entities, there is no anticipated cost or savings to these entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The commission assumes all compliance costs. Any affected persons do not assume compliance costs of the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because the commission does not regulate business, there is no fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 JUDICIAL PERFORMANCE EVALUATION
 COMMISSION
 ADMINISTRATION
 ROOM B-330 SENATE BUILDING
 420 N STATE ST
 SENATE BUILDING B-330
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: V. Lowry Snow, Chair

R597. Judicial Performance Evaluation Commission, Administration.

R597-3. Judicial Performance Evaluations.

R597-3-2. Survey.

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission shall distribute the survey questionnaires upon which the judge shall be evaluated to each judge at the beginning of the survey cycle.

(c) In 2010, the commission shall finalize survey questionnaires and implementation procedures for each respondent classification.

(d) The commission may select retention survey questions from among the midterm survey questions.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle.

(ii) Number of survey respondents. For each judge who is the subject of a survey, the surveyor shall identify [+80 potential respondents or all attorneys appearing before the judge, whichever is less] the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%; or, in the event that an insufficient number of attorneys have appeared before the evaluated judge to achieve that confidence level, all attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall ~~[make a random selection of respondents and shall otherwise]~~ design the survey to comply with generally-accepted principles of surveying.

(iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be ~~[given a juror questionnaire]~~ eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall ~~[distribute surveys to the]~~ collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall [collect completed surveys, seal them in an envelope, and mail them to the surveyor.] transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge ~~[shall]~~ include, but are not limited to [where applicable]:

- (A) judicial assistants;
- (B) case managers;
- (C) clerks of court;
- (D) trial court executives;

(E) interpreters;
 (F) bailiffs;
 (G) law clerks;
 (H) juvenile probation and intake officers;
 (I) other courthouse staff, as appropriate;
 (J) Administrative Office of the Courts staff.
 (ii) Pilot program. The commission shall run a pilot program to evaluate the methodology, content, and administrative feasibility of surveying court staff.

(d) Litigants

(i) Identification of survey respondents. The following categories are litigants for purposes of the judicial performance evaluation survey:

(A) any named party to an action; and

(B) any of the following if involved directly or indirectly in litigation before the judge:

~~(I)~~ any person 14 years of age or older;

~~([E]II)~~ the parent, foster parent, guardian, or legal custodian of any minor;

~~([D]III)~~ the designated representative of a corporate or like entity;

~~([E]IV)~~ an executor, administrator, guardian, or like person representing a real party in interest who has appeared before the judge.

~~(+)(ii)~~ The representative of the prosecuting entity in a criminal case shall be surveyed as an attorney. Prosecutor responses to the judicial temperament part of the survey shall be reported in both the attorney and litigant portions of the judicial evaluation report.

(iii) Pilot Program. The commission shall run a pilot program to evaluate the methodology, content, and administrative feasibility of surveying litigants.

~~(e) Witnesses~~

~~(i) Identification of survey respondents.~~

~~(A) District and Justice Court. A witness is anyone not surveyed as a litigant who is sworn and testifies in court before a judge who is being evaluated. Any witness who is 14 years of age or older is qualified as a witness survey respondent.~~

~~(B) Juvenile Court. A witness is anyone who does not fall within another survey respondent group and who proffers or testifies in court before a judge who is being evaluated.~~

~~(ii) Pilot Program. The commission shall run a pilot program to evaluate the methodology, content, and administrative feasibility of surveying witnesses.~~

~~(f) Juvenile Court Professionals~~

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services on a regular basis to the juvenile court.

(iii) The commission shall run a pilot program to evaluate the methodology, content, and administrative feasibility of surveying juvenile court professionals.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of all quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

R597-3-3. Courtroom Observation.

(1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), supra.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

(2) Courtroom Observers.

(a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(iv) persons currently involved in litigation in state or justice courts;

(v) convicted felons;

_____ (vi) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

_____ (c) Terms and Conditions of Service

_____ (i) Courtroom observers shall serve at the will of the commission staff.

_____ (ii) Courtroom observers shall commit to one one-year term of service.

_____ (iii) Courtroom observers may serve up to three one-year terms, subject to annual renewal at the discretion of the commission.

_____ (iv) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

_____ (d) Training of Observers

_____ (i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

_____ (ii) Elements of the training program shall include:

_____ (A) Orientation and overview of the commission process and the courtroom observation program;

_____ (B) Classroom training addressing each level of court;

_____ (C) In-court group observations, with subsequent classroom discussions, for each level of court;

_____ (D) Training on proper use of observation instrument;

_____ (E) Training on confidentiality and non-disclosure issues;

_____ (F) Such other periodic trainings as are necessary for effective observations.

_____ (3) Courtroom Observation Program.

_____ (a) Courtroom Requirements

_____ (i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

_____ (ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

_____ (iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

_____ (iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

_____ (b) Travel and Reimbursement

_____ (i) All travel must be preapproved by the executive director.

_____ (ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

_____ (iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

_____ (iv) Overnight lodging

_____ (A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

_____ (B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

_____ (v) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

_____ (4) Principles and Standards used to evaluate the behavior observed.

_____ (a) Courtroom observers shall respond to questions concerning a judge's:

_____ (i) Neutrality, including:

_____ (A) displaying fairness and impartiality toward all parties;

_____ (B) acting as a fair and principled decision maker who applies rules consistently across people and over cases;

_____ (C) explaining transparently and openly how rules are applied and how decisions are reached.

_____ (ii) Respect, including:

_____ (A) demonstrating courtesy toward attorneys, court staff, and others in the court;

_____ (B) treating all people with dignity;

_____ (C) demonstrating appropriate consideration for people's rights;

_____ (D) helping interested parties understand decisions and what the parties must do as a result;

_____ (E) maintaining decorum in the courtroom.

_____ (iii) Trustworthiness, including:

_____ (A) demonstrating interest in the needs, problems, and concerns of court participants;

_____ (B) listening carefully and impartially;

_____ (C) avoiding impropriety and the appearance of impropriety;

_____ (D) demonstrating adequate preparation to hear scheduled cases;

_____ (E) acting in the interests of the parties, not out of personal prejudices;

_____ (F) managing the workload, including the practical impact on the parties and the effect of delay.

_____ (iv) Voice, including:

_____ (A) giving parties the opportunity, where appropriate, to tell their story or voice their perspective and demonstrating that their story or perspective has been heard;

_____ (B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

_____ (C) attending, where appropriate, to the participants' comprehension of the proceedings.

_____ (b) Courtroom observers may be asked additional questions to help the commission assess the overall performance of the judge.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys

Date of Enactment or Last Substantive Amendment: [April 15], 2010

Authorizing, and Implemented or Interpreted Law: 78A-12

**Labor Commission, Occupational
Safety and Health
R614-1-4
Incorporation of Federal Standards**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34022

FILED: 08/27/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the proposed rule change is to incorporate the most recent amendments to the Federal OSHA standards.

SUMMARY OF THE RULE OR CHANGE: On 02/28/2006, OSHA published a final rule for Occupational Exposure to Hexavalent Chromium (Cr(VI)). Public Citizen Health Research Group and other parties petitioned for review of the final rule in the Third Circuit Court of Appeals. The court remanded the employee notification requirements in the rule's exposure determination provisions for further consideration. Specifically, the court directed OSHA to explain its decision to limit employee notification requirements to instances where Cr(VI) exceeds the permissible exposure limit (PEL), or else take other appropriate action with respect to that portion of the rule. After reviewing the record and reconsidering the provision in question, OSHA decided to revise the notification requirements to require employers to notify employees of all exposure test results even if there is no exposure found. OSHA then promulgated a direct final rule (DFR) requiring employee notification of any Cr(VI) exposure. OSHA also confirmed the effective date of the DFR. OSHA stated that the DFR would become effective on 06/15/2010 unless one or more significant adverse comments were submitted by a certain date. OSHA did not receive significant adverse comments on the DFR, therefore it became effective on 06/15/2010.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 34A, Chapter 6

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds 75 FR 51, Wednesday, March 17, 2010, Pages 12681 to and including 12686 "Revising the Notification Requirements in the Exposure Determination Provision of the Hexavalent Chromium Standards" Direct Final Rule, published by Government Printing Office, 03/17/2010
- ◆ Adds 75 FR 93, Friday, May 14, 2010. Pages 27188 to and including 27189 "Revising the Notification Requirements in the Exposure Determination Provision of the Hexavalent Chromium Standards" Final Rule.; confirmation of

effective date", published by Government Printing Office, 05/14/2010

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** OSHA estimated the new burden hours and costs that would result from this amendment and the public had 60 days to comment on those estimates in accordance with 44 U.S.C. 3506(c)(2). OSHA estimated that the requirement to notify employees of any Cr(VI) exposure would increase burden hours by 62,575 hours and employer costs by \$1,526,731 annually.

◆ **LOCAL GOVERNMENTS:** OSHA estimated the new burden hours and costs that would result from this amendment and the public had 60 days to comment on those estimates in accordance with 44 U.S.C. 3506(c)(2). OSHA estimated that the requirement to notify employees of any Cr(VI) exposure would increase burden hours by 62,575 hours and employer costs by \$1,526,731 annually.

◆ **SMALL BUSINESSES:** OSHA estimated the new burden hours and costs that would result from this amendment and the public had 60 days to comment on those estimates in accordance with 44 U.S.C. 3506(c)(2). OSHA estimated that the requirement to notify employees of any Cr(VI) exposure would increase burden hours by 62,575 hours and employer costs by \$1,526,731 annually.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** OSHA estimated the new burden hours and costs that would result from this amendment and the public had 60 days to comment on those estimates in accordance with 44 U.S.C. 3506(c)(2). OSHA estimated that the requirement to notify employees of any Cr(VI) exposure would increase burden hours by 62,575 hours and employer costs by \$1,526,731 annually.

COMPLIANCE COSTS FOR AFFECTED PERSONS: OSHA estimated the new burden hours and costs that would result from this amendment and the public had 60 days to comment on those estimates in accordance with 44 U.S.C. 3506(c)(2). OSHA estimated that the requirement to notify employees of any Cr(VI) exposure would increase burden hours by 62,575 hours and employer costs by \$1,526,731 annually.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: With respect to occupational safety and health standards, Utah is a "state plan" state. In order to fulfill the requirement that a state plan state be at least as effective as OSHA, Utah adopts and incorporates federal rules by reference.

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

LABOR COMMISSION
OCCUPATIONAL SAFETY AND HEALTH
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:

♦ William Adams by phone at 801-530-6897, by FAX at 801-530-7606, or by Internet E-mail at wadams@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R614. Labor Commission, Occupational Safety and Health.**R614-1. General Provisions.****R614-1-4. Incorporation of Federal Standards.**

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2009, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2009, is incorporated by reference.

3. 29 CFR 1904, July 1, 2009, is incorporated by reference.

4. FR Vol. 75, No. 51, Wednesday, March 17, 2010, Pages 12681 to and including 12686 "Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards" Direct Final Rule" is incorporated by reference.

5. FR Vol. 75, No. 93, Friday, May 14, 2010, Pages 27188 to and including 27189 "Revising the Notification Requirements in the Expure Determination Provision of the Hexavalent Chromium Standards" Final rule.; confirmation of effective date" is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2009, edition is incorporated by reference.

2. FR Vol. 75, No. 51, Wednesday, March 17, 2010, Pages 12681 to and including 12686 "Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards" Direct Final Rule" is incorporated by reference.

3. FR Vol. 75, No. 93, Friday, May 14, 2010, Pages 27188 to and including 27189 "Revising the Notification Requirements in the Exposure Determination Provision of the Hexavalent Chromium Standards" Final rule.; confirmation of effective date" is incorporated by reference.

KEY: safety

Date of Enactment or Last Substantive Amendment: ~~May 22, 2008~~ **2010**

Notice of Continuation: November 2, 2007

Authorizing, and Implemented or Interpreted Law: 34A-6

Labor Commission, Boiler and Elevator
Safety
R616-2-8
Inspection of Boilers and Pressure
Vessels

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34027

FILED: 08/31/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to clarify the authority of Division inspectors to enter property where boilers and pressure vessels are to be inspected and the authority of deputy inspectors to enter property.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies the authority of Division inspectors to enter property and the authority of deputy inspectors to enter property.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-7-101 et seq.

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no cost to the state budget associated with this change. This change is being made to clarify the difference in right of entry between Labor Commission Boiler/Pressure Vessel Inspectors and Boiler/Pressure Vessel Inspectors that are employed by insurance companies. This change occurs in correlation with the addition of Section R616-2-15.

♦ **LOCAL GOVERNMENTS:** There is no cost to local governments associated with this change. This change is being made to clarify the difference in right of entry between Labor Commission Boiler/Pressure Vessel Inspectors and Boiler/Pressure Vessel Inspectors that are employed by insurance companies. This change occurs in correlation with the addition of Section R616-2-15.

♦ **SMALL BUSINESSES:** There is no cost to small businesses associated with this change. This change is being made to clarify the difference in right of entry between Labor Commission Boiler/Pressure Vessel Inspectors and Boiler/Pressure Vessel Inspectors that are employed by insurance companies. This change occurs in correlation with the addition of Section R616-2-15.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no cost associated with this change. This change is being made to clarify the difference in right of entry between Labor Commission Boiler/Pressure Vessel Inspectors and Boiler/Pressure Vessel Inspectors that are employed by insurance companies. This change occurs in correlation with the addition of Section R616-2-15.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost to affected persons associated with this change. This change is being made to clarify the difference in right of entry between Labor Commission Boiler/Pressure Vessel Inspectors and Boiler/Pressure Vessel Inspectors that are employed by insurance companies. This change occurs in correlation with the addition of Section R616-2-15.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Labor Commission's boiler and pressure vessel program provides a valuable service to the people of the State of Utah, ensuring a level of safety in schools and businesses. This rule change distinguishes the difference in "right of entry" between deputy insurance inspectors and Labor Commission inspectors. This change is made necessary by the addition of Section R616-2-15.

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

LABOR COMMISSION
BOILER AND ELEVATOR SAFETY
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:

◆ Ami Windham by phone at 801-530-6850, by FAX at 801-530-6871, or by Internet E-mail at ajohnston@utah.gov
◆ Pete Hackford by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R616. Labor Commission, Boiler and Elevator Safety.
R616-2. Boiler and Pressure Vessel Rules.
R616-2-8. Inspection of Boilers and Pressure Vessels.

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its jurisdiction, when deemed necessary or appropriate.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. For boilers or pressure vessels inspected by an inspector employed by the Division, the owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. For boilers or pressure vessels inspected by a deputy inspector employed by an insurance company, the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located is subject to the agreement between the insurance company and the owner or operator of the boiler or pressure vessel. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

KEY: boilers, certification, safety

Date of Enactment or Last Substantive Amendment: [April-7], 2010

Notice of Continuation: November 30, 2006

Authorizing, and Implemented or Interpreted Law: 34A-7-101 et seq.

Labor Commission, Boiler and Elevator
 Safety
R616-2-15
 Deputy Boiler/Pressure Vessel
 Inspectors

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34023

FILED: 08/27/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to establish procedures and standards for the Division to appoint deputy boiler/pressure vessel inspectors, monitor their performance, and take corrective action, including revocation of authority as a deputy inspector, when appropriate.

SUMMARY OF THE RULE OR CHANGE: The rule change adds provisions to establish procedures and standards for the Division to appoint deputy boiler/pressure vessel inspectors, monitor their performance, and take corrective action, including revocation of authority as a deputy inspector, when appropriate.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-7-101 et seq.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Labor Commission requires applicants to pay a fee to cover the administrative costs associated with the appointment and reappointment processes; this fee is subject to Legislative approval. This rule makes no change to these fees. In addition, the main substance of this rule has heretofore been enforced in Division policy; therefore, there is no anticipated cost or savings associated with this rule.

◆ **LOCAL GOVERNMENTS:** The services provided to local governments by the Commission and its appointed deputy insurance inspectors will not be affected by this rule.

◆ **SMALL BUSINESSES:** The services provided to small businesses by the Commission and its appointed deputy insurance inspectors will not be affected by this rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Labor Commission requires applicants to pay a fee to cover the administrative costs associated with the appointment and reappointment processes; this fee is subject to Legislative approval. This rule makes no change to these fees. In addition, the main substance of this rule has heretofore been enforced in Division policy, therefore, there is no anticipated cost or savings associated with this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule continues the requirement that each applicant or applicant's employer pay a fee of \$25 for each initial appointment and \$20 yearly for individual renewal. This rule makes no change to these fees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Labor Commission's boiler and pressure vessel program provides a valuable service to the people of the State of Utah, ensuring a level of safety in schools and businesses. This rule sets forth a performance standard for deputy insurance inspectors further ensuring safety in Utah.

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

LABOR COMMISSION
 BOILER AND ELEVATOR SAFETY
 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:

- ◆ Ami Windham by phone at 801-530-6850, by FAX at 801-530-6871, or by Internet E-mail at ajohnston@utah.gov
- ◆ Pete Hackford by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R616. Labor Commission, Boiler and Elevator Safety.

R616-2. Boiler and Pressure Vessel Rules.

R616-2-15. Deputy Boiler/Pressure Vessel Inspectors.

A. Purpose -- Section 34A-7-10 of the Safety Act ("the Act"; Title 34A, Chapter 7, Part One, Utah Code Annotated) permits the Division of Boiler, Elevator and Coal Mine Safety ("the Division") to authorize qualified individuals to inspect boilers and pressure vessels as "deputy inspectors." This rule sets forth the Division's procedures and standards for authorizing deputy inspectors, monitoring their performance, and suspending or revoking such authority when appropriate.

B. Initial appointment of deputy inspectors.

1. An applicant for initial Division authorization to inspect boilers and pressure vessels as a deputy inspector must satisfy the following requirements in the order listed below:

a. A company insuring boilers and pressure vessels in Utah ("sponsoring employer" hereafter) must submit a letter to the Division certifying that:

i. the applicant is employed by the sponsoring employer;

and

ii. the sponsoring employer requests the Division authorize the applicant to inspect boilers and pressure vessels insured by that employer;

b. The applicant or sponsoring employer must submit to the Division a current, valid certification from the National Board of Boiler and Pressure Vessel Certification ("National Board") that the applicant is qualified to inspect boilers and pressure vessels;

c. The applicant or sponsoring employer must submit an application fee of \$25 to the Division;

d. The applicant must complete training for deputy inspectors provided by the Division;

e. The applicant must pass an oral examination administered by the Division pertaining to boiler and pressure vessel inspection standards and processes; and

f. The applicant must pass a written, closed-book examination administered by the Division on the Division's boiler/Pressure Vessel Compliance Manual, Rules, and codes adopted;

2. Upon successful completion of the foregoing requirements, the Division will appoint the applicant as a deputy inspector and will issue credentials to that effect. The Division will also notify the sponsoring employer of the appointment.

3. Initial appointment as a deputy inspector terminates at the end of the calendar year in which such appointment is made unless a deputy inspector qualifies for reappointment under paragraph C of this rule.

C. Annual reappointment of deputy inspectors.

1. Effective January 1 of each year, the Division will renew the appointment of each deputy inspector for an additional year if the inspector satisfies the following requirements:

a. The individual was authorized to serve as a deputy inspector as of December 31 of the previous year;

b. A sponsoring employer has submitted a letter to the Division certifying that:

i. the individual is employed by the sponsoring employer; and

ii. The sponsoring employer requests the Division to reappoint that individual as a deputy inspector to inspect boilers and pressure vessels for that employer;

c. The individual or sponsoring employer has submitted to the Division a current, valid certification from the National Board establishing that the individual is qualified as a boiler and pressure vessel inspector;

d. The individual or sponsoring employer has submitted to the Division the required renewal fee of \$20;

e. The individual has completed the Division's required training for deputy inspectors.

2. An individual who does not meet each of the foregoing requirements is not eligible for reappointment as a deputy inspector and must instead meet each of the requirements for initial appointment under paragraph B of this rule.

D. Lapse, change of employment and loss of National Board certification.

1. Lapse. An individual's appointment as a deputy inspector will lapse if the individual:

a. Does not renew the appointment by satisfying the requirements of paragraph C of this rule;

b. Does not perform and submit to the Division at least one boiler or pressure vessel inspection during the previous calendar year; or

c. Fails to inform the Division of any change in status of employment with his or her sponsoring employer as required in the following paragraph D.2. of this rule.

2. Change in employment.

a. A deputy inspector must immediately notify the Division in writing of any change in the status of the inspector's employment with his or her sponsoring employer.

b. If the Division determines that an individual previously appointed as a deputy inspector is no longer employed by a company authorized to insure boilers and pressure vessels in Utah, the Division will immediately revoke that individual's appointment.

c. If the Division determines that a deputy inspector has changed employment to another company that insures boilers and pressure vessels in Utah, the Division will require the new employer or deputy inspector to submit the following:

i. A letter from the new employer:

AA. certifying that the individual is employed by that sponsoring employer; and

BB. requesting that the individual's appointment as a deputy inspector be continued;

ii. A current, valid certification as a boiler/pressure vessel inspector from the National Board; and

iii. Payment to the Division of the required fee of \$20.

3. National Board Certification.

a. Every deputy inspector shall at all times hold a current valid certification as a boiler/pressure vessel inspector from the National Board.

b. Each deputy inspector shall immediately notify the Division if his or her National Board certification has been revoked or suspended.

c. If the Division has reason to believe that a deputy inspector's National Board certification has been revoked or suspended, the Division will obtain written verification from the National Board. IF the National Board has in fact revoked or suspended the deputy inspector's certification, the Division will revoke the inspector's appointment as a deputy inspector.

E. Scope of authority. Appointment as a deputy inspector has the limited effect of authorizing the deputy inspector to inspect boilers and pressure vessels insured by his or her sponsoring employer for compliance with engineering codes and other standards adopted by the Division in Utah Administrative Code Rule R616-2. The Division expressly does not confer any other authority to deputy inspectors. Deputy inspectors remain employees of their respective sponsoring employers and are not employees of the Division or agents of the Division for any other purpose. A deputy inspector's right to inspect any particular boiler or pressure vessel, including the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located, is subject to the agreement between the sponsoring employers and the owner or operator of the boiler or pressure vessel. Appointment as a deputy inspector by the Division does not confer any right of entry independent from the terms of such agreement.

F. Inspection Standards

1. In inspecting any boiler or pressure vessel, a deputy inspector shall apply the standards and engineering codes adopted in Utah Administrative Code R616-2 - Boiler and Pressure Vessel Rules.

2. Each deputy inspector must use the Division's web-based applications to accurately record and submit all information regarding boilers and pressure vessels, including:

- a. inspection reports;
- b. scrapped and inactive items;
- c. information changes other than those requiring submission of a Change of Insurance Status Form (NB4); and
- d. a Web Issue Form (Form WIF-01) to identify any error or other issue resulting from the deputy inspector's use of the Division's web-based applications.

G. Quality Control. The Division will evaluate the performance of each deputy inspector to assure compliance with the Division's standards for boiler and pressure vessel inspections.

1. The Division's Business Analyst will review each inspection report submitted by a deputy inspector and will report any serious errors to the Chief Boiler and Pressure Vessel Inspector ("Chief Inspector") for appropriate action.

2. Each year, the Chief Inspector will evaluate a sample of each deputy inspector's inspections performed during that year for compliance with Division standards.

3. In addition to the reviews undertaken pursuant to paragraph G.2. of this rule, the Chief Inspector will also investigate any observation or report of an inspection deficiency to determine whether the deputy inspector complied with Division standards and rules in performing and reporting the inspection.

H. Corrective Action, Revocation and Right to Hearing.

1. If the Chief Inspector concludes that a deputy inspector does not satisfy requirements of this rule for continued appointment as a deputy inspector or has performed an inspection in a manner that is inconsistent with Division standards, the Chief Inspector will submit a written report and a recommendation for corrective action to the Division Director.

2. Depending on the circumstances and the seriousness of the situation, the Chief Inspector may recommend corrective action that includes:

- a. warning letter;
- b. requirements for additional training;
- c. requirements for retesting;
- d. request review by the National Board;
- e. additional supervision; and
- f. revocation of appointment as a deputy inspector.

3. The Division Director shall forward a copy of the Chief Inspector's written report and recommendation to the deputy inspector and the sponsoring employer. The Division Director shall also schedule time and place to conduct a hearing on the matter, such hearing to be conducted as an informal adjudicative proceeding under the Utah Administrative Procedures Act. After conducting such hearing, the Division Director will issue a written decision setting forth the material facts and ordering appropriate corrective action. The Division Director shall forward a copy of the decision to the deputy inspector, sponsoring employer, and the National Board.

4. If the deputy inspector or sponsoring employer is dissatisfied with the Division Director's decision, the inspector or

sponsoring employer may seek judicial review as provided by the Utah Administrative Procedures Act.

KEY: boilers, certifications, safety

Date of Enactment or Last Substantive Amendment: [April-7], 2010

Notice of Continuation: November 30, 2006

Authorizing, and Implemented or Interpreted Law: 34A-7-101 et seq.

Natural Resources; Oil, Gas and
Mining; Oil and Gas
R649-4
Determination of Well Categories
Under the Natural Gas Policy Act of
1978.

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34010

FILED: 08/25/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Board and Division of Oil, Gas and Mining seek to repeal this rule since no further applications for natural gas well category determinations are allowed under the Natural Gas Policy Act of 1978. The Federal Energy Regulatory Commission has discontinued accepting docketed matters from states on this topic, thus the rule can be repealed.

SUMMARY OF THE RULE OR CHANGE: This rule established the procedures for natural gas well operators to seek classification of certain wells under the 1978 Natural Gas Policy Act from Oil, Gas and Mining. This rule is repealed in its entirety, since it is no longer necessary.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 40-6-5(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no costs or savings to the state budget since over seven years have passed since the last application under this rule was processed, and no further applications will occur.

♦ **LOCAL GOVERNMENTS:** There is no impact to local government by repeal of this rule, since this rule applied to certain natural gas well operators and the Division.

♦ **SMALL BUSINESSES:** Operators of certain natural gas wells, some of which were small business, submitted applications for determination of well categories through January 2003, but no further applications have occurred or will occur. Thus, there are no costs or savings to small business from this rule repeal.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are not impacted by this rule repeal. This rule previously impacted certain natural gas well operators and the Division.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Operators of certain natural gas wells submitted applications for determination of well categories through January 2003, but no further applications have occurred or will occur. Thus, there are no compliance costs to affected persons from this rule repeal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact upon businesses is expected from this rule repeal.

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

NATURAL RESOURCES
OIL, GAS AND MINING; OIL AND GAS
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 09/22/2010 09:00 AM, UBATC, 1100 E Lagoon St, Roosevelt, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/27/2010

AUTHORIZED BY: John Baza, Director

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
~~[R649-4. Determination of Well Categories Under the Natural Gas Policy Act of 1978.~~

R649-4-1. Definitions.

1. Unless the context specifically requires otherwise, any special words, terms, or phrases used in the Section and not defined

~~in Section 1 have the meanings defined under the Natural Gas Policy Act of 1978 (NGPA), and applicable Federal Energy Regulatory Commission (FERC) rules and regulations.~~

R649-4-2. Applications.

~~— An operator requesting the classification of a well or reservoir pursuant to the authority granted to the Board by Section 503 of the NGPA, in order to enable the Board to determine the applicable category for any such well or reservoir pursuant to Title 1 of the NGPA, shall:~~

~~1. File the original and two copies of a written application made upon forms prescribed by the Board together with supporting documentation, including all information, data, forms, plats, maps, exhibits, and evidence as may be required by the applicable statutes, rules, and regulations. An application may be amended, supplemented, or withdrawn by the applicant at any time prior to the Board determination.~~

~~1.1. Complete an individual application as to each well for which a status determination is being requested. If more than one status determination is being requested for a single well, all forms and information required for each requested determination shall be submitted jointly under one application, with notice to the Board that multiple determinations for one well are being sought under the application.~~

~~1.2. File an affidavit as to the truthfulness and correctness of all information contained in the application, including all documents, testimony, and evidence attached to or submitted with the application.~~

~~1.3. Certify that the purchaser and owners of the natural gas for which the determination is being submitted, have been served by personal delivery or by mail, postage prepaid, with a copy of the application, including a complete FERC Form 121, excluding required supporting documents.~~

R649-4-3. Notice and Hearing.

~~1. Upon receipt of an application for a well status determination under the NGPA, the Board shall:~~

~~1.1. Notify the applicant of the receipt of the application;~~

~~1.2. Determine the completeness of the application. If the application is incomplete in any respect, the Board shall indicate to the applicant the items to be filed which would make the application complete;~~

~~1.3. Assign a cause number to each application, determine a hearing date for each complete application, and notify the applicant of the cause number and hearing date;~~

~~1.4. Cause notice of hearing to be given.~~

~~2. If the same applicant has filed for multiple well determinations or for multiple determinations as to any well, the published notice of hearing may include more than one well or reservoir in one notice.~~

R649-4-4. Determination and Orders.

~~1. Following notice and hearing, the Board shall issue a determination and order for each complete application.~~

~~2. If no response or protest to the application is filed with the Board, an application may be considered and a determination may be made by the Director or a designated hearing examiner on the basis of sworn testimony, depositions, or affidavits, together with all exhibits, forms, and other matters properly filed with the~~

~~Board. Such matters shall comprise the transcript of the hearing on which the determination is based.~~

~~3. An applicant may also request consideration and a determination by the Director or a designated hearing examiner by filing a letter with the Board agreeing that the determination can be made by the Director without the necessity of an appearance by the applicant. The Board may, however, upon its own motion, require an evidentiary hearing with sworn testimony to be held upon any application following proper notice. In the event the Board determines that a hearing is required, the Board shall notify the applicant at least ten days prior to the scheduled hearing date.~~

~~R649-4-5. Notice of Determination:~~

~~Within five days after the last day for filing a motion for rehearing, or, if such a motion is filed, within 15 days after it is denied or overruled by operation of law, the Board shall give written notice to the FERC of its determination and order.~~

~~**KEY: oil and gas law**~~

~~**Date of Enactment or Last Substantive Amendment: January 3, 2001**~~

~~**Notice of Continuation: November 8, 2005**~~

~~**Authorizing, and Implemented or Interpreted Law: 40-6-1 et seq.]**~~

Natural Resources, Parks and
Recreation
R651-637
2011 Antelope Island State Park
Special Mule Deer and Bighorn Sheep
Hunt

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 34024

FILED: 08/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2010 General Session of the Utah Legislature, the following intent language was incorporated into H.B. 3: "The Legislature intends that the proceeds of the hunts for bison, deer and bighorn sheep on Antelope Island, up to the amount of \$200,000, be used on Antelope Island State Park. Both conservation and regular hunts will be coordinated through a cooperative agreement between the Division of State Parks and the Division of Wildlife Resources." This language directs the Division of State Parks and Recreation to begin efforts resulting in a hunt for both mule deer and bighorn sheep during the fall of 2011.

(DAR NOTE: H.B. 3 (2010) is found at Chapter 414, Laws of Utah 2010, and was effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: Hunting on Antelope Island is currently authorized only for bison in accordance with Rule R651-614. Hunting of other species of wildlife which reside on Antelope Island is prohibited. Consequently, no rule exists which would authorize a hunt for mule deer and bighorn sheep, nor adequately define access limitations and hunter behavior with regards to the 2011 hunt. This is a one-time hunt for mule deer and bighorn sheep on Antelope Island during the fall of 2011.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 79-4-304

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. The only affected persons are those who draw the permits. Since the permit costs are set by either bid conditions or by the Division of Wildlife Resources (DWR), they are not affected by this rule.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government budgets. The only affected persons are those who draw the permits. Since the permit costs are set by either bid conditions or by DWR, they are not affected by this rule.

♦ SMALL BUSINESSES: There are no anticipated costs or savings to small business. The only affected persons are those who draw the permits. Since the permit costs are set by either bid conditions or by DWR, they are not affected by this rule.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to other persons. The only affected persons are those who draw the permits. Since the permit costs are set by either bid conditions or by DWR, they are not affected by this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only affected persons are those who draw the permits. Since the permit costs are set by either bid conditions or by DWR, they are not affected by this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should have a positive impact on private concessionaires on Antelope Island State Park.

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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

R651. Natural Resources, Parks and Recreation.**R651-637. 2011 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt.****R651-637-1. Authorization of a Hunt.**

(1) A hunt for mule deer and bighorn sheep on Antelope Island State Park is authorized for the fall of 2011. Access on Antelope Island State Park is authorized for purposed of hunting mule deer and bighorn sheep in the fall of 2011.

(2) All hunting shall be confined to the designated hunting unit which consists of that portion of approximately 26,000 acres on Antelope Island lying south of the chain link fence, commonly known as the "2000 acre fence" beginning in Farmington Bay and running in a south southwesterly direction and ending at White Rock Bay.

R651-637-2. Applicability of Law and Rules.

Hunting during the 2011 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt shall be conducted in accordance with applicable state law, administrative code, hunting guidebooks of the Utah Wildlife Board, and in accordance with this rule.

R651-637-3. Season Dates.

The 2011 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt shall be conducted during legal hunting hours as follows:

(1) Hunters obtaining a permit to hunt mule deer or bighorn sheep on Antelope Island through the competitive bid process may hunt during legal hours beginning 30 minutes before official sunrise on November 15, 2011 and ending 30 minutes after official sunset on November 24, 2011.

(2) Hunters obtaining a permit to hunt mule deer or bighorn sheep on Antelope Island through the public draw process may hunt during legal hours beginning 30 minutes before official sunrise on November 19, 2011 and ending 30 minutes after official sunset on November 24, 2011.

R651-637-4. Hunting Party Size.

Each hunter licensed to hunt during the 2011 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt may be accompanied by up to four (4) non-hunting companions. Guides, photographers, packers and all other individuals accompanying the hunter in camp or in the field are included in this limit.

R651-637-5. Fees.

(1) Day use fees for licensed hunters and their companions will be waived for the duration of their hunt.

(2) Camping fees for hunters and their companions who desire to camp on Antelope Island during the hunt will be charged per the current fee schedule. All campers shall camp in designated areas as directed by park management.

R651-637-6. Access.

(1) Motor vehicle access will be limited to publicly accessible roads. No off-road, motorized vehicular travel will be allowed.

(2) Off-highway vehicles as defined in Title 41-22-2 UCA are not allowed on Antelope Island.

(3) During the hunt, foot and horse travel, including cross-country foot and horse travel, will be allowed in all areas of the hunting unit.

(4) Foot and horse travel outside the actual hunting season will be confined to designated roads and trails. This includes preseason scouting trips, unless conducted during regularly scheduled "Open Access Events".

R651-637-7. Mandatory Orientation.

A mandatory orientation will be held prior to the hunt at the Antelope Island State Park Visitor Center. All license holders and their guides shall be in attendance at this orientation session.

R651-637-8. Mandatory Check-in and Check-out.

All hunters and their companions shall check in with Park Management at the beginning of their hunt and shall check out at the end of their hunt. In addition, any hunter or companion leaving or returning to Antelope Island during the course of the hunt shall check in or check out with Park Management. Instructions on checking in and out will be provided at the mandatory orientation.

R651-637-9. Handling of Harvested Wildlife.

The carcasses of all harvested wildlife shall be covered while being transported on Antelope Island or on the Antelope Island Causeway. This includes all parts of the harvested wildlife, including the head.

KEY: parks, hunting

**Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 79-4-304**

Natural Resources, Wildlife Resources

R657-9

Taking Waterfowl, Common Snipe and Coot

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34014

FILED: 08/26/2010

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 adds definitions for "Baiting", "Daily Bag Limit", "Possession limit", and "Migratory bird preservation facility". The amendment also clarifies the age requirement for purchasing a federal duck stamp.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment only adds definitions and clarifies age restrictions, 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, the division 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 clarifies terms and age restrictions 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 clarifies terms and age restrictions 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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.**R657-9. Taking Waterfowl, Common Snipe and Coot.****R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

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

R657-9-2. Definitions.

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

(2) In addition:

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

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

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

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

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

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

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

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

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

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

(~~h~~k) "Waterfowl" means ducks, mergansers, geese, brant and swans.

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

R657-9-3. Stamp Requirements.

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

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

(3) A federal migratory bird hunting and conservation stamp is not required for any person [~~12 through 15 years~~]under the age of [age-]16.

R657-9-16. 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, is legal 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.

R657-9-26. Migratory Bird Preservation Facilities.

(1) Migratory bird preservation facility means:

(i) Any person who, at their residence or place of business and for hire or other consideration; or

(ii) Any taxidermist, cold-storage facility or locker plant which, for hire or other consideration; or

(iii) Any hunting club which, in the normal course of operations; receives, possesses, or has in custody any migratory

game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage or shipment.

(2) 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~~3) 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~~4) 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.

KEY: wildlife, birds, migratory birds, waterfowl

Date of Enactment or Last Substantive Amendment: [~~October 22, 2009~~2010]

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.: 34017

FILED: 08/26/2010

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 rules: 1) add definitions for "Compensation", "Dog handler", "Private lands", "Public lands", "Restricted pursuit unit", and "Written permission"; 2)

set regulations for Guides and Outfitters concerning compensation and dog use; and 3) clarify the process of removing a depredated cougar.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment adds definitions and sets the regulations for Licensed Guides and Outfitters concerning compensation and dog use; 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 definitions and regulations for Guide and Outfitter compensation, it should have little to no effect on the local government. 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 other 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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-10. Taking Cougar.

R657-10-1. Purpose and Authority.

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

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

R657-10-2. Definitions.

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

(2) In addition:

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

(b) "Compensation" means anything of economic value in excess of \$100 that is paid, loaned, granted, given, donated, or transferred to a dog handler for or in consideration of pursuing cougar for any purpose.

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

([e]d) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.

([e]e) "Dog handler" means the person in the field that is responsible for transporting, releasing, tracking, controlling, managing, training, commanding and retrieving the dogs involved in the pursuit. The owner of the dogs is presumed the dog handler when the owner is in the field during pursuit.

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

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

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

([g]i) "Kitten with spots" means a cougar that has obvious spots on its sides or its back.

([h]j) "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]k) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

([j]l) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

~~(m)~~ "Public lands" means any lands owned by the state, a political subdivision or independent entity of the state, or the United States, excluding Indian trust lands, that are open to the public for purposes of engaging in pursuit.

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

~~([k]o)~~ "Split unit" means a cougar hunting unit that begins as a limited entry unit then transitions into a harvest objective unit.

~~([H]p)~~ "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.

~~(q)~~ "Written permission" means written authorization from the owner or person in charge to enter upon private lands and must include:

~~(i)~~ the name and signature of the owner or person in charge;

~~(ii)~~ the address and phone number of the owner or person in charge;

~~(iii)~~ the name of the dog handler given permission to enter the private lands;

~~(iv)~~ a brief description of the pursuit activity authorized;

~~(v)~~ the appropriate dates; and

~~(vi)~~ a general description of the property.

R657-10-3. Permits for Taking Cougar.

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

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

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

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

(a) as provided in Subsection R657-10-25(3); or

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

~~([4]3)~~ Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

~~([5]4)~~ To obtain a cougar limited entry permit, harvest objective permit, or pursuit permit, a person must possess a Utah hunting or combination license.

R657-10-4. ~~[Purchase of Permit by Mail]~~ Permits for Pursuing Cougar.

~~(1)~~ ~~[A person may]~~(a) To pursue cougar without a limited entry cougar permit, the dog handler must:

~~(i)~~ obtain a valid cougar pursuit permit ~~[or cougar harvest objective permit by mail by sending the following information to any division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter education certification, proof of valid]~~ from a division office; or

~~(ii)~~ possess the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation.

~~(b)~~ A cougar pursuit permit or exemption therefrom does not allow a person to kill a cougar.

~~(2)~~ Residents and nonresidents may purchase cougar pursuit permits consistent with the requirements of this rule and the proclamations of the Wildlife Board.

~~(3)~~ To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license ~~[—or— the corresponding fee.~~

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

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

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

R657-10-12. Use of Dogs.

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

(2) ~~[The owner and]~~ A dog handler ~~[of dogs used to take or]~~ may pursue cougar ~~[must have]~~ provided he or she possesses:

~~(a)~~ a valid limited entry cougar permit ~~[or]~~ issued to the dog handler;

~~(b)~~ a valid cougar pursuit permit ~~[—in possession while engaged in taking or pursuing cougar.]; or~~

~~(c)~~ the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation.

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

(4) When dogs are used to take a cougar and there is not an open pursuit season, the dog handler must have:

~~(a)~~ a limited entry cougar permit issued to the dog handler for the unit being hunted;

~~(b)(i)~~ a valid cougar pursuit permit; and

~~(ii)~~ be accompanied, as provided in Subsection (3), by a hunter possessing a limited entry cougar permit for the area; or

~~(c)(i)~~ the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation and

~~(ii)~~ be accompanied, as provided in Subsection (3), by a paying client possessing a limited entry cougar permit for the area.

~~(5)~~ A dog handler may pursue cougar under:

~~(a)~~ a cougar pursuit permit only during the season and in the areas designated by the Wildlife Board in proclamation open to pursuit;

~~(b)~~ a limited entry cougar permit only during the season and in the area designated by the Wildlife Board in proclamation for that permit; or

~~(c)~~ the pursuit for compensation provisions in this rule only during the seasons and in the areas designated by the Wildlife Board in proclamation open to pursuit.

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

R657-10-21. Livestock Depredation and Human Health and Safety.

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

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

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

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

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

(3) A depredating cougar may be taken ~~[with]~~ by those persons authorized in Subsection (1)(a) with:

~~(a) any weapon authorized for taking cougar; or~~

~~(b) with the use of snares only with written authorization from the director of the division and subject to all the conditions and restrictions set out in the written authorization.~~

~~(i) The option in Subsection (3)(b) may only be authorized in the case of a chronic depredation situation where numerous livestock have been killed by a depredating cougar and must be verified by Wildlife Services or division personnel.~~

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

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

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

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

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

R657-10-24. Extended and Preseason Hunts.

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

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

R657-10-25. Cougar Pursuit.

(1)(a) ~~Except as provided in rule R657-10-3(b) and Subsection (2), [E]cougar may be pursued only by persons who have obtained a [valid]cougar pursuit permit.~~

~~(b) The cougar pursuit permit does not allow a person to:~~

~~(i) kill a cougar[-]; or~~

~~([2]ii) pursue cougar for compensation.~~

~~(c) A person may pursue cougar for compensation only as provided in Subsection (2).~~

~~(d) To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license.~~

~~(2)(a) A person may pursue cougar on public lands for compensation, provided the dog handler:~~

~~(i) receives compensation from a client or customer to pursue cougar;~~

~~(ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79 of the Utah Code and authorized to pursue cougar;~~

~~(iii) possesses on his or her person the Utah hunting guide or outfitter license;~~

~~(iv) possesses on his or her person all permits and authorizations required by the applicable public lands managing authority to pursue cougar for compensation; and~~

~~(v) is accompanied by the client or customer at all times during pursuit.~~

~~(b) A person may pursue cougar on private lands for compensation, provided the dog handler:~~

~~(i) receives compensation from a client or customer to pursue cougar;~~

~~(ii) is accompanied by the client or customer at all times during pursuit; and~~

~~(iii) possesses on his or her person written permission from all private landowners on whose property pursuit takes place.~~

~~(c) A person who is an employee or agent of the Division of Wildlife Services may pursue cougar on public lands and private lands while acting within the scope of their employment.~~

~~(3) A pursuit permit is not required to pursue cougar under Subsection (2).~~

~~(4)(a) A person pursuing cougar for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the proclamations of the Wildlife Board regulating the pursuit and take of cougar.~~

~~(b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the proclamations of the Wildlife Board may be grounds for suspension of the privilege to pursue cougar for compensation under this subsection, as determined by a division hearing officer.~~

~~(5) A cougar pursuit permit authorizes the holder to pursue cougar with dogs on any unit open to pursuing cougar during the seasons and under the conditions prescribed by the Wildlife Board in proclamation.~~

~~(6) A person may not:~~

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

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

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

~~(i) The weapon restrictions set forth in the subsection do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill cougar.~~

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

([4]8) Cougar may be pursued only on limited entry units or harvest objective units during the dates provided in the proclamation of the Wildlife Board for taking cougar.

([5]9) A cougar pursuit permit is valid on a calendar year basis.

([6]10) A person must possess a valid hunting or combination license to obtain a cougar pursuit permit.

KEY: wildlife, cougar, game laws

Date of Enactment or Last Substantive Amendment: [~~October 22, 2009~~2010]

Notice of Continuation: August 21, 2006

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

Natural Resources, Wildlife Resources R657-11 Taking Furbearers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34016

FILED: 08/26/2010

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: The changes to this rule: 1) require the purchase of a Furbearer License prior to acquiring temporary bobcat permits; 2) require the name and address of the trapper who has another individual transport bobcat and marten in addition to the current requirements; and 3) require all applications for muskrat trapping on Waterfowl Management Areas be submitted and accepted on-line only.

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 require the purchase of an already existing license and only clarify other existing requirements. 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 existing 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 requirement to purchase a furbearer license before acquiring temporary bobcat tags. Currently the rule states a furbearer license permit must be purchased to use the temporary bobcat tags; therefore the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment adds a requirement to purchase a furbearer license before acquiring temporary bobcat tags. Currently the rule states a furbearer license permit must be purchased to use the temporary bobcat tags; 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 adds a requirement to purchase a furbearer license before acquiring temporary bobcat tags. Currently the rule states a furbearer license permit must be purchased to use the temporary bobcat tags. 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.

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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.**R657-11. Taking Furbearers.****R657-11-1. Purpose and Authority.**

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

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

R657-11-2. Definitions.

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

(2) In addition:

(a) "Artificial cubby set" means any artificially manufactured container with an opening on one end that houses a trapping device. Bait must be placed inside the artificial cubby set at least eight inches from the opening. Artificial cubby sets must be placed with the top of the opening even with or below the bottom of the bait so that the bait is not visible from above.

(b) "Bait" means any lure containing animal parts larger than one cubic inch, or eight cubic inches if used in an artificial cubby set, with the exception of white-bleached bones with no hide or flesh attached.

(c) "Exposed bait" means bait which is visible from any angle, except when used in an artificial cubby set.

(d) "Fur dealer" means any individual engaged in, wholly or in part, the business of buying, selling, or trading skins or pelts of furbearers within Utah.

(e) "Fur dealer's agent" means any person who is employed by a resident or nonresident fur dealer as a buyer.

(f) "Green pelt" means the untanned hide or skin of any furbearer.

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

(h) "Scent" means any lure composed of material of less than one cubic inch that has a smell intended to attract animals.

R657-11-4. Bobcat Permits.

(1) Bobcat permits can only be obtained and are only valid with a valid, current furbearer license.

(2) A person may obtain up to the number of bobcat permits authorized each year by the Wildlife Board. Permit numbers shall be published in the proclamation of the Wildlife Board for taking furbearers.

(3) Bobcat permits will be available during the dates published in the proclamation of the Wildlife Board for taking furbearers and may be obtained by submitting an application through the division's Internet address.

(4) Bobcat permits are valid for the entire bobcat season.

R657-11-7. Permanent Possession Tags for Bobcat and Marten.

(1) A person may not:

(a) possess a green pelt or unskinned carcass from a bobcat or marten that does not have a permanent tag affixed after the Saturday following the close of the bobcat trapping season and marten seasons;

(b) possess a green pelt or the unskinned carcass of a bobcat with an affixed temporary bobcat possession tag issued to another person, except as provided in Subsections (5) and (6); or

(b) buy, sell, trade, or barter a green pelt from a bobcat or marten that does not have a permanent tag affixed.

(2) Bobcat and marten pelts must be delivered to a division representative to have a permanent tag affixed and to surrender the lower jaw.

(3) Bobcat and marten pelts may be delivered to the following division offices, by appointment only, during the dates published in the proclamation of the Wildlife Board for taking furbearers:

(a) Cedar City - Regional Office;

(b) Ogden - Regional Office;

(c) Price - Regional Office;

(d) Salt Lake City - Salt Lake Office;

(e) Springville - Regional Office; and

(f) Vernal - Regional Office.

(4) There is no fee for permanent tags.

(5) Bobcat and marten which have been legally taken may be transported from an individual's place of residence by an individual other than the fur harvester to have the permanent tag affixed; bobcats must be tagged with a temporary possession tag and accompanied by a valid furbearer license belonging to the fur harvester.

(6) Any individual transporting a bobcat or marten for another person must have written authorization stating the following:

(a) date of kill;

(b) location of kill;

(c) species and sex of animal being transported;

(d) origin and destination of such transportation;

(e) the name, address, signature and furbearer license number of the fur harvester;

(f) the name of the individual transporting the bobcat or marten; and

(g) the fur harvester's marten permit number if marten is being transported.

(7) Green pelts of bobcats and marten legally taken from outside the state may not be possessed, bought, sold, traded, or bartered in Utah unless a permanent tag has been affixed or the pelts are accompanied by a shipping permit issued by the wildlife agency of the state where the animal was taken.

(8)(a) Fur harvesters taking marten are requested to present the entire skinned carcass intact, including the lower jaw, to the division in good condition when the pelt is presented for tagging.

(b) "Good condition" means the carcass is fresh or frozen and securely wrapped to prevent decomposition so that the tissue remains suitable for lab analysis.

R657-11-12. Accidental Trapping.

(1)(a) Any bear, bobcat, cougar, [~~fisher~~]-marten, otter, wolverine, any furbearer trapped out of season, or other protected wildlife accidentally caught in a trap must be released unharmed.

(b) Written permission must be obtained from a division representative to remove the carcass of any of these species from a trap.

(c) The carcass remains the property of the state and must be turned over to the division.

(2) All incidents of accidental trapping of any of these animals must be reported to the division within 48 hours.

(3) Black-footed ferret, lynx and wolf are protected species under the Endangered Species Act. Accidental trapping or capture of these species must be reported to the division within 48 hours.

R657-11-13. Methods of Take and Shooting Hours.

(1) Furbearers, except bobcats and marten, may be taken by any means, excluding explosives, poisons, and crossbows, or as otherwise provided in Section 23-13-17.

(2) Bobcats may be taken only by shooting, trapping, or with the aid of dogs as provided in Section R657-11-26.

(3) Marten may be taken only with an elevated, covered set in which the maximum trap size shall not exceed 1 1/2 foothold or 160 Conibear.

(4) Taking furbearers by shooting or with the aid of dogs is restricted to one-half hour before sunrise to one-half hour after sunset, except as provided in Section 23-13-17.

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

R657-11-27. Applications for Trapping on State Waterfowl Management Areas.

(1)(a) Applications for trapping on state waterfowl management areas are available ~~[from the division offices, and from waterfowl management superintendents]~~ at the division's internet address, and must be completed and submitted online by the date prescribed in the respective proclamation of the Wildlife Board.

~~[(2) Applications must be received in the mail no later than 5 p.m. on the date published in the proclamation of the Wildlife Board for taking furbearers. Applications completed incorrectly or received after the date published in the proclamation of the Wildlife Board for taking furbearers will be rejected.~~

~~(3) Application must be sent to the Wildlife Management section in the Salt Lake division office.~~

~~(4)(a) Trappers may apply for only one permit on only one management area in any 12 month period.](i) Applicants submitting more than one application per calendar year will be rejected.~~

~~(b) Applicants must meet all age requirements, proof of hunter education and furharvester requirements, and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.~~

~~(c) Applicants may select up to two WMA choices on the application.~~

~~(d) Hunt choices must be listed in order of preference.~~

~~[(b)e] Up to three trappers may apply as a group for a single permit.~~

~~[(e) None of the group applicants may apply for any other area.~~

~~(5)(a) Only the trapper or trappers specified on the application may trap on the waterfowl management area.~~

~~(b) Violation of this section is cause for forfeiture of all trapping privileges on management areas for that trapping year.~~

~~(6) Areas open to trapping, trapping fees, and number of permits for individual areas are available at division offices or by contacting the waterfowl management area superintendents during the application period.](f) A person who applies for or obtains a~~

permit must notify the division of any change in mailing address, residency, telephone number, email address, and physical description.

~~[(7)(a)g] If the number of applications received for a WMA exceeds the number of permits available, a drawing will be held. [Applicants shall be notified by mail of] This drawing [results-~~

~~(b) This drawing] will determine successful or unsuccessful applicants.~~

~~(i) each application will be assigned a computerized random drawing number.~~

~~(ii) a drawing order will be established by arranging applications beginning with the lowest random drawing number.~~

~~(iii) in sequence of the drawing order, the applicant's first selection will be considered. If a permit is not available for that selection, that applicant's second selection will be considered.~~

~~(iv) remaining permits will be offered to the alternate list beginning with the first eligible alternate.~~

~~(A) the alternate list is comprised of unsuccessful applicants[and alternates].~~

~~(8) Trapping dates and species that may be trapped]B) the alternate list is arranged in order beginning with the lowest drawing number.~~

~~(2) Permits, trapping dates and boundaries~~

~~(a) Open areas, trapping dates, allowable species, fees, and number of permits shall be determined by the waterfowl management area superintendent.~~

~~(9)b) Superintendents of waterfowl management areas offering more than one trapping permit will determine the trapping boundaries of each permit.~~

~~(c) Only the trapper or trappers listed on the permit may trap on the waterfowl management area.~~

~~(d) All trappers must trap under the supervision of the waterfowl management area superintendent. Permits are not valid until signed by the superintendent in charge of the area to be trapped.~~

~~(e) Violation of this section is cause for forfeiture of all trapping privileges on management areas for that trapping year.~~

~~(f) Applicants may be notified of drawing results by the date prescribed in the respective proclamation of the Wildlife Board.~~

R657-11-28. Fees.

(1) Upon verified payment of trapping fees, permits will be mailed to successful applicants are granted trapping rights for management areas.

(2) If a successful applicant fails to make full payment within ~~[ten]~~14 days ~~[after]~~of the ~~[drawing]~~results posting date, an alternate trapper will be selected.

(3) Permits are not valid until signed by the superintendent in charge of the area to be trapped.

KEY: wildlife, furbearers, game laws, wildlife law

Date of Enactment or Last substantive Amendment: [October 22, 2009]2010

Notice of Continuation: August 16, 2010

Authorizing, and Implementing or Interpreted Law: 23-14-18; 23-14-19; 23-13-17

Natural Resources, Wildlife Resources
R657-24
 Compensation for Mountain Lion, Bear
 or Eagle Damage

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34018

FILED: 08/26/2010

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 compensation for mountain lion, bear, wolf, or eagle damage program.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule: 1) amend the rule to include wolf damage claims to be in compliance with H.B. 32 that was recently passed by the Legislature and signed by the Governor; 2) add wolf to the title of the rule; 3) add wolf to the list of species individuals may receive compensation for damages to livestock from; 4) define wolf; 5) clarify that payments for damages caused to livestock by wolves are not made until mountain lion and bear claims for a fiscal year have first been paid; and 6) make technical corrections. (DAR NOTE: H.B. 32 (2010) is found at Chapter 289, Laws of Utah 2010, and was effective 05/11/2010.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-24-1 and Section 4-23-7

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--These amendments do not create a cost or savings impact to the state budget or the Division of Wildlife Resources' (DWR) budget. The budget that DWR has for damage compensation payments is determined by the Legislature and varies from year to year.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or saving 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 other persons, 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: None--The amendments do not create any compliance costs for affected persons. There are no costs because the amendment simply indicates wolves as another species category under which livestock owners may claim compensation.

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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-24. Compensation for Mountain Lion, Bear, Wolf or Eagle Damage.

R657-24-1. Purpose and Authority.

Under authority of Section 23-24-1, this rule provides the procedures, standards, requirements and limits for obtaining compensation for damages to livestock by mountain lion, black bear, wolf or an eagle.

R657-24-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-24-1(1).

(2) In addition:

(a) "Black bear" means *Ursus americanus*.

(b) "Fair market value" means the average commercial livestock prices from July 1 through June 30, as determined by the Utah Livestock and Auction Reporting Service.

(c) "Injury" means an act by a mountain lion or bear that results in the death of livestock within 30 days of the act or a permanent injury to livestock.

(d) "Livestock" means cattle, sheep, goats, or turkeys.

(e) "Mountain lion" means *Felis concolor*.

(f) "Eagle" means *Haliaeetus leucocephalus* (bald eagle) and *Aquila chrysaetos* (golden eagle).

(g) "Wolf" means *Canis lupus*

R657-24-3. Notification of Damage -- Payment of Damage Claims.

(1) When livestock are damaged by a mountain lion, bear, wolf or an eagle, the owner may receive compensation in accordance with Section 23-24-1(2).

(2)(a) Notification must be ~~[made in writing]~~ given to ~~[one of the regional division offices]~~ the Division within ~~[four working]~~ 4 days of ~~[discovering]~~ the damage. ~~[A Proof of Loss form must then be submitted within 30 days after the original notification.]~~

(b) Notification may be made orally to expedite field investigations, but it must be followed ~~[in writing]~~ with a draft (unsigned) Livestock Damage Proof of Loss form within ~~[four working days after the damage is discovered. A]~~ 14 days of the conclusion of the field investigation.

(c) Final signed copies of the Livestock Damage Proof of Loss form must [then be submitted within 30 days after the original written notification.] be submitted to the mammals program coordinator by June 1 except for damage that occurs between May 15 and June 30 for which the final signed copy of the Livestock Damage Proof of Loss form must be received by June 30.

(3)(a) Claims for damage payments received from July 1 through June 30 are assessed and accepted or denied based on information reported on the ~~[livestock damage]~~ Livestock Damage Proof of Loss form.

(b) Claims accepted for damage payments are held until all damage claims for the July 1 through June 30 period have been collected.

(c) If the total amount of the damage claims exceed the appropriated funds for this purpose, damage payments will be prorated for all eligible claims.

(d) Payments for eagle damage claims shall not be made until all accepted mountain lion ~~[and]~~, bear and wolf claims for a fiscal year have first been paid.

(e) Payments for wolf damage claims will only be made for damage that occurs in areas of the state where wolves are removed from the protection of the Endangered Species Act.

(4)(a) Damage payments will be paid only for confirmed losses and only to livestock producers who have paid the required head tax in accordance with Section 23-24-1(2).

(b) Verification of the payment of head tax will be acquired from the Utah Department of Agriculture.

(5)(a) The division or ~~[animal damage control]~~ USDA-APHIS Wildlife Services specialists will document on approved ~~[livestock damage]~~ Livestock Damage Proof of Loss forms the type and magnitude of livestock losses experienced by livestock producers.

(b) Where agreement with the type or magnitude of losses is not achieved by ~~[animal damage control]~~ a USDA-APHIS Wildlife Services specialists, a division representative shall follow up with an additional field investigation to assess damage claims.

KEY: wildlife, damages, livestock

Date of Enactment or Last Substantive Amendment: [August 8, 2006]2010

Notice of Continuation: October 7, 2005

Authorizing, and Implemented or Interpreted Law: 23-24-1; 4-23-7

Natural Resources, Wildlife Resources R657-42 Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34015

FILED: 08/26/2010

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 of Wildlife Resources' (DWR) rule pursuant to fees, exchanges, surrenders refunds, and reallocation of permits and other documents.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to this rule clarify criteria for refunding permits under certain situations and established protocol for reissuing surrendered, unissued, or unpaid for permits.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-19-1 and Section 23-19-38

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule amendment clarifies certain conditions to be met in order for a permit holder to surrender his permit and receive a refund. It requires small programming changes and can be implemented with the Division's current budget. Therefore, DWR determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** Since the amendment clarifies the criteria for surrendering a hunting permit and would impact only individual permit holders, this filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** This amendment clarifies criteria for hunters wishing to surrender a permit and receive a refund. It does not have an additional financial requirement on persons who wish to surrender a permit, and would not generate a cost or saving impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment clarifies criteria for hunters wishing to surrender a permit and receive a refund. It does not have an

additional financial requirement on persons who wish to surrender a permit, and would not generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will not create additional costs for hunters who wish to surrender a permit under the criteria to receive a refund. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who participate in hunting 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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: James Karpowitz, Director

**R657. Natural Resources, Wildlife Resources.
 R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents.**

R657-42-1. Purpose and Authority.

(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue wildlife documents in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

- (a) exchange of permits;
- (b) surrender of wildlife documents;
- (c) refund of wildlife documents;
- (d) reallocation of permits; and
- (e) assessment of late fees.

R657-42-5. Refunds.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with:

- (a) Section 23-19-38 and Rule R657-50;
- (b) Section 23-19-38.2 and Subsection (3); or

(c) Section 23-19-38 and this section.

(2)(a) An application for a refund may be obtained from any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(3) A person may receive a refund for a wildlife document if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the wildlife document;

(b) the person surrenders the wildlife document to the division, or signs an affidavit stating the wildlife document is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the wildlife document ; and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and

(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a wildlife document if the person to whom it was issued dies prior to participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) The person legally entitled to administer the decedent's estate provides the division with:

(i) picture identification;

(ii) letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;

(iii) a photocopy of the decedent's certified death certificate; and

(iv) the wildlife document for which a refund is requested.

(5)(a)(i) A person may receive a refund for a ~~surrendered~~ once-in-a-lifetime or limited-entry permit provided the permit is surrendered to the division no less than 30 days prior to the season opening date identified on the permit ~~and the permit is:~~

~~(a) a once-in-a-lifetime or limited-entry permit; or~~

~~(b)ii) A person may receive a refund for a general season permit that must be surrendered in order to accept a reallocated limited entry permit for the same species.~~

~~(6)b(i) The established wildlife document refund fee shall be deducted from all [refunds] refunds under subsection (5)(a).~~

~~(7)ii) A refund will not be issued where the wildlife document purchase price is equal to or less than the wildlife document refund fee.~~

~~(8)6) The director may determine that a person did not have the opportunity to participate in an activity authorized by the wildlife document.~~

([9]Z) The division may reinstate a bonus point or preference point, whichever is applicable, and waive waiting periods, if applicable, when issuing a refund in accordance with this Section.

KEY: wildlife, permits

Date of Enactment or Last Substantive Amendment: [~~August 9~~], 2010

Notice of Continuation: May 8, 2008

Authorizing, and Implemented or Interpreted Law: 23-19-1; 23-19-38; 23-19-38.2

**Public Safety, Criminal Investigations
and Technical Services, Criminal
Identification
R722-300
Concealed Firearm Permit and
Instructor Rule**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 33967

FILED: 08/17/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to clarify definitions and to enact procedures to carry out the statute change, see H.B. 214 in the 2010 General Session of the Utah Legislature. (DAR NOTE: H.B. 214 (2010) is found at Chapter 62, laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: This rule enacts procedures to carry out the statute change in H.B. 214 (2010).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 53, Chapter 5

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No aggregate anticipated cost or savings to the state budget. This proposed rule addresses the actual process of applying for a Concealed Firearm Permit (CFP) and the process for adjudicative proceedings thus, no aggregate cost or savings to the state budget is anticipated. Clarification of certain disqualifiers for revoking or suspending a permit and certain instructor procedures does not add an aggregate anticipated cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** No aggregate anticipated cost or savings to local government. This proposed rule addresses the actual process of applying for a Concealed Firearm Permit (CFP) and the process for adjudicative proceedings thus, no aggregate cost or savings to local government is anticipated. Clarification of certain disqualifiers for revoking or suspending a permit and certain instructor procedures does not add an aggregate anticipated cost or savings to local government.

◆ **SMALL BUSINESSES:** No aggregate anticipated cost or savings to small businesses. This proposed rule addresses the actual process of applying for a Concealed Firearm Permit (CFP) and the process for adjudicative proceedings thus, no aggregate cost or savings to small businesses is anticipated. Clarification of certain disqualifiers for revoking or suspending a permit and certain instructor procedures does not add an aggregate anticipated cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities. This proposed rule addresses the actual process of applying for a Concealed Firearm Permit (CFP) and the process for adjudicative proceedings thus, no aggregate cost or savings to persons other than small businesses, businesses, or local government entities is anticipated. Clarification of certain disqualifiers for revoking or suspending a permit and certain instructor procedures does not add an aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs--This rule addresses the application for licensing, certain adjudicative proceedings, and clarifications for certain disqualifiers for revoking or suspending a permit and certain instructor procedures relating to the Concealed Firearm Permit and Instructor programs. There are no anticipated compliance costs for any of the persons addressed above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This should not have any particular effect on business since it is only implementing procedures for the issuance of a permit pursuant to the statutory requirements.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL
SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: Alice Moffat, Bureau Chief

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-300. Concealed Firearm Permit and Instructor Rule.

R722-300-1. Purpose.

The purpose of this rule is to establish procedures whereby the bureau administers the Concealed Firearms Act in accordance with Title 53, Chapter 5, Part 7.

R722-300-2. Authority.

This rule is authorized by Section 53-5-704(16) which provides that the commissioner may make rules necessary to administer Title 53, Chapter 5.

R722-300-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-5-702, 53-5-711, 76-10-501.

(2) In addition:

(a) "applicant" means an individual seeking to obtain or renew a permit, a temporary permit, an instructor certification, or a LEOJ permit from the bureau;

(b) "certified firearms instructor" means an individual certified by the bureau pursuant to Section 53-5-704(8) who can certify that an applicant meets the general firearm familiarity requirement under Section 53-5-704(7);

(c) "certified firearms instructor official seal" means a red, self-inking stamp containing the information required in Subsection 53-5-704(10)(a)(iii)(C) which meets the design requirements described on the bureau's website;

(d) "crime of violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States which has, as an element, the use, threatened use, or attempted use of physical force or a dangerous weapon;

(e) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(f) "FBI" means the Federal Bureau of Investigation;

(g) "instructor certification" means a concealed firearm instructor certification issued by the bureau pursuant to Section 53-5-704(8);

(h) "LEOJ permit" means a permit to carry a concealed firearm issued to a judge or law enforcement official by the bureau pursuant to 53-5-711;

(i) "NRA" means the National Rifle Association;

(j) "offense involving domestic violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 77-36-1; or

(ii) 18 U.S.C § 921(a)(33);

(k) "offense involving moral turpitude" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(l) "offense involving unlawful sexual conduct" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Title 76 Chapter 5, Part 4

(ii) Title 76 Chapter 7, Part 1;

(iii) Title 76 Chapter 9, Part 702, 702.5, and 702.5;

(iv) Title 76 Chapter 10, Part 12; or

(v) Title 76 Chapter 10, Part 13;

(m) "offense involving the use of alcohol" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 32A-12-209;

(ii) Section 32A-12-220;

(iii) Section 41-6a-501(2) related to the use of alcohol; or

(iv) Section 76-10-528 related to carrying a dangerous weapon while under the influence of alcohol;

(n) "offense involving the unlawful use of narcotics or controlled substances" means:

(i) any offense listed in Section 41-6a-501(2) involving the use of a controlled substance;

(ii) any offense involving the use or possession of any controlled substance found in Title 58, Chapters 37, 37a, or 37b; or

(iii) the crime of carrying a dangerous weapon while under the influence of a controlled substance pursuant to Section 76-10-528;

(o) "past pattern of behavior involving unlawful violence" means verifiable incidents, regardless of whether there has been an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others, including an attempt or threat to commit suicide.

(p) "permit" means a permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-704;

(q) "POST" means the Utah Department of Public Safety, Division of Peace Officer Standards and Training;

(r) "revocation" means the permanent deprivation of a permit, instructor certification, or certificate of qualification. Revocation of a permit, instructor certification, or certificate of qualification does not preclude an individual from applying for a new permit, instructor certification, or certificate of qualification if the reason for revocation no longer exists;

(s) "suspension" means the temporary deprivation, for a specified period of time, of a permit, instructor certification, or certificate of qualification; and

(t) "temporary permit" means a temporary permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-705.

R722-300-4. Application for a Permit to Carry a Concealed Firearm.

(1)(a) An applicant seeking to obtain a permit must submit a completed permit application packet to the bureau.

(b) The permit application packet shall include:

(i) a written application form provided by the bureau which shall include the address of the applicant's permanent residence;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(v) a non-refundable processing fee of \$65.25, in the form of cash, check, money order, or credit card, which consists of a \$35.00 fee established by Section 53-5-707 and a \$30.25 FBI fingerprint processing fee;

(vi) evidence indicating that the applicant has general familiarity with the types of firearms to be concealed as required by Subsection 53-5-704(5)(d); and

(vii) any mitigating information that the applicant wishes the bureau to consider when determining whether the applicant meets the qualifications set forth in Subsection 53-5-704(2)(a).

(2) An applicant may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(5)(d) by submitting a signed certificate, issued within one year of the date of the application, bearing a certified firearms instructor's official seal, certifying that the applicant has completed the required firearms course of instruction established by the bureau.

(3) If the applicant is employed as a law enforcement officer, the applicant:

(i) shall not be required to pay the application fee; and

(ii) may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(5)(d) by submitting documentation from a law enforcement agency located within the state of Utah indicating that the applicant has successfully completed the firearm qualification requirements of that agency within the last five years.

(4)(a) Upon receipt of a complete permit application packet, the bureau shall conduct a thorough background investigation to determine if the applicant meets the requirements found in Subsections 53-5-704(2) and (3).

(b) The background investigation shall consist of the following:

(i) sending the fingerprint card to the FBI for a review of the applicant's criminal history record pursuant to Section 53-5-706; and

(ii) verifying the accuracy of the information provided in the application packet through a search of local, state and national records which may include, but is not limited to, the following:

(A) the Utah Computerized Criminal History database;

(B) the National Crime Information Center database;

(C) the Utah Law Enforcement Information Network;

(D) state driver license records;

(E) the Utah Statewide Warrants System;

(F) juvenile court criminal history files;

(G) expungement records maintained by the bureau;

(H) the National Instant Background Check System;

(I) the Utah Gun Check Inquiry Database;

(J) Immigration and Customs Enforcement records; and

(K) Utah Department of Corrections Offender Tracking System; and

(L) the Mental Gun Restrict Database.

(5)(a) If the background check indicates that an applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a), the bureau shall consider any mitigating circumstances submitted by the applicant.

(b) If the applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a) because the applicant has been convicted of a crime, the bureau may find that mitigating circumstances exist if the applicant was not convicted of a registerable sex offense, as defined in Subsection 77-27-21.5(1)(n), and the following time periods have elapsed from the date the applicant was convicted or released from incarceration, parole, or probation, whichever occurred last:

(i) five years in the case of a class A misdemeanor;

(ii) four years in the case of a class B misdemeanor; or

(iii) three years in the case of any other misdemeanor or infraction.

(c) Notwithstanding any other provision, the bureau may not grant a permit if the applicant does not meet the qualifications in Subsection 53-5-704(2)(a)(viii).

(6)(a) If the bureau determines that the applicant meets the requirements found in Subsection 53-5-704(2) and (3), the bureau shall issue a permit to the applicant within 60 days.

(b) The permit shall be mailed to the applicant at the address listed on the application.

(7)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(2) and (3), the bureau shall mail a letter of denial to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(15).

R722-300-5. Application for a Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to be certified as a Utah concealed firearms instructor must submit a completed instructor certification application packet to the bureau.

(b) The instructor certification application packet shall include:

(i) a written instructor certification application form provided by the bureau;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph;

(iv) a non-refundable processing fee of \$50.00, in the form of cash, check, money order, or credit card;

(v) evidence that the applicant has a current NRA certification or its equivalent as required by Subsection 53-5-704(8)(a)(iii); and

(vi) evidence that the applicant has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(8)(c), within one year of the date of the application.

(2) An applicant may meet the requirements of Subsection 53-5-704(8)(a)(iii) by providing a certificate of completion from one of the following:

(a) a NRA firearms instructor training program; or

(b) a POST firearms instructor training program.

(4) When reviewing an application for certification the bureau shall conduct a background investigation to ensure that the instructor is eligible to possess a firearm under Section 76-10-503 and federal law.

(5)(a) If the bureau determines that an applicant meets the requirements found in Subsection 53-5-704(8), the bureau shall issue an instructor certification to the applicant.

(b) An instructor certification identification card shall be mailed to the applicant at the address listed on the application.

(6)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(8), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(15).

R722-300-6. Renewal of a Concealed Firearms Permit or Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to renew a permit or an instructor certification must submit a completed renewal packet to the bureau.

(b) The renewal packet shall include:

(i) a written renewal form provided by the bureau which shall include the current address of the applicant's permanent residence;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph; and

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card which is \$10.00 fee to renew a permit or \$25.00 fee to renew an instructor certification.

(2) In addition to the items listed in Subsection (1)(b), an instructor seeking to renew an instructor certification must submit evidence that the instructor has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(8)(c), within one year of the date of the application.

(3) A renewal packet may be submitted no earlier than 60 days prior to the expiration of a current permit or certification.

(4) A fee consisting of \$7.50 will be collected for renewal packets submitted on a permit or an instructor certification that has been expired for more than thirty days but less than one year.

(b) Renewal packets for a permit or an instructor certification which has been expired for more than one year will not be accepted and the applicant will have to re-apply for a permit or an instructor certification.

(5) When renewing a permit or an instructor certification the bureau shall conduct a background investigation.

(6)(a) If the bureau determines that the applicant meets the requirements to renew a permit or an instructor certification, the bureau shall mail the renewed permit or instructor certification identification card to the applicant.

(b) The renewed permit or instructor certification identification card shall be mailed to the applicant at the address listed on the renewal application.

(7)(a) If the bureau determines that the applicant does not meet the requirements to renew a permit or an instructor certification, the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(15).

R722-300-7. Application for a Temporary Permit to Carry a Concealed Firearm.

(1)(a) In order to obtain a temporary permit an applicant must submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant must provide written documentation to establish extenuating circumstances which would justify the need for a temporary permit to carry a concealed firearm.

(2) When reviewing an application for a temporary permit to carry a concealed firearm the bureau shall conduct the same background investigation as provided in R722-300-4.

(3)(a) If the bureau finds that extenuating circumstances exist to justify the need for a temporary permit, the bureau shall issue a temporary permit to the applicant.

(b) The temporary permit shall be mailed to the applicant at the address listed on the application.

(4) If the bureau finds that the applicant is otherwise eligible to receive a permit under Section 53-5-704, the bureau shall request that the applicant surrender the temporary permit prior to the issuance of the permit under Section 53-5-704.

R722-300-8. Application for a LEOJ Permit.

(1)(a) In order to obtain a LEOJ permit under Section 53-5-711, an applicant must submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant must provide written documentation to establish to the satisfaction of the bureau that:

(i) the applicant is a law enforcement official or judge as defined in Section 53-5-711; and (ii) that the applicant has completed the course of training required by Subsection 53-5-711(2)(b).

(2) When reviewing an application for a LEOJ permit the bureau shall conduct the same background investigation as if the individual were seeking a permit.

(3)(a) If the bureau finds that the applicant meets the requirements found in Subsection 53-5-711(2), the bureau shall issue a LEOJ permit to the applicant.

(b) The LEOJ permit shall be mailed to the applicant at the address listed on the application.

(4)(a) If the bureau finds that the applicant does not meet the requirements found in Subsection 53-5-711(2), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(15).

R722-300-9. Termination of LEOJ Status.

(1) When the bureau receives notice that a LEOJ permit holder resigns or is terminated from a position as a law enforcement official or judge, the LEOJ permit will be revoked and the bureau shall issue a permit, pursuant to 53-5-704, if the former LEOJ permit holder otherwise meets the requirements found in that section.

(2) If a former LEOJ permit holder gains new employment as a law enforcement official or judge, the bureau shall re-issue a LEOJ permit.

R722-300-10. Suspension or Revocation of a Permit to Carry a Concealed Firearm, Concealed Firearms Instructor Certification, or a LEOJ Permit.

(1) A permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the permit holder does not meet the requirements found in Subsection 53-5-704(2);

(b) the bureau determines that the permit holder has committed a violation under Subsection 53-5-704(3); or

(c) the permit holder knowingly and willfully provided false information on an application for a permit, or a renewal of a permit.

(2) An instructor certification may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the instructor has become ineligible to possess a firearm under Section 76-10-506 or federal law; or

(b) the instructor knowingly and willfully provided false information to the bureau.

(3) A LEOJ permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that a LEOJ permit holder is no longer employed as a law enforcement official or judge; or

(b) a LEOJ permit holder fails to provide proof of annual requalification by November 30 of each year as required by Section 53-5-711.

(4)(a) If the bureau suspends or revokes a permit, an instructor certification, or a LEOJ permit, the bureau shall mail a notice of agency action to the permit holder, instructor, or LEOJ permit holder, return receipt requested.

(b) The notice of agency action shall state the reasons for suspension or revocation and indicate that the permit holder, instructor, LEOJ permit holder has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(15).

R722-300-11. Review Hearing Before the Board.

(1)(a) Review hearings before the board will be informal and shall be conducted according to the provisions in Section 63G-4-203.

(b) At the hearing, the bureau must establish the allegations contained in the notice of agency action by a preponderance of the evidence.

(2) Upon request, an applicant, permit holder, instructor, or LEOJ permit holder who is seeking review before the board is entitled to review all the materials in the bureau's file upon which the bureau intends to use in the hearing.

(3) In accordance with Section 63G-4-209 the board may enter an order of default against an applicant, permit holder, instructor, or LEOJ permit holder who fails to appear at the hearing.

(4) Within 30 days of the date of the hearing the board shall issue an order which shall:

(a) state the board's decision and the reasons for the board's decision; and

(b) indicate that the applicant, permit holder, instructor, or LEOJ permit holder has a right to appeal the decision of the board by filing a petition for judicial review within 30 days as provided in Section 63G-4-402.

R722-300-12. Records Access.

(1) Information provided to the bureau by an applicant shall be considered "private" in accordance with Subsection 63G-2-302(2)(d).

(2) Information gathered by the bureau and placed in an applicant's file shall be considered "protected" in accordance with Subsections 63G-2-305(9).

(3) When a permit has been issued to an applicant, the names, address, telephone numbers, dates of birth, and Social Security numbers of the applicant are protected records pursuant to Section 53-5-708.

KEY: concealed firearm permit, concealed firearm permit instructor

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: Title 53, Section 5 Part 7

**Public Safety, Criminal Investigations
and Technical Services, Criminal
Identification**

R722-310

**Regulation of Bail Bond Recovery and
Enforcement Agents**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33966

FILED: 08/17/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes are: 1) to address statutory change for identification of licensees, H.B. 426, 2010 General Session; 2) to clarify definitions of certain terms for

disqualifiers; 3) to clarify the procedures for application for initial licensure and renewal, training program requirements, verification of experience, credit for specified training, and continuing classroom instruction; and 4) to set criteria for certified Bail Enforcement Firearms Instructors and process for adjudicative proceedings. (DAR NOTE: H.B. 426 (2010) is found at Chapter 348, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: Response to the statutory change and clarification of certain aspects of the licensing process.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 53, Chapter 11

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No aggregate anticipated cost or savings to the state budget. This proposed rule addresses the actual process of applying for a Bail Recovery Bond Recovery and Enforcement initial and renewal licenses, training programs, and the process for adjudicative proceedings thus, no aggregate cost or savings to the state budget is anticipated. Clarification of certain disqualifiers, training program requirements, verification of experience, credit for specified training, and continuing classroom instruction does not add an aggregate anticipated cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** No aggregate anticipated cost or savings to local government. This proposed rule addresses the actual process of applying for a Bail Recovery Bond Recovery and Enforcement initial and renewal licenses, training programs, and the process for adjudicative proceedings thus, no aggregate cost or savings to local government is anticipated. Clarification of certain disqualifiers, training program requirements, verification of experience, credit for specified training, and continuing classroom instruction does not add an aggregate anticipated cost or savings to local government.

◆ **SMALL BUSINESSES:** No aggregate anticipated cost or savings to small business. This proposed rule addresses the actual process of applying for a Bail Recovery Bond Recovery and Enforcement initial and renewal licenses, training programs, and the process for adjudicative proceedings thus, no aggregate cost or savings to small businesses is anticipated. Clarification of certain disqualifiers, training program requirements, verification of experience, credit for specified training, and continuing classroom instruction does not add an aggregate anticipated cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities. This proposed rule addresses the actual process of applying for a Bail Recovery Bond Recovery and Enforcement initial and renewal licenses, training programs, and the process for adjudicative proceedings thus, no aggregate cost or savings to persons other than small businesses, businesses, or local

government entities is anticipated. Clarification of certain disqualifiers, training program requirements, verification of experience, credit for specified training, and continuing classroom instruction does not add an aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs. As this rule addresses the application for licensing, certain adjudicative proceedings, and clarifications for certain other issues related to the Regulation of Bail Bond Recovery and Enforcement Agents there are no anticipated compliance costs for any of the persons addressed above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This should not have any particular effect on business since it is only implementing procedures for the issuance of a license pursuant to the statutory requirements.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PUBLIC SAFETY
 CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
 3888 W 5400 S
 TAYLORSVILLE, UT 84118
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: Alice Moffat, Bureau Chief

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-310. Regulation of Bail Bond Recovery and Enforcement Agents.

R722-310-1. Authority.

This rule is authorized by Subsection 53-11-103(5).

R722-310-2. Definitions.

(1) Terms used in this rule are defined in Section 53-11-102.

(2) In addition:

~~[(a) "Bureau" means the Bureau of Criminal Identification with the Utah Department of Public Safety.~~

~~(b) "Moral turpitude" as used in Subsection 53-11-108(2)~~

~~(a)(vi), means a conviction of any offense involving:~~

~~(i) theft;~~

~~(ii) fraud;~~

- ~~(iii) tax evasion;~~
- ~~(iv) issuing bad checks;~~
- ~~(v) interference with police;~~
- ~~(vi) fleeing, resisting, or failing to obey police;~~
- ~~(vii) obstruction of justice;~~
- ~~(viii) bribery;~~
- ~~(ix) perjury;~~
- ~~(x) extortion;~~
- ~~(xi) arson;~~
- ~~(xii) criminal mischief;~~
- ~~(xiii) wildlife violations "involving a weapon";~~
- ~~(xiv) falsifying government records;~~
- ~~(xv) receiving stolen property;~~
- ~~(xvi) firearms violations;~~
- ~~(xvii) vandalism;~~
- ~~(xviii) crimes involving unlawful sexual conduct; and~~
- ~~(xix) violating the pornographic and harmful materials and performances act.~~
- ~~(xx) In addition, a crime of "moral turpitude" means a conviction of an offense involving:~~
 - ~~(A) the use of alcohol;~~
 - ~~(B) the unlawful use of narcotics or other controlled substances; or~~
 - ~~(C) any offense involving dishonesty or misrepresentation.~~
- ~~(e) "Peace officer" as used in Subsection 53-11-108(2)(e), means anyone who is employed either full time or part time by the federal, state or local government in one of the officer classifications listed in Subsection 53-13-102.](a) "act involving moral turpitude" means conduct which:~~
 - ~~(i) is done knowingly contrary to justice, honesty, or good morals;~~
 - ~~(ii) has an element of falsification or fraud; or~~
 - ~~(iii) contains an element of harm or injury directed to another person or another's property;~~
- ~~(b) "bureau" means the Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201; and~~
- ~~(c) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;~~
- ~~(d) "licensee" means an individual who has received a bail enforcement agent license, bail bond recovery agency license, bail recovery agent license or bail recovery apprentice license;~~
- ~~(e) "revocation" means the permanent deprivation of a bail bond recovery license. Revocation of a bail bond recovery license does not preclude an individual from applying for a new bail bond recovery license if the reason for revocation no longer exists; and~~
- ~~(f) "suspension" means the temporary deprivation, for a specified period of time, of a bail bond recovery license.~~

R722-310-3. Purpose.

- ~~[(1) The purpose of this rule is to regulate:~~
 - ~~(a) bail bond recovery and enforcement agents;~~
 - ~~(b) as provided by Title 53, Chapter 11, the "Bail Bond Recovery Act."]The purpose of the rule is to establish procedures~~

for the licensing of bail enforcement agents, bail bond recovery agencies, bail recovery agents, and bail recovery apprentices.

R722-310-4. [Application.]Application for Licensure.

~~[(1) In addition to the requirements set forth in Sections 53-11-109 and 53-11-113, all applicants seeking licensure under this chapter shall provide two completed sets of fingerprint cards for the purpose of fingerprint processing as provided in Section 53-11-115.~~

~~(2) An applicant seeking initial licensure that also wishes to carry a firearm shall satisfy the requirements of Title 53 Chapter 5, the "Concealed Weapon Act" plus complete the 16 hour weapons course required by Subsection 53-11-108(5).~~

~~(3) An applicant for an upgrade in licensure that also wishes to carry a firearm shall satisfy the requirements of Title 53 Chapter 5, the "Concealed Weapon Act."~~

~~(a) In addition, an applicant for an upgrade wishing to carry a firearm shall satisfy an eight hour firearm proficiency test which shall include an actual shooting component. This firearm proficiency test shall be adapted from a firearm course under the supervision of the Bureau.~~

~~(b) A list of certified instructors shall be made available on the Bureau's web page.~~

~~(c) The firearm proficiency test and shooting component shall also be required upon each renewal.](1)(a) An applicant seeking to obtain a license as a bail bond agency, bail enforcement agent, bail recovery agent, or a bail recovery apprentice must submit a completed application packet to the bureau.~~

~~(b) The application packet shall include:~~

~~(i) a written application form provided by the bureau which shall include the applicant's residential address;~~

~~(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph~~

~~(iii) a photocopy of a state-issued driver license or identification card;~~

~~(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;~~

~~(v) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-11-115; and~~

~~(vi) documentation from an approved provider indicating that the applicant has completed the sixteen hour training program, described in Section 53-11-108(4).~~

~~(2) If the applicant is applying for license as a bail enforcement agent, the applicant must also provide documentation indicating that the applicant has 2,000 hours of experience related to bail bond recovery and enforcement.~~

~~(3) If an applicant for license as a bail enforcement agent wishes to operate a bail bond recovery agency, the applicant must also provide:~~

~~(i) the name and business address for the bail bond recovery agency; and~~

~~(ii) a certificate of workers' compensation insurance, if applicable.~~

~~(4) If the applicant is applying for license as a bail recovery agent, the applicant must also provide:~~

~~(i) documentation indicating that the applicant has 1,000 hours of experience related to bail bond recovery and enforcement.~~

~~(ii) verification from a bail bond recovery agency indicating that the agency will employ or contract with the applicant.~~

~~(5) If the applicant is applying for license as a bail recovery apprentice, the applicant must also provide:~~

~~(i) verification from a bail bond recovery agency indicating that the agency will employ or contract with the applicant.~~

~~(6) If the applicant is seeking to carry a firearm as a licensee, the applicant must comply with all of the requirements found in R722-300 and must provide documentation from an approved bail enforcement firearms instructor indicating that the applicant has completed the sixteen hour firearms training course required in Section 53-11-108(5).~~

~~(7)(a) Once the application packet is complete, the bureau shall submit it to the board for their review at the next regularly scheduled meeting.~~

~~(b) Application packets that are received or completed less than 7 days prior to a scheduled board meeting will not be considered by the board until the next regularly scheduled board meeting.~~

R722-310-5. [~~Licensure.]Training Program Requirements.~~

~~[(1) In addition to the provisions set forth in Subsection 53-11-116(1)(b)(i), each license and identification card shall have on its face a designation as to whether or not the licensee is authorized to carry a loaded and concealed firearm as provided in Subsection 53-11-108(5).~~

~~(2) Providers offering instruction or continuing instruction required for licensure shall offer the courses to all applicants at the same course fees. [(1) The sixteen hour training program described in Section 53-11-108(4), which is required for licensure, must be provided by a training program provider approved by the board.~~

~~(2) Training program providers seeking to become approved by the board must provide a detailed course curriculum for the board's review.~~

~~(3)(a) Training programs which are approved by the board must be open to anyone who wishes to attend.~~

~~(b) If a training provider charges a fee for the training program, the same fee must apply to all participants in the training program.~~

~~(4) Training program providers must notify the bureau, at least five days in advance, of the dates, times, and location of all courses provided.~~

~~(5)(a) Bureau investigators shall periodically monitor approved training programs to insure that the training program is providing instruction as required by Section 53-11-108(4).~~

~~(b) The training program may not charge the investigator a fee for monitoring the program.~~

~~(6) If the board receives information that a training program is not providing instruction as required by Section 53-11-108(4), the board shall terminate its approval of the training program after notice and an opportunity for a hearing before the board.~~

[R722-310-5a. Presumed Lengths of Time of Licensure Denial:

~~(1) The following time lengths are presumed, but non-binding, waiting periods for an applicant whose license is denied:~~

~~(a) 3 years for class B misdemeanor violations;~~

~~(b) 5 years for class A misdemeanor violations;~~

~~(c) 3 years for misdemeanor DUI and alcohol related reckless driving violations; and~~

~~(d) felony violations shall require a waiting period until the conviction is expunged, if possible.~~

[R722-310-6. [~~Minimum Experience Requirements.] Verification of Experience.~~

~~[(1) In addition to the requirements set forth in Subsections 53-11-109(1)(b)(i) and (ii), an applicant claiming previous experience as either a bail recovery agent or law enforcement officer shall substantiate the experience as qualifying experience.~~

~~(2) The applicant may do so by showing that the experience claimed has been acquired within ten years immediately preceding application. [(1) When verifying the experience necessary for licensure as a bail enforcement agent or a bail recovery agent, the applicant must provide a written statement which lists, in detail, the number of hours and the type of bail bond recovery work performed by the applicant.~~

~~(2) The verification of experience must be signed and notarized by the applicant's employer or by an individual who has personal knowledge of the bail bond recovery work performed.~~

~~(3) The bail bond recovery work must have been performed within ten years from the date of the application.~~

R722-310-7. [~~Qualification.]Credit for Specified Training.~~

~~[(1) An applicant receiving qualification credit under Section 53-11-114, is still required to attend the 16-hour training course referred to in Section 53-11-108.~~

~~(2) An applicant who holds a criminal justice bachelor's degree or who is certified to have successfully completed the state Peace Officers Standards and Training basic training course referred to in Section 53-6-202, shall be exempt from meeting the 1000-hours of experience requirements.~~

~~(3) Not more than 1000 hours shall be exempt for any specified training.~~

~~(4) If any license expires under Rule R722-310 for 90-days or more, the applicant shall reapply and the 16-hours of training shall be retaken. [(1) An applicant who wishes to receive credit towards the experience requirement for licensure, must provide documentation indicating that the applicant has a criminal justice bachelor's degree or has successfully completed a basic training course described in Section 53-11-114(1)(b) or (c).~~

~~(2) An applicant may receive up to 1000 hours of credit towards the experience requirement for licensure under Section 53-11-114.~~

~~(3) An applicant seeking credit under Section 53-11-114, is not exempt from completing the sixteen hour training course required by Section 53-11-108(4).~~

R722-310-8. Renewal of a License.

~~(1)(a) A licensee seeking to renew a license as a bail bond agency, bail enforcement agent, bail recovery agent, or a bail recovery apprentice must submit a completed renewal packet to the bureau.~~

~~(b) The renewal packet shall include:~~

~~(i) a written renewal form provided by the bureau which shall include the applicant's address;~~

~~(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph;~~

~~(iii) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-11-115;~~

~~(iv) evidence that the applicant has completed eight hours of continuing classroom instruction required by Subsection 53-11-111(2); and~~

~~(v) evidence that the applicant has a liability insurance policy described in Subsection 53-9-109(2).~~

~~(2)(a) Once the renewal packet is complete, the bureau shall submit it to the board for their review at the next regularly scheduled meeting.~~

~~(b) Renewal packets that are received or completed less than 7 days prior to a scheduled board meeting will not be considered by the board until the next regularly scheduled board meeting.~~

~~(3) A licensee whose license has been expired for more than ninety days, must reapply and meet all requirements found in R722-310-4.~~

~~**R722-310-7a. Required Continuing Training for Licensure Renewal or Upgrade.**~~**R722-310-9. Requirements for Continuing Classroom Instruction.**

~~(1) An applicant seeking renewal or upgrade of each license in this section shall complete not less than eight hours of continuing classroom instruction as required by Subsection 53-11-111(2).~~

~~(2) Four of these required eight hours of continuing classroom instruction shall be provided by the Bureau.~~

~~(3) This four hour course shall be required every two years during the renewal process for each license level.~~

~~(a) The course shall provide updates on Utah law, administrative changes, and other pertinent information in order to enhance knowledge of bail recovery.~~

~~(b) The remaining four hours of continuing classroom instruction required under Subsection 53-11-111(2) is left to the discretion of the license renewal applicant. (1)(a) Four of the eight hours of continuing classroom instruction required by Subsection 53-11-111(2) shall be provided by the bureau.~~

~~(b) The course provided by the bureau shall provide updates on Utah law, administrative changes, and other pertinent information designed to enhance the licensee's knowledge of bail recovery.~~

~~(2) The remaining four hours of continuing classroom instruction required under Subsection 53-11-111(2) are left to the discretion of the licensee.~~

R722-310-10. Criteria for Certified Bail Enforcement Firearms Instructor.

(1) The sixteen hour firearms training program described in Section 53-11-108(5), must be provided by a bail enforcement firearms instructor approved by the bureau.

(2) In order to become an approved bail enforcement firearms instructor, the instructor must be a certified Utah concealed firearm permit instructor under Section 53-5-704(8) and must be in good standing with the bureau.

~~(3)(a) Each approved bail enforcement firearms instructor must adhere to the curriculum adopted by the bureau.~~

~~(b) An instructor may supplement, but may not detract from the set curriculum.~~

~~**R722-310-8.**~~**R722-310-11. Notice to Commissioner.**

~~[Required notice to the commissioner under Subsection 53-11-116(5) when there is a change in the name or address of a bail bond agency and any change of employees or contract employees shall be in writing and signed by the licensee.] A bail bond recovery agency may provide notice of a change in the name or address of a bail bond agency or any change of employees or contract employees to the commissioner as required by Subsection 53-11-116(5) by sending a written notice to the bureau that is signed by the licensee.~~

~~**R722-310-9. Appeal on Denial of License.**~~**R722-310-12. Adjudicative Proceedings.**

~~(1) All adjudicative proceedings provided for herein shall be informal in accordance with Section 63G-4-203 and as allowed by Section 63G-4-202.~~

~~(2) The board may deny a license application or renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.~~

~~(3) The board shall review and make an initial determination on all license applications. An applicant denied licensure by the board shall be given opportunity to appeal the board's initial determination to the board for a hearing.~~

~~(4) The board shall issue a written decision to the applicant within ten days following the hearing.~~

~~(5) When the board denies the license following a hearing, the board's issued decision shall advise the applicant that the applicant may appeal to the commissioner within 30 days after the decision is issued.~~

~~(6) An appeal to the commissioner shall not result in a de novo hearing before the commissioner. It shall result in the department's administrative law judge reviewing the record as the commissioner's designee. The administrative law judge may request oral argument by the parties.~~

~~(7) In addition to the options in Subsection 53-11-118(4), the administrative law judge may affirm the board's decision.~~

~~(8) The administrative law judge shall issue a decision within 60 days after receipt of the appeal. (1) All adjudicative proceedings shall be informal according to the provisions in Sections 63G-4-202 through 63G-4-203.~~

~~(2)(a) The board shall review and make an initial determination on all license applications and renewals.~~

~~(b) The board may deny a license application or renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.~~

~~(3) The board shall review all investigations presented by the bureau and may take disciplinary action against a licensee based on a violation of Section 53-11-119.~~

~~(4)(a) The board shall issue a written decision within ten days after the board meets to decide the matter.~~

~~(b) The board's written decision shall indicate that the applicant or licensee may appeal to the commissioner within thirty days from the date that the written decision is issued.~~

(5)(a) If an applicant or licensee appeals the board's decision, the commissioner, or his designee, shall review the materials in the bureau's file, the findings of the board along with any materials submitted by the applicant or licensee and may affirm, adopt, modify, supplement, reverse, or reject the board's findings or return the matter to the board for reconsideration.

(b) If the applicant or licensee requests a hearing, the commissioner, or his designee, shall schedule a hearing within sixty days from the receipt of the request for review.

R722-310-13. Identification of Licensees.

(1)(a) A licensee shall be issued an identification card by the bureau which identifies whether the licensee as a bail enforcement agent, bail bond recovery agency, bail recovery agent or bail recovery apprentice.

(b) The identification card shall indicate on its face if the licensee is authorized to carry a loaded and concealed firearm as provided in Subsection 53-11-108(5).

(2)(a) A bail enforcement agent or bail recovery agent may wear a badge that is identical to the badge depicted on the bureau's website in accordance Section 53-11-121.

(b) A bail enforcement agent or bail recovery agent may obtain a badge from any source, so long as it complies with the following specifications:

(i) the badge must be 2.55 inches high and 2.66 inches wide;

(ii) the badge must be in the shape of a five point star on a circle;

(iii) the star must be gold in color and the circle must be silver in color;

(iv) the center of the star must be black in color and contain a seal with the phrase "Liberty & Justice For All";

(v) the text of the badge must be written in block lettering and must be black;

(vi) the silver circle must contain two panels with writing to indicate whether the agent is a bail enforcement or bail recovery agent; and

(vii) the badge must contain two gold panels with writing to indicate the word "Utah" on the top panel and the agent's license number on the bottom panel.

(3)(a) A bail enforcement agent or bail recovery agent may only display the badge described in this rule if the agent is wearing an item of clothing that identifies whether the agent is a bail enforcement agent or bail recovery agent.

(b) The item of clothing must contain the words "bail enforcement agent" or "bail recovery agent" written on both the chest and back and must meet the following requirements:

(i) the writing on the back must be at least two inches in height;

(ii) the writing on the chest must be at least one half of an inch in height; and

(iii) the writing must be in a color that contrasts with the color of the item of clothing.

KEY: bail bond enforcement agent, bail bond recovery agent, license

Date of Enactment or Last Substantive Amendment: [January 1, 2009]2010

Notice of Continuation: May 12, 2010

Authorizing, and Implemented or Interpreted Law: 53-11-103(5)

**Public Service Commission,
Administration
R746-360-8**

**Calculation of Fund Distributions in
Rate-of-Return Incumbent Telephone
Corporation Territories**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34001

FILED: 08/25/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to define the "weighted average rate of return on capital" to be used in the determination of support amounts to be paid to Incumbent Telephone Corporations from the universal service fund (USF).

SUMMARY OF THE RULE OR CHANGE: The amendment defines how the Public Service Commission (PSC) shall calculate the "weighted average rate of return on capital" to be used in determining the Incumbent's "total embedded costs". "Total embedded costs" is in turn used in determining the Incumbent's support amount from the USF.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 47 CFR Part 36 and Section 54-8b-15

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The PSC has determined the current definition of "total embedded costs" used by individual Incumbents is not known by the Division of Public Utilities (the USF Administrator). Consequently, the PSC has no basis on which to calculate a change in demand on the USF or the likelihood of any resultant change in cost or savings.

♦ **LOCAL GOVERNMENTS:** The PSC has determined the current definition of "total embedded costs" used by individual Incumbents is not known by the Division of Public Utilities (the USF Administrator). Consequently, the PSC has no basis on which to calculate a change in demand on the USF or the likelihood of any resultant change in cost or savings.

♦ **SMALL BUSINESSES:** The change could increase revenues for small, independent telecom companies.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The PSC has determined the current definition of "total embedded costs" used by individual Incumbents is not known by the Division of Public Utilities (the USF Administrator). Consequently, the PSC has no basis on which to calculate a change in demand on the USF or the likelihood of any resultant change in cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule change only affects small, independent telecom companies (Incumbents). The new rule does not change their compliance costs. It simply clarifies the definition of a term used in determining their fund distribution.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The new definition could increase or decrease the USF support amount claimed by an Incumbent, depending on the Incumbent's present calculation method. The methods vary and are not known by the Division of Public Utilities. This change could potentially increase the level of demand upon the USF, perhaps significantly.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: David R. Clark, Legal Counsel

R746. Public Service Commission, Administration.

R746-360. Universal Public Telecommunications Service Support Fund.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

(A[-]) Determination of Support Amounts --

(1[-]) Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support

area. "Total embedded costs" shall include a weighted average rate of return on capital of the intrastate and interstate jurisdictions. For example, in the case of an Incumbent telephone corporation whose costs are allocated fifty percent to each jurisdiction and whose interstate return is 11.25 percent and whose intrastate return authorized by the Commission is 9 percent, the weighted average return on capital would be 10.125 percent.

(a) In order to determine the interstate return on capital to calculate the weighted average rate of return on capital for Incumbent telephone corporations, the Commission shall:

(i) use the prior year return reported by the National Exchange Carriers Association (NECA) to the Federal Communications Commission (FCC) on FCC Form 492 for Incumbent telephone corporations that do separations between intrastate and interstate jurisdictions under 47 CFR Part 36. In the event that the Incumbent local telephone corporation uses a future test period as provided in Utah Code Ann. Subsection 54-4-4(3)(b) (i), the interstate return for these Incumbent telephone corporations shall be the average of the actual return for the prior three years as reported on FCC Form 492.

(ii) use NECA's most recent interstate allocation computation filed at the FCC under 47 CFR Part 69.606 and the actual interstate return on capital reported by NECA as described in R746-360-8 A.1.a.i. for average schedule Incumbent telephone corporations.

(iii) use the actual interstate return of an Incumbent telephone corporation's relevant tariff group reported to the FCC in its most recent September FCC Form 492A for Incumbent telephone corporations that are regulated on a price-cap basis in the interstate jurisdiction.

(2[-]) Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

(B[-]) Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

(C[-]) Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

KEY: public utilities, telecommunications, universal service fund

Date of Enactment or Last Substantive Amendment: [November 1, 2009]2010

Notice of Continuation: November 25, 2008

Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-7-25; 54-7-26; 54-8b-12; 54-8b-15

**School and Institutional Trust Lands,
Administration
R850-110
Off-Highway Vehicle Designations**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33988

FILED: 08/24/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The last update of this rule language occurred in 1988, several years prior to the formation of the Trust Lands Administration. Since that time, motorized recreation, and off-highway vehicle (OHV) use in particular, has increased dramatically. The growth in motorized recreation, coupled with increased restrictions on adjacent federal lands, has led to significant impacts on trust lands. Consistent with state law, this comprehensive rewrite of this rule will clarify and define the management tools available to the Agency to create a disciplined approach to motorized recreation on trust lands.

SUMMARY OF THE RULE OR CHANGE: Changes to the existing rule include: 1) all routes upon which exist a temporary public easement or a permanent public access easement are designated open to motor vehicle use where such use is permitted by state law and local ordinances and not in conflict with current leases or permits; 2) all trust lands will be closed to cross-country travel unless specifically designated as open; 3) allows director's authority to establish "Designated Use Only" areas; 4) route width designations broken down into classes; being 26" or less, 52" or less, and open to all vehicle widths; 5) open routes may have date and time restrictions placed on them; 6) method of route designation set forth in rule; 7) Director's authority to close routes and areas for justified reasons; 8) off-trail game retrieval is prohibited; 9) commercial recreational use and long-term non-commercial use of trust lands exceeding 15 consecutive days require a right-of-entry permit; and 10) exemptions as listed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53C-1-302(1)(a)(ii) and Subsection 53C-2-301(1)(g)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** It is anticipated that there could be considerable savings to the state budget as a result of minimizing reclamation costs attributed to undisciplined OHV use.

♦ **LOCAL GOVERNMENTS:** The agency does not anticipate there will be much of a savings to local government as a result of minimizing the need for law enforcement, nor will

they be impacted with any additional costs as a result of these rule changes.

♦ **SMALL BUSINESSES:** There shouldn't be any impact to small businesses, either in costs or savings, as a result of these rule changes as small businesses are already required to obtain a permit or lease for any use they might have of trust lands.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There shouldn't be any additional costs or savings to persons other than small businesses, businesses, or local government entities beyond those already existing in rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is not anticipated that there would be any compliance costs associated with these rule changes beyond what already exists in rule. These changes simply better define acceptable and unacceptable OHV use of trust lands.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is not anticipated that this rule will have any fiscal impact on businesses. The rule regulates individual users of trust lands, and their ability to access existing roadways for recreational purposes. As such, there is no substantive interface with business interests.

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:

♦ Kim Christy by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: Kevin Carter, Director

R850. School and Institutional Trust Lands, Administration.

R850-110. [~~Off-Highway Vehicle~~Motor Vehicle Travel Designations.

R850-110-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and [~~Section~~Subsections 53C-1-302(1)(a)(ii) and 53C-2-301(1)(g)] which authorize the Director of the School and Institutional Trust Lands Administration to [~~require off-highway vehicle use designation~~]establish rules consistent with general policies

prescribed by the board of trustees, and regulate the unauthorized use or occupation of trust land, and Subsection 41-22-10.1(2) which authorizes the agency to designate trails, streets, or highways as open to off-highway vehicle use.

R850-110-200. ~~[Off-Highway Vehicle]~~Travel Route Designations.

~~[In accordance with Section 41-22-10.1 lands administered by the School and Institutional Trust Lands Administration may be designated for Off-Highway Vehicle (OHV) use by designating certain roads, trails, and areas as "open" for various classes of OHVs. Pending completion of coordination efforts and detailed designations, all lands are open to over-snow vehicle use unless the use is the basis for a lease between the Trust Lands Administration and a second party. Existing roads and trails unless signed closed or previously designated closed, are open to OHV use so long as the use is otherwise consistent with state law and not in conflict with current leases or permits. All lands are closed to other than over-snow vehicles, until formally evaluated, at which time certain lands may be designated open.]~~ Pending detailed route designations, all routes upon which exist a temporary public easement pursuant to Subsection 72-5-203(1)(a), other valid legal easement or right-of-way, or a permanent public access easement granted pursuant to agency rules are designated as open to motor vehicle use to the extent that such use is permitted by state law and local ordinances.

2. The agency may establish "Designated Use Only" areas.

(a) All routes within a "Designated Use Only" area are closed to motor vehicle use unless specifically designated open by the agency or authorized for a specific use through the issuance of a permit, easement, or lease.

(b) "Designated Use Only" areas may be established by the director through a written finding that such action is consistent with trust management objectives, current and projected land uses, and resource protection considerations.

3. All lands administered by the agency are closed to cross-country travel by all motor vehicles other than over-snow vehicles unless otherwise designated open or authorized for a specific use through the issuance of a permit, easement, or lease.

4. Except as authorized under Subsections (1) through (3), all trust lands are closed to motor vehicle use.

R850-110-300. Route Designations on Roads Maintained by Local Government Entities.

The agency may coordinate route designations with local government entities on routes maintained by them.

R850-110-400. Over-snow Vehicles.

All lands are open to cross-country travel by over-snow vehicles provided that:

1. the use is consistent with state law and not in conflict with current leases or permits; and

2. adequate snow depth exists to prevent resource degradation. Adequate snow depth is generally accepted to be at least 12 inches of consistent snow cover, but may vary depending on terrain or other ground conditions. The determination of whether there is adequate snow depth to prevent resource degradation shall be at the sole discretion of the agency.

R850-110-500. Route Width Designations.

Routes which have been designated as open to motor vehicle use by the agency may further be designated to allow for certain width classes of OHVs.

1. Twenty-six inches or less. Only OHVs under 26 inches wide may utilize routes designated in this class.

2. Fifty-two inches or less. Only OHVs under 52 inches wide may utilize routes designated in this class.

3. Routes which do not have a designated width class are open to all motor vehicles, provided that the vehicle width does not exceed the existing disturbed travel surface of the route.

R850-110-600. Date and Time Restrictions.

Routes which have been designated as open to motor vehicle use or areas which have been designated by the agency as open to cross-country travel, may be restricted to allow for use only within certain times of year or times of day.

R850-110-700. Other Route or Area Restrictions.

Additional restrictions or designations other than those specifically identified by rule may be placed upon routes or areas which have been designated as open to motor-vehicle use by the director. Such actions shall be authorized through a written finding by the director that the action is consistent with trust-management objectives, resource protection considerations, or other justified reasons.

R850-110-~~500~~800. Method of Designating ~~[OHV Use]~~Travel Routes.

~~[Trust Lands Administration lands]~~Travel routes may be designated as open to motor vehicle use and areas may be designated as open to cross-country travel by the director through a written finding that such action is consistent with trust-management objectives, current and projected land uses, and resource-protection considerations. Routes or areas that have been designated ~~[to]~~open ~~[to]~~ motor vehicle use by the director shall ~~[with]~~ be identified as specified in ~~[Section]~~Subsection 41-22-10.1 ~~[with]~~by posting signs or ~~[upon]~~designating by map[s] or description, ~~[which will be available for public distribution.]~~Additional designations with respect to route widths, date and time restrictions, or other restrictions shall also be identified through posted signs, map, or description. Posted signs shall conform to accepted interagency statewide OHV trail signing standards, and maps may ~~[Maps will be used to the extent possible and will]~~be published in cooperation with other land~~[-]~~management agencies ~~[when]~~where practicable. ~~[Signs will be used only as needed in special situations or when they can be added to boundary designation signs as appropriate.]~~

R850-110-~~600~~900. Director's Authority to Close Routes and Areas.

The director may ~~[designate]~~close specific routes and areas ~~[as closed]~~to motorized vehicle use, regardless of any previous route designation, when necessary ~~[to protect endangered species, comply with local zoning and ordinances and]~~for resource protection, to fulfill trust-management objectives, or for other justified reasons. Such action shall be documented in a written finding by the director. ~~[These areas will be posted closed and a]~~Amendments shall be made to existing ~~[OHV]~~route designation maps or descriptions~~[accordingly]~~ and signs posted as necessary.

R850-110-~~300~~1000. Scattered Sections and Isolated Parcel Designations.

The agency ~~[will]~~may coordinate ~~[OHV]~~route designations with adjacent ~~[state and federal]~~land~~[-]~~-management agencies to reduce confusion over ownership boundaries and complications with enforcement. Agency land~~[-]~~-use and management objectives ~~[will]~~may be carefully considered when negotiating with other ~~land-management~~ agencies.~~[-The agency will coordinate designations with counties for all roads maintained by them and with local government to insure compliance with zoning and ordinances, unless otherwise justified.]~~

R850-110-~~400~~1100. Blocked Land Designations.

~~[Common primary roads across agency lands may be designated consistent]~~The agency may coordinate designations of shared routes with adjacent land~~[-]~~-management agencies~~[-]~~ to the extent that such designations are consistent with agency management objectives. All other ~~[roads, -]~~routes and areas contained within land blocks~~[-]~~ ~~will~~ shall be designated in accordance with trust-management objectives, current and projected land uses, and resource protection considerations.~~[- resource protection requirements, multiple use concepts, trust requirements, and current and projected land use. Coordination with counties will be made for all roads maintained by the counties, and with local government, to insure compliance with zoning and ordinances, unless otherwise justified.]~~

R850-110-1200. Off-Trail Game Retrieval.

Use of a motor vehicle for the retrieval of downed game off of a designated route is prohibited, unless located within an area which has been designated as open for cross-country travel.

R850-110-~~700~~1300. ~~[Off-Highway Vehicle]~~Recreational Use ~~[Authorized by]~~Requiring a Lease or Permit.

~~[Organized OHV events and long term use, primarily OHV connected, will be allowed only upon issuance of a temporary Right-of-Entry or Special Use Lease in accordance with current rules. Use of OHV vehicles is authorized in connection with administration and operation of valid leases and permits as appropriate. OHV use is not authorized beyond that required for administration and operation of valid leases and permits, except as otherwise designated.]~~1. Commercial recreational use of trust lands, including competitive events or use of trust lands by commercial outfitters or tour operators, will be allowed only upon issuance of a Right-of-Entry Permit or Special Use Lease in accordance with current rules.

2. Long-term non-commercial recreational use of trust lands exceeding 15 consecutive days will be allowed only upon issuance of a Right-of-Entry Permit or Special Use Lease in accordance with current rules.

R850-110-1400. Exemptions.

The following uses are exempt from the restrictions and prohibitions set forth in this rule:

1. Administrative use by the agency.
2. Use in conjunction with the administration or operation of a valid lease or permit.

3. Use of any fire, military, emergency, or law-enforcement vehicle for emergency purposes.

4. Law-enforcement response to violations of law, including pursuit.

~~[R850-110-800. Off-Highway Vehicle Use Categories:~~

~~Categories of designation and the corresponding symbols may be utilized consistent with those already adopted by adjacent land management agencies or as listed below. Each symbol will contain the number corresponding to the specified designation:~~

~~Road Designations - Square Symbol~~

1. ~~Permitted except when signed as closed: high clearance 4 x 4 vehicles and pickups, 2-wheel motorized vehicles, all-terrain vehicles, bicycles, sedans, over-snow vehicles.~~

2. ~~Permitted except when signed as closed: high clearance 4 x 4 vehicles and pickups, bicycles, sedans, over-snow vehicles.~~

3. ~~Permitted except when signed as closed: high clearance 4 x 4 vehicles and pickups, 2-wheel motorized vehicles, all-terrain vehicles, bicycles, sedans.~~

4. ~~Closed to all vehicles.~~

~~Trail Designations - Triangle Symbol~~

1. ~~High clearance 4 x 4 vehicles and pickups, sedans prohibited; 2-wheel motorized vehicles, over-snow vehicles, all-terrain vehicles, bicycles permitted.~~

2. ~~All-terrain vehicles prohibited; 2-wheel motorized vehicles, over-snow vehicles, high clearance 4 x 4 vehicles and pickups, bicycles, sedans permitted.~~

3. ~~2-wheel motorized vehicles prohibited; 4 x 4 high clearance vehicles and pickups, all-terrain vehicles, over-snow vehicles, bicycles, sedans permitted.~~

4. ~~2-wheel motorized vehicles, all-terrain vehicles, bicycles prohibited; high clearance 4x4 vehicles and pickups, over-snow vehicles, sedans permitted.~~

5. ~~Over-snow and all-terrain vehicles prohibited; 2-wheel motorized vehicles, high clearance 4x4 vehicles and pickups, bicycles, sedans permitted.~~

6. ~~Sedans prohibited; all others permitted.~~

7. ~~All vehicles prohibited.~~

~~Area Designations - Circle Symbol~~

1. ~~Closed to all vehicles year around.~~

2. ~~Ski area, entry only for ski area administration.~~

3. ~~All vehicles restricted to designated routes. Area open to over-snow vehicles.~~

4. ~~All vehicles restricted to designated routes. Over-snow vehicles prohibited.~~

5. ~~Over-snow vehicles prohibited. All other vehicles restricted to designated routes except when signed as closed. Designations may be altered to suit special circumstances.]~~

KEY: land use, leases, permits, roads

Date of Enactment or Last Substantive Amendment: ~~[1988]~~October 22, 2010

Notice of Continuation: December 16, 2008

Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-301(1)(g)

Tax Commission, Auditing
R865-19S-78
Charges for Labor and Repair Under
an Extended Warranty Agreement
Pursuant to Utah Code Ann. Sections
59-12-103 and 59-12-104

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34011

FILED: 08/25/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment will treat all transactions in the same manner as bundled transactions are treated under statute, and clarifies statutory definitions.

SUMMARY OF THE RULE OR CHANGE: This amendment removes language indicating that in a purchase consisting of taxable and nontaxable items, the nontaxable items must be separately stated on the invoice or the entire purchase is subject to sales tax. The standard for recording these transactions will be in the amended Section R865-19S-4. This amended section will allow the seller to separately state the nontaxable items on the invoice or be able to reasonably identify them from the books and records it keeps in its regular course of business. In addition, the proposed amendment clarifies the definitions of "installation charges" and "repair or renovation of tangible personal property". The amendment also makes technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-102 and Section 59-12-103 and Section 59-12-104

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--The proposed amendment does not impact the amount of tax due only the recordkeeping requirements of the seller. Definition changes match Commission practice.
- ◆ **LOCAL GOVERNMENTS:** None--The proposed amendment does not impact the amount of tax due only the recordkeeping requirements of the seller. Definition changes match Commission practice.
- ◆ **SMALL BUSINESSES:** None--Sellers are currently acting within the scope of the proposed amendment. The proposed amendment will allow sellers who sell taxable and nontaxable items in a nonbundled transaction the same invoicing options as the seller of a bundled transaction. Definition changes match Commission practice.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Sellers are currently acting within the scope of the proposed amendment. The proposed amendment will allow sellers who sell taxable and nontaxable items in a nonbundled transaction the same invoicing options as the seller of a bundled transaction. Definition changes match Commission practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Sellers are currently acting within the scope of the proposed amendment. The proposed amendment will allow sellers who sell taxable and nontaxable items in a nonbundled transaction the same invoicing options as the seller of a bundled transaction. Definition changes match Commission practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None anticipated.

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

TAX COMMISSION
 AUDITING
 210 N 1950 W
 SALT LAKE CITY, UT 84134
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R865. Tax Commission, Auditing.

R865-19S. Sales and Use Tax.

R865-19S-78. Charges for ~~labor and~~ repair ~~under an extended warranty agreement~~ and renovation of tangible personal property or property transferred electronically pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.

(1) For purposes of the definition of "installation charge" in Section 59-12-102, an installation charge does not include a charge for attaching tangible personal property or a product transferred electronically as part of a manufacturing or fabrication process.

(2) For purposes of the definition of "repair or renovation of tangible personal property" in Section 59-12-102, attaching tangible personal property or a product transferred electronically to other tangible personal property that is not permanently attached to

real property applies only to an attachment in conjunction with a repair or replacement of tangible personal property or a product transferred electronically.

(3) "Service plan" includes an extended warranty agreement, a maintenance agreement, or other similar arrangement.

~~[(1) Sales of extended warranty agreements or service plans are taxable, and tax must be collected at the time of the sale of the agreement. The payment is considered to be for future repair, which would be taxable. If the extended warranty agreement covers parts as well as labor, any parts that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge under the extended warranty agreement is taxable. Repairs made under an extended warranty plan are exempt from tax, even if the plan was sold in another state.]~~

~~(a) Repair parts provided and services rendered under the warranty agreements or service plans are not taxable because the tax is considered prepaid as a result of taxing the sale of the warranty or service plan when it was sold.]~~

(3)(a) Service plan charges for a future taxable repair are subject to sales tax.

~~(b) [If the customer is required to pay for any parts or labor at the time of warranty service, sales tax must be collected on the amount charged to the customer. Sales tax must also be collected on any [deductible]deductible charged to [customers]a customer for [their]the customer's share of the repair [work]done under the [warranty agreement]service plan. [Parts or materials that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.]~~

~~[(2)](4)(a) [Extended warranties on]Service plan charges for items of tangible personal property that are converted to real property are not taxable. [However, the taxable nature of parts and other items of tangible personal property provided in conjunction with labor under an extended warranty service shall be determined in accordance with R865-19S-58.]~~

~~(b) Rule R865-19S-58 outlines the sales tax responsibility of a person that converts tangible personal property to real property.~~

KEY: charities, tax exemptions, religious activities, sales tax
Date of Enactment or Last Substantive Amendment:
[September 17, 2009]2010
Notice of Continuation: March 13, 2007
Authorizing, and Implemented or Interpreted Law: 9-2-1702; 9-2-1703; 10-1-303; 10-1-306; 10-1-307; 10-1-405; 19-6-808; 26-32a-101 through 26-32a-113; 59-1-210; 59-12; 59-12-102; 59-12-103; 59-12-104; 59-12-105; 59-12-106; 59-12-107; 59-12-108; 59-12-118; 59-12-301; 59-12-352; 59-12-353

**Workforce Services, Employment
 Development
 R986-200
 Family Employment Program**

**NOTICE OF PROPOSED RULE
 (Amendment)**

**DAR FILE NO.: 34054
 FILED: 09/01/2010**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to make changes to more efficiently administer the program.

SUMMARY OF THE RULE OR CHANGE: They changes are: in Section R986-200-204, to insure that clients obtain the employment plan as soon as possible; in Section R986-200-212, to streamline the sanction process for ease of administration and to encourage compliance while protecting due process notice requirements; in Sections R986-200-231 and R986-200-235, Food Stamp regulations recently changed to count income from tribal casino profits. In an effort to align eligibility as much as possible with all programs, that income will not be counted for the Family Employment Program and Child Care; and in Section R986-200-248, adds a program to encourage early return to work for our clients by providing incentives to employers that hire clients. This program is currently only a pilot program in one area and is similar to the Back to Work pilot for unemployed clients.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-302(5)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to the local government.
- ◆ **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 other than small businesses, businesses, or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs of any persons to comply with these changes because there are no costs or fees 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 AT 5:00 PM ON 10/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2010

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.

R986-200. Family Employment Program.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting, ~~and~~ sign a FEP Agreement, ~~and negotiate and sign an employment plan~~ within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) When an employment counselor discovers that a client is not complying with his or her employment plan, the employment counselor will attempt to discuss compliance with the client and explore solutions. The employment counselor will also send written notice of the failure to comply to the client. The notice will specify a date certain by which the client must comply and the consequences of not complying by that date. ~~[The employment counselor will attempt to discuss compliance with the client and explore solutions. If compliance is not resolved the counselor will move to the second phase.]~~

(2) ~~[In the second phase, the employment counselor will request a meeting with the client, the employment counselor, the counselor's supervisor and any other Department or allied entity representatives, if appropriate, who might assist in encouraging participation. If the client does not attend the meeting, the meeting will be held in the client's absence. A formal meeting with the client is not required for a third or subsequent occurrence. If a resolution cannot be reached, one of the following will occur:]~~ If compliance is not resolved by the date specified in the notice sent under subsection (1) of this section, the employment counselor will send a second written notice and initiate termination of the household financial assistance. This second notice will advise the client that the financial assistance will terminate at the end of that month unless the client resolves the problem, as provided in paragraph (2) (a) of this section. This second notice will also provide a date certain by which the compliance problems must be resolved for benefits to continue.

(a) ~~[for the first occurrence, the client's financial assistance payment will be reduced by \$100 for one month. The reduction will occur in the month following the month the determination was made. If the client does not participate during the \$100 reduction month, financial assistance will be terminated beginning the month following the \$100 reduction month.]~~ If the client establishes reasonable cause for not complying with the employment plan or provides required documentation by the date specified in the first or second notice, financial assistance will continue or be restored.

(b) ~~[for the second occurrence, the client's financial assistance payment will be terminated and the client will be ineligible for financial assistance for one month. If the client re-applies during the one month termination period, the new application will be denied for non-participation. If the client re-applies after the one month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.]~~ If the compliance problem is not resolved as provided in subparagraph (a) of this subsection, the household will be ineligible for financial assistance for one full

~~month. The client must then reapply for financial benefits and successfully complete a two week trial participation period before financial assistance will be approved.~~

~~[(e) for the third and subsequent occurrences the client's financial assistance will be terminated beginning with the month following the determination by the employment counselor that the client is not participating. The client will be ineligible for financial assistance for two months and if the client re-applies during the two month period, the new application will be denied for non-participation. If the client re-applies after the two month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.~~

~~_____](3) A client must demonstrate a genuine willingness to [participate]comply with the employment plan during the two week trial period.~~

~~[(4) The occurrences are life-time occurrences and it does not matter how much time elapses between occurrences. If a client's assistance was reduced as provided in (2)(a) of this section three years ago, for example, the next occurrence will be treated as a second occurrence.~~

~~_____](5)4 The two week trial period may be waived only if the client has cured all previous [participation]compliance issues prior to re-application.~~

~~[(6)5 The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.~~

~~[(7)6 A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant[on the first and all subsequent occurrences]. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.~~

~~[(8)7 Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.~~

~~[(9)8 Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.~~

~~[(10)9 If a client is also receiving food stamps and the client[']s is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.~~

R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over \$1,000, then only that item is counted toward the \$2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe. Any asset purchased with profit distributions or income to tribal members derived from tribal owned casinos and privately owned land is countable;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of \$1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the \$1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at \$1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of \$1,500. Any amount over \$1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance, except, starting March 1, 2009 and continuing as long as it is authorized by Congress and not counted for food stamps, the \$25 supplemental weekly Unemployment Compensation payment authorized by the American

Recovery and Reinvestment Act of 2009 (ARRA) will not be countable unearned income;

- (d) strike or union benefits;
- (e) VA allotment;
- (f) income from the GI Bill;
- (g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;
- (h) payments received from trusts made for basic living expenses;
- (i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;
- (j) inheritances;
- (k) life insurance benefits;
- (l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;
- (m) cash contributions from any source including family, a church or other charitable organization;
- (n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;
- (o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and
- (p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

- (a) cash gifts for special occasions which do not exceed \$30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;
- (b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;
- (c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;
- (d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Profit distributions or income to tribal members derived from tribal owned casinos and privately owned land are countable income~~[income to tribal members derived from privately owned land is not exempt]~~;
- (e) any payments made to household members that are declared exempt under federal law;
- (f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;
- (g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;
- (h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of \$30 can be allowed for:

- (i) taxes;
- (ii) attorney fees expended to make the rental income available;
- (iii) upkeep and repair costs necessary to maintain the current value of the property; and
- (iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;
- (k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;
- (l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;
- (m) federal and state income tax refunds and earned income tax credit payments;
- (n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;
- (o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-248. Wasatch Front North Service Area Pilot: FEP Subsidized Employment (FEP SE).

(1) FEP SE is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible FEP recipient. FEP SE is a pilot program for Wasatch Front North Service Area but may be expanded to other service areas if funding permits. To be eligible, a FEP recipient must:

- (a) be currently receiving FEP benefits and have received at least one FEP payment;
- (b) have a current employment plan. If the client is working less than 30 hours per week, the employment plan must provide additional activities.
- (c) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;
- (d) have not worked for the employer where the client is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the FEP SE program; and
- (e) have not previously participated in the FEP SE program.

(2) An employer eligible for a subsidy under this section is an employer that:

(a) is registered with the Department's UI division as an active employer in "good standing". For the purposes of this section, "good standing" means the employer has no delinquent UI contributions or reports;

(b) is a "qualified employer" which is defined as any employer other than the United States, any State, or any political subdivision or instrumentality thereof. A public institution of higher education is considered a "qualified employer" for purposes of this section. The employer cannot be a Temporary Help Company as defined in R994-202-102 or a Professional Employer Organization as defined in R994-202-106;

(c) pays a wage of at least \$8 per hour. Commission only jobs may qualify if the employer guarantees \$8 per hour or more;

(d) has not displaced or partially displaced existing workers by participating in this program;

(e) has at least one other employee;

(f) will provide the client with at least 20 hours work per week; and

(g) does not hire the client for temporary or seasonal work.

(3) Once it has been verified that a FEP recipient has been hired, a qualified employer will be paid a \$500 subsidy and an additional \$1,500 subsidy at the conclusion of the third month of employment provided the required DWS invoices have been provided.

(4) FEP SE will continue for as long as funding is available.

KEY: family employment program

Date of Enactment or Last Substantive Amendment: ~~July 1~~, 2010

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

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.

Agriculture and Food, Administration **R51-1** Public Petitions for Declaratory Rulings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34029
FILED: 08/31/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under provisions of Title 63G, Chapter 4, which enables the Department to be in compliance with requirements of the Administrative Procedures Act.

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 written comments received from the public during the past five years in support of the rule or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to enable the agency to be in compliance with requirements of the Administrative Procedures Act and to issue rulings on disputed issues, should they arise. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ADMINISTRATION
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 08/31/2010

Agriculture and Food, Animal Industry **R58-11** Slaughter of Livestock

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33997
FILED: 08/25/2010

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 was promulgated under authority of Section 4-32-8 which allows the slaughter of livestock by custom exempt and farm custom slaughter licensees.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has received no written comments in support or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department of Agriculture licenses and inspects custom exempt and farm custom slaughter establishments and licensees to help ensure that livestock owners received their product and to further ensure the products are produced under safe, wholesome conditions. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 ANIMAL INDUSTRY
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
 ♦ Terry Menlove by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at tmenlove@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 08/25/2010

Agriculture and Food, Animal Industry
R58-12
Record Keeping and Carcass
Identification at Meat Exempt (Custom
Cut) Establishments

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
 DAR FILE NO.: 33996
 FILED: 08/25/2010

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 was promulgated under authority of Section 4-32-7 which requires the Department to enact rules for the keeping of records by custom exempt establishments.

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 Agriculture has received no comments supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department of Agriculture and Food licenses and inspects custom exempt establishments and requires that they keep records on the animals killed in their establishments. The law continues to require this rule; therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 ANIMAL INDUSTRY
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
 ♦ Terry Menlove by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at tmenlove@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 08/25/2010

Agriculture and Food, Animal Industry
R58-13
Custom Exempt Slaughter

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 33995
FILED: 08/24/2010

**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 was promulgated under authority of Section 4-32-7 which requires the Department of Agriculture and Food to enact rules to regulate custom exempt establishments.

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 Agriculture and Food has received no comments supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department of Agriculture and Food licenses and inspects custom exempt establishments to ensure the public receives a safe, wholesome meat product and to ensure that the facilities operate in compliance with public health requirements. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
- ◆ Terry Menlove by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at tmenlove@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 08/24/2010

**Agriculture and Food, Animal Industry
R58-15**

**Collection of Annual Fees for the
Wildlife Damage Prevention Act**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 33999
FILED: 08/25/2010

**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 was promulgated under authority of Subsection 4-2-2(1)(j) and Section 4-23-7 which requires the Department of Agriculture and Food to enact rules for the collection and non-collection exemption of annual fees assessed under the Wildlife Damage Prevention Act.

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 Agriculture and Food has received no comments supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department of Agriculture is still required to collect fees under the Wildlife Damage Prevention Act. These fees help fund the predator control efforts of the agency and the rule is supported by the livestock industry. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov

◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
◆ Terry Menlove by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at tmenlove@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 08/25/2010

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
◆ Terry Menlove by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at tmenlove@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 08/24/2010

**Agriculture and Food, Animal Industry
R58-16
Swine Garbage Feeding**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 33994
FILED: 08/24/2010

**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 was promulgated under authority of Sections 4-31-10, 4-31-11, and 4-31-12; and Subsections 4-2-2(1)(c), (f), and (j) which require the Department of Agriculture and Food to enact rules for regulations of the practice of swine garbage feeding.

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 Agriculture and Food has received no comments to support or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department of Agriculture and Food still needs to regulate the practice of swine garbage feeding when it is practiced to protect the swine industry in the state and public health from communicable diseases. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034

**Agriculture and Food, Chemistry
Laboratory
R63-1
Fee Schedule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 34012
FILED: 08/26/2010

**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 was promulgated under authority of Section 4-2-10. Analytical service fees shall be charged as determined by the Department pursuant to Subsection 4-2-2(2). These sections are a result of Section 4-2-1 (Department created) and Section 4-2-5 (Organization of divisions within department).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has received no comments supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule allows charging of fees to other agencies, companies, and individuals for testing of samples on an as-needed basis. The law continues to require this rule; therefore, this rule should be continued.

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

AGRICULTURE AND FOOD
CHEMISTRY LABORATORY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Clark by phone at 801-538-7128, by FAX at 801-538-7126, or by Internet E-mail at dhclark@utah.gov
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 08/26/2010

the for the apple industry through increased sales and profitability. It is supported and requested by the apple industry. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD
MARKETING AND DEVELOPMENT
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 08/24/2010

**Agriculture and Food, Marketing and
Development
R65-1
Utah Apple Marketing Order**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 33993
FILED: 08/24/2010

**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 was promulgated under authority of Subsection 4-2-2(1)(e) which directs the Department of Agriculture and Food to write rules to promote the production and sale of apples in the state of Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received in the past five years in support or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This Marketing order is to improve conditions

**Agriculture and Food, Marketing and
Development
R65-3
Utah Turkey Marketing Order**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 33992
FILED: 08/24/2010

**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 was promulgated under authority of Subsection 4-2-2(1)(e) which directs the Department of Agriculture and Food to write rules to promote the production and sale of turkey products in the state of Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department of Agriculture and Food has received no comments supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The turkey producers voted to establish this marketing order to improve conditions for their industry through increased sales and profitability. Economic conditions of the last two years have heightened the need to promote turkey products to save this important industry in the State. This rule should continue as originally established to maintain and expand Utah's turkey industry.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 MARKETING AND DEVELOPMENT
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 08/24/2010

OPPOSING THE RULE: The Board of Egg Marketing Order was dissolved a few years ago and producers informed the Department that they no longer needed the Order.

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 will be continued for now but the Division will be filing a repeal to remove the rule. The Division did not have time to get the repeal through the process before the five-year review was due.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 MARKETING AND DEVELOPMENT
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 08/24/2010

**Agriculture and Food, Marketing and
 Development
 R65-4
 Utah Egg Marketing Order**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 33991
 FILED: 08/24/2010**

**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 was promulgated under authority of Subsection 4-2-2(1)(e) for the benefit of Utah's egg industry.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

**Agriculture and Food, Plant Industry
 R68-1
 Utah Bee Inspection Act Governing
 Inspection of Bees**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 33998
 FILED: 08/25/2010**

**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 was promulgated under authority of Section 4-11-3, to make and enforce rules for administration and enforcement of the Bee Inspection Act. This rule includes provisions for the identification of each apiary within the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department received comments supporting the rule. The Bee Inspection Act was revised at the request of and in cooperation with the Utah Beekeepers Association in January 2010. The Utah Beekeepers Association agreed that the current rule should continued as written.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The current law continues to require this rule. The rule is needed to protect the bee industry from pests, parasites, and diseases. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 PLANT INDUSTRY
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Clair Allen by phone at 801-538-7180, by FAX at 801-538-7189, or by Internet E-mail at clairallen@utah.gov
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 08/25/2010

**Natural Resources, Parks and
 Recreation
 R651-635
 Commercial Use of Division Managed
 Park Areas**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 33989
 FILED: 08/24/2010**

**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 was enacted under the provisions of Title 79 (Natural Resources), Chapter 4 (Parks and Recreation), Section 204 (Division authorized to enter into contracts and agreements): 79-4-204. Division authorized to enter into contracts and agreements. (1) The division, with the approval of the executive director and the governor, may enter into contracts and agreements with the United States, a United States agency, any other department or agency of the state, semipublic organizations, and with private individuals to: (a) improve and maintain state parks and recreational grounds and the areas administered by the division; and (b) secure labor, quarters, materials, services, or facilities according to procedures established by the Division of Finance. (2) All departments, agencies, officers, and employees of the state shall give to the division the consultation and assistance that the division may reasonable request. Rule R651-635 was enacted to address the issue of providing visitor recreation services, event, and other approved commercial activities in the managed park areas through the process of concession contracts, service agreements, and special use permits with private commercial businesses. This rule further provides that commercial activity shall not take place in managed park areas without "specific written authorization". The rule stipulates there are to be written forms of authorization (contracts, agreements permits, leases, right-of-way, etc.) and that these documents are not valid unless signed by authorized Division of State Parks and Recreation personnel.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is critical for this rule to be continued so that the mechanisms for conducting commercial activities in the park managed areas may continue to be used. In addition, this rule restricts commercial activities to only those that receive "specific written authorization" and thereby provides for protection from commercial competition for those authorized to conduct commercial activities and business in managed park areas. No comments received in opposition to the rule.

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

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

EFFECTIVE: 08/24/2010

**Natural Resources, Wildlife Resources
R657-24
Compensation for Mountain Lion, Bear
or Eagle Damage**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 34013
FILED: 08/26/2010

**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: Under Section 23-24-1, the Wildlife Board is authorized to provide rules to administer and enforce the procedures to obtain compensation for livestock damage done by mountain lion, bear or eagle.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Wildlife Resources and the Wildlife Board have not received any comments, either in support or opposition to Rule R657-24. Any comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council and Wildlife Board agendas for review and discussion during the process for taking public input. The public is welcome to view the administrative record for this rule at the Division of Wildlife Resources.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-24 provides the procedures, standards, requirements, and limits for obtaining compensation for damages to livestock by mountain lion,

bear or eagle. Continuation of this rule is necessary for continued success of this program.

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

AUTHORIZED BY: James Karpowitz , Director

EFFECTIVE: 08/26/2010

**Public Service Commission,
Administration
R746-510
Funding for Speech and Hearing
Impaired Certified Interpreter Training**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 33968
FILED: 08/18/2010

**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 establishes uniform administrative requirements for the use of funds from the Hearing and Speech Impaired telephone surcharge pursuant to Subsection 54-8b-10(5)(b)(vi).

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 received since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The reason for continuing this rule is to allow the Commission to continue to carry out its statutory mandate

under the above cited statutes. This rule is to establish uniform administrative requirements for the distribution of funds from the telephone surcharge to be awarded by contract to institutions within the state system of higher education, or to the Division of Services to the Deaf and Hard of Hearing, for training persons to qualify as certified interpreters for deaf, hard of hearing, or severely speech-impaired persons. Therefore, this rule should be continued.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 08/18/2010

**Workforce Services, Unemployment
Insurance
R994-207
Unemployment**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 33990
FILED: 08/24/2010

**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 35A-4-207 provides that the Department should adopt rules for the allowance of benefits to a claimant who is partially employed.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has received no comments during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to establish definitions for self employment, corporate officers, commission salespersons etc. The rule also establishes guidance for determining unemployed status. Therefore, this rule should be continued.

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
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

AUTHORIZED BY: Kristen Cox, Executive Director

EFFECTIVE: 08/24/2010

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Administrative Services

Fleet Operations, Surplus Property
No. 33706 (AMD): R28-2. Surplus Firearms
Published: 07/01/2010
Effective: 08/19/2010

Alcoholic Beverage Control

Administration
No. 33729 (AMD): R81-1-6. Violation Schedule
Published: 07/01/2010
Effective: 09/01/2010

No. 33731 (AMD): R81-4C-1. Licensing
Published: 07/01/2010
Effective: 09/01/2010

No. 33732 (AMD): R81-10A-1. Licensing
Published: 07/01/2010
Effective: 09/01/2010

Commerce

Occupational and Professional Licensing
No. 33783 (AMD): R156-60d. Substance Abuse Counselor
Act Rule
Published: 07/15/2010
Effective: 08/24/2010

No. 33780 (AMD): R156-64. Deception Detection Examiners
Licensing Act Rule
Published: 07/15/2010
Effective: 08/24/2010

Real Estate

No. 33793 (AMD): R162-2c-203. Utah-Specific Education
Certification
Published: 07/15/2010
Effective: 08/23/2010

No. 33792 (AMD): R162-2c-402. Disciplinary Action
Published: 07/15/2010
Effective: 08/23/2010

Governor

Economic Development, Pete Suazo Utah Athletic
Commission
No. 33711 (AMD): R359-1. Pete Suazo Utah Athletic
Commission Act Rule
Published: 07/01/2010
Effective: 10/01/2010

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 33775 (AMD): R414-1-5. Incorporations by Reference
Published: 07/01/2010
Effective: 08/31/2010

No. 33590 (AMD): R414-33D. Targeted Case Management
by Community Mental Health Centers for Individuals with
Serious Mental Illness
Published: 05/15/2010
Effective: 08/31/2010

No. 33590 (CPR): R414-33D. Targeted Case Management
by Community Mental Health Centers for Individuals with
Serious Mental Illness
Published: 07/01/2010
Effective: 08/31/2010

No. 33776 (AMD): R414-54-3. Services
Published: 07/01/2010
Effective: 08/31/2010

NOTICES OF RULE EFFECTIVE DATES

No. 33777 (AMD): R414-59-4. Client Eligibility Requirements
Published: 07/01/2010
Effective: 08/31/2010

Human Services
Administration

No. 33785 (NEW): R495-808. Fatality Review Act
Published: 07/15/2010
Effective: 08/23/2010

No. 33786 (NEW): R495-890. Department of Human Services Related Parties Conflict Investigation Procedure for Non Contracted Private Sector Independent Child Protective Services
Published: 07/15/2010
Effective: 08/23/2010

Judicial Performance Evaluation Commission
Administration

No. 33668 (AMD): R597-1. General Provisions
Published: 06/15/2010
Effective: 08/18/2010

Public Safety
Administration

No. 33789 (NEW): R698-6. Honoring Heroes Restricted Account
Published: 07/15/2010
Effective: 09/01/2010

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, 2010 through September 01, 2010. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administrative Rules</u>					
R15-4	Administrative Rulemaking Procedures	33437	NSC	03/29/2010	Not Printed
<u>Archives</u>					
R17-7-3	Archives/ Research Room/Access to Records	33320	AMD	05/17/2010	2010-3/12
<u>Debt Collection</u>					
R21-3	Debt Collection Through Administrative Offset	33564	NSC	07/01/2010	Not Printed
R21-3	Debt Collection Through Administrative Offset	33778	NSC	07/26/2010	Not Printed
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	33621	AMD	07/08/2010	2010-11/6
R23-2-15	Negotiation and Appointment	33766	NSC	07/01/2010	Not Printed
R23-7	State Construction Contracts and Drug and Alcohol Testing	33622	NEW	07/08/2010	2010-11/16
R23-22	General Procedures for Acquisition and Selling of Real Property	33623	AMD	07/08/2010	2010-11/19
R23-22-7	Requirements for the Disposition of Real Property by DFCM	33683	NSC	07/08/2010	Not Printed
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	33634	AMD	07/08/2010	2010-11/23
R23-26	Dispute Resolution	33360	5YR	02/01/2010	2010-4/79
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	33618	AMD	08/01/2010	2010-11/26
R25-7-10	Reimbursement for Transportation	33302	AMD	04/21/2010	2010-3/12
<u>Fleet Operations, Surplus Property</u>					
R28-2	Surplus Firearms	33706	AMD	08/19/2010	2010-13/4
<u>Purchasing and General Services</u>					
R33-3	Source Selection and Contract Formulation	33650	AMD	07/08/2010	2010-11/28
R33-5	Construction and Architect-Engineer Selection	33635	AMD	07/08/2010	2010-11/35
R33-10	State Construction Contracts and Drugs and Alcohol Testing	33656	NEW	07/08/2010	2010-11/44
<u>Records Committee</u>					
R35-1-4	Committee Minutes	33335	AMD	05/17/2010	2010-4/16
R35-1-4	Committee Minutes	33436	NSC	05/17/2010	Not Printed
R35-1a	State Records Committee/Definitions	33399	5YR	02/22/2010	2010-6/35
<u>Risk Management</u>					
R37-1	Risk Management General Rules	33390	AMD	06/01/2010	2010-5/2
R37-2	Risk Management State Workers' Compensation Insurance Administration	33392	NSC	03/10/2010	Not Printed

R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	33393	AMD	06/01/2010	2010-6/6
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-1	Public Petitions for Declaratory Rulings	34029	5YR	08/31/2010	Not Printed
<u>Animal Industry</u>					
R58-7	Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers and Livestock Market Weighpersons	33326	5YR	01/14/2010	2010-3/87
R58-10	Meat and Poultry Inspection	33329	5YR	01/14/2010	2010-3/87
R58-11	Slaughter of Livestock	33997	5YR	08/25/2010	Not Printed
R58-12	Record Keeping and Carcass Identification at Meat Exempt (Custom Cut) Establishments	33996	5YR	08/25/2010	Not Printed
R58-13	Custom Exempt Slaughter	33995	5YR	08/24/2010	Not Printed
R58-15	Collection of Annual Fees for the Wildlife Damage Prevention Act	33999	5YR	08/25/2010	Not Printed
R58-16	Swine Garbage Feeding	33994	5YR	08/24/2010	Not Printed
R58-17	Aquaculture and Aquatic Animal Health	33327	5YR	01/14/2010	2010-3/88
R58-20-5	Facilities	33217	AMD	01/27/2010	2009-24/4
R58-21	Trichomoniasis	33340	5YR	01/27/2010	2010-4/79
<u>Chemistry Laboratory</u>					
R63-1	Fee Schedule	34012	5YR	08/26/2010	Not Printed
<u>Conservation and Resource Management</u>					
R64-1	Agriculture Resource and Development Loans (ARDL)	33305	5YR	01/07/2010	2010-3/89
<u>Marketing and Development</u>					
R65-1	Utah Apple Marketing Order	33993	5YR	08/24/2010	Not Printed
R65-3	Utah Turkey Marketing Order	33992	5YR	08/24/2010	Not Printed
R65-4	Utah Egg Marketing Order	33991	5YR	08/24/2010	Not Printed
<u>Plant Industry</u>					
R68-1	Utah Bee Inspection Act Governing Inspection of Bees	33998	5YR	08/25/2010	Not Printed
R68-2	Utah Commercial Feed Act Governing Feed	33813	5YR	07/07/2010	2010-15/69
R68-6	Utah Nursery Act	33905	5YR	08/10/2010	2010-17/113
R68-7	Utah Pesticide Control Act	33080	AMD	01/04/2010	2009-22/5
R68-10	Quarantine Pertaining to European Corn Borer	33835	5YR	07/15/2010	2010-15/69
R68-12	Quarantine Pertaining to Mint Wilt	33677	5YR	05/27/2010	2010-12/69
R68-20	Utah Organic Standards	33315	5YR	01/12/2010	2010-3/89
<u>Regulatory Services</u>					
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	33074	AMD	01/11/2010	2009-22/11
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	33542	5YR	04/07/2010	2010-9/41
R70-610	Uniform Retail Wheat Standards of Identity	33894	5YR	08/05/2010	2010-17/113
R70-620	Enrichment of Flour and Cereal Products	33892	5YR	08/05/2010	2010-17/114
R70-910	Registration of Serviceperson for Commercial Weighing and Measuring Devices	33893	5YR	08/05/2010	2010-17/115
R70-950	Uniform National Type Evaluation	33891	5YR	08/05/2010	2010-17/115
ALCOHOLIC BEVERAGE CONTROL					
<u>Administration</u>					
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R645-105	Blaster Training, Examination and Certification	33394	5YR	02/17/2010	2010-6/40
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R645-400	Inspection and Enforcement: Division Authority and Procedures	33395	5YR	02/17/2010	2010-6/40
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R649-9-1	Introduction	33508	NSC	04/14/2010	Not Printed
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R651-101	Adjudicative Proceedings	33808	5YR	07/01/2010	2010-14/63
R651-101-1	Authority and Effective Date	33408	AMD	04/21/2010	2010-6/16
R651-206	Carrying Passengers For Hire	33733	AMD	08/09/2010	2010-13/106
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R651-215-9	Required Wearing of PFDs	33725	AMD	08/09/2010	2010-13/111
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R655-3	Reports of Water Rights Conveyance	33347	5YR	01/27/2010	2010-4/81
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R657-33	Taking Bear	33331	AMD	03/25/2010	2010-4/35
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R710-6	Liquefied Petroleum Gas Rules	33513	AMD	05/24/2010	2010-8/28
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R765-604	New Century Scholarship	33760	AMD	08/09/2010	2010-13/129
R765-609	Regents' Scholarship	33581	NEW	07/15/2010	2010-10/150
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R861-1A-42	Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401	33637	NSC	05/27/2010	Not Printed
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R865-6F-27	Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202	33693	AMD	08/12/2010	2010-12/58
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R865-6F-31	Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321	33859	NSC	08/25/2010	Not Printed
R865-6F-36	Taxation of Registered Securities or Commodities Broker or Dealer Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321	33858	NSC	08/25/2010	Not Printed
R865-9I-2	Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Section 59-10-103	33696	AMD	08/12/2010	2010-12/59
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R865-9I-13	Nonresident's share of Pass-Through Entity Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2 and 59-10-1405	33349	AMD	04/08/2010	2010-4/49
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R865-9I-21	Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514	33646	AMD	07/08/2010	2010-11/123
R865-9I-42	Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, Title 59, Chapter 10, and 63M-1-413	33694	AMD	08/12/2010	2010-12/61
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R895-4	Sub-Domain Naming Conventions for Executive Branch Agencies	33877	NSC	08/25/2010	Not Printed
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R895-7	Acceptable Use of Information Technology Resources	33879	NSC	08/25/2010	Not Printed
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R916-3	DESIGN-BUILD Contracts	33396	NSC	03/10/2010	Not Printed
R916-4	Construction Manager/General Contractor Contracts	33452	5YR	03/11/2010	2010-7/58
R916-5	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	33649	AMD	07/13/2010	2010-11/125
R916-6	Drug and Alcohol Testing in State Construction Contracts	33587	NEW	06/21/2010	2010-10/154

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R926-13	Designated Scenic Byways	33446	NEW	06/21/2010	2010-7/43
R926-13	Designated Scenic Byways	33625	NSC	06/21/2010	Not Printed
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R986-200-235	Unearned Income	33296	AMD	04/01/2010	2010-2/43
R986-200-247	Utah Back to Work Pilot Program (BWP)	33597	AMD	07/01/2010	2010-10/155
R986-700	Child Care Assistance	33017	AMD	01/13/2010	2009-20/34
R986-700	Child Care Assistance	33383	AMD	04/21/2010	2010-5/53
R986-700-714	CC Payment Method	33295	AMD	04/01/2010	2010-2/44
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R994-204	Covered Employment	33521	5YR	03/31/2010	2010-8/65
R994-205	Exempt Employment	33522	5YR	03/31/2010	2010-8/66
R994-206	Agricultural Labor	33523	5YR	03/31/2010	2010-8/66
R994-206-101	Agricultural Labor	33527	NSC	04/14/2010	Not Printed
R994-207	Unemployment	33990	5YR	08/24/2010	Not Printed
R994-304	Special Provisions Regarding Transfers of Unemployment Experience and Assigning Rates	33524	5YR	03/31/2010	2010-8/67
R994-402	Extended Benefits	33354	R&R	04/01/2010	2010-4/57
R994-406-203	Waiver of Recovery of Nonfault Overpayments	33355	AMD	04/01/2010	2010-4/62
R994-406-401	Claimant Fraud	33799	NSC	07/26/2010	Not Printed
R994-508-306	Reconsideration of a Decision of the Board	33868	NSC	08/25/2010	Not Printed

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>abrasive blasting</u>					
Environmental Quality, Air Quality	33434	R307-206	5YR	03/04/2010	2010-7/55
	33699	R307-306	5YR	06/02/2010	2010-13/144
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<u>accounts receivable</u>					
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	33778	R21-3	NSC	07/26/2010	Not Printed
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	33149	R151-46b-5	AMD	01/07/2010	2009-23/11	
	33667	R151-46b-5	AMD	07/22/2010	2010-12/4	
	33781	R151-46b-11	NSC	07/26/2010	Not Printed	
<u>administrative law</u>						
Administrative Services, Administrative Rules	33437	R15-4	NSC	03/29/2010	Not Printed	
<u>administrative offset</u>						
Administrative Services, Debt Collection	33564	R21-3	NSC	07/01/2010	Not Printed	
	33778	R21-3	NSC	07/26/2010	Not Printed	
<u>administrative penalties</u>						
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	33862	R655-14-4	NSC	08/25/2010	Not Printed	
	33619	R655-14-14	NSC	05/27/2010	Not Printed	
<u>administrative procedure</u>						
Environmental Quality, Drinking Water	33831	R309-300-5	NSC	07/28/2010	Not Printed	
<u>administrative procedures</u>						
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Agriculture and Food, Animal Industry	33999	R58-15	5YR	08/25/2010	Not Printed	
Commerce, Administration	33150	R151-46b	AMD	01/07/2010	2009-23/7	
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Commerce, Occupational and Professional Licensing	33639	R156-46b	AMD	07/08/2010	2010-11/91	
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	33828	R309-115	NSC	07/28/2010	Not Printed	
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	33482	R309-400	5YR	03/22/2010	2010-8/48	
	33483	R309-405	5YR	03/22/2010	2010-8/49	
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Health, Epidemiology and Laboratory Services, Epidemiology	33182	R386-702-11	AMD	03/15/2010	2009-24/57
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Health, Epidemiology and Laboratory Services, Epidemiology	33182	R386-702-11	AMD	03/15/2010	2009-24/57
<u>radiation</u>					
Environmental Quality, Radiation Control	33267	R313-25-8	AMD	06/02/2010	2010-1/21
	33267	R313-25-8	CPR	06/02/2010	2010-9/38
	33367	R313-34	5YR	02/10/2010	2010-5/70
	33368	R313-34-3	AMD	04/15/2010	2010-5/42
<u>radiation safety</u>					
Environmental Quality, Radiation Control	33367	R313-34	5YR	02/10/2010	2010-5/70
	33368	R313-34-3	AMD	04/15/2010	2010-5/42
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Environmental Quality, Radiation Control	33267	R313-25-8	AMD	06/02/2010	2010-1/21
	33267	R313-25-8	CPR	06/02/2010	2010-9/38
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	33683	R23-22-7	NSC	07/08/2010	Not Printed
<u>real estate appraisals</u>					
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	33180	R162-102	AMD	01/27/2010	2009-24/30
	33224	R162-104	AMD	01/27/2010	2009-24/33
	33225	R162-105	AMD	01/27/2010	2009-24/39
	33226	R162-106-1	AMD	02/03/2010	2009-24/42
	33398	R162-106-7	AMD	04/28/2010	2010-6/7
	33148	R162-110	NEW	01/07/2010	2009-23/13
	33303	R162-110-1	NSC	01/28/2010	Not Printed
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	33565	R162-3	AMD	06/21/2010	2010-10/56
	33563	R162-4-1	AMD	06/16/2010	2010-9/9
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Environmental Quality, Radiation Control	33554	R313-19	AMD	07/14/2010	2010-9/15
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	33670	R645-103-200	AMD	07/28/2010	2010-12/43
	33394	R645-105	5YR	02/17/2010	2010-6/40
	33671	R645-201-300	AMD	07/28/2010	2010-12/46
	33672	R645-300-100	AMD	07/28/2010	2010-12/49
	33673	R645-301-100	AMD	07/28/2010	2010-12/52
	33674	R645-301-400	AMD	07/28/2010	2010-12/56
	33509	R645-301-600	NSC	04/14/2010	Not Printed
	33395	R645-400	5YR	02/17/2010	2010-6/40
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	33436	R35-1-4	NSC	05/17/2010	Not Printed	
	33399	R35-1a	5YR	02/22/2010	2010-6/35	
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	33787	R309-352	NSC	07/26/2010	Not Printed	
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	33303	R162-110-1	NSC	01/28/2010	Not Printed	
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	33786	R495-890	NEW	08/23/2010	2010-14/26	
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Education, Administration	33443	R277-484	AMD	05/12/2010	2010-7/8	
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	33666	R162-2c	AMD	07/22/2010	2010-12/6	
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	33793	R162-2c-203	AMD	08/23/2010	2010-14/9	
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	33726	R162-2c-301	NSC	07/28/2010	Not Printed	
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	33376	R162-204	REP	04/12/2010	2010-5/26
	33377	R162-205	REP	04/12/2010	2010-5/27
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	33300	R616-4	NEW	03/11/2010	2010-3/54
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	33279	R614-7-1	AMD	02/22/2010	2010-2/20
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	33447	R926-14	NEW	06/21/2010	2010-7/46
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	33231	R861-1A-43	AMD	01/21/2010	2009-24/90
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	33693	R865-6F-27	AMD	08/12/2010	2010-12/58
	33643	R865-6F-28	NSC	05/27/2010	Not Printed
	33861	R865-6F-29	NSC	08/25/2010	Not Printed
	33859	R865-6F-31	NSC	08/25/2010	Not Printed
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	33352	R865-12L-6	AMD	04/08/2010	2010-4/55
	33691	R865-20T-13	AMD	08/12/2010	2010-12/62
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