

# 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 Division of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

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Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764. Additional rulemaking information and electronic versions of all administrative rule publications are available at <http://www.rules.utah.gov/>.

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

Division of Administrative Rules, Salt Lake City 84114

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# SPECIAL NOTICES

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## Insurance Administration

### **Public Hearing on Proposed Fees for Services Provided on Costs Incurred by the Utah Insurance Department During Fiscal Year 2015.**

The purpose of the hearing is to obtain public comment regarding the following fee changes: 1) FBI changing from \$16 to \$14.75; 2) total Title Insurance Regulation Assessment changing from "up to \$80,000" to "up to \$100,000"; 3) Risk Adjustment Fee shifted from federal to state at same rate of \$0.96 per member per year; 4) new Captive Cell Initial Application fee of \$200; 5) new Captive Cell License fee of \$1,000; 6) new Captive Cell License Renewal fee of \$1,000; and 7) new Captive Cell Late Renewal fee of \$50.

A hearing date has been scheduled for 02/06/2015 at 11:00 a.m. in Room 3112 of the State Office Building, 450 North State Street, Salt Lake City, UT 84114.

*Written comments should be directed to Steve Gooch at [sgooch@utah.gov](mailto:sgooch@utah.gov); or FAX at: 801-538-3829; or mail to: State Office Building, 450 N. State Street, Room 3110, Salt Lake City, UT 84114-6901.*

**End of the Special Notices Section**



## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between January 01, 2015, 12:00 a.m., and January 15, 2015, 11:59 p.m. are included in this, the February 01, 2015, issue of the *Utah State Bulletin*.

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

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them ([example]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the 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 March 3, 2015. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through June 1, 2015, 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.

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

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

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

**Administrative Services, Facilities  
Construction and Management  
R23-2  
Procurement of Architect-Engineer  
Services**

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 39061

FILED: 01/09/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule will be replaced by the reenacted Rule R23-1, General Procurement Provisions. The purpose of the repeal and reenactment is to establish more specific rules on the General Procurement Provisions for the Division of Facilities Construction and Management.

**SUMMARY OF THE RULE OR CHANGE:** This rule reflected the requirements of the previous Utah Procurement Code which was enacted on or about 1981. The fundamental differences between this rule and the reenacted Rule R23-1 is that the new rule now reflects the current requirements listed in the 2014 Utah Procurement Code and implements the recent changes related to the 2014 Utah Procurement Code. Additionally, the new rule is now more in line with the Division of Purchasing and General Services rules. This rule is repealed in its entirety. (DAR NOTE: The proposed repeal and reenactment of Rule R23-1 is under DAR No. 39033 in the January 15, 2015, issue of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63G-6-208

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected. The changes update the rule in order to implement and provide provisions related to the Utah Procurement Code, as well as to be more aligned with the Division of Purchasing and General Services' rules.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected. The changes update the rule in order to implement and provide provisions related to the Utah Procurement Code, as well as to be more aligned with the Division of Purchasing and General Services' rules.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected. The changes update the rule in order to implement and provide provisions related to the Utah Procurement Code, as well as to be more aligned with the Division of Purchasing and General Services' rules.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected.

The changes update the rule in order to implement and provide provisions related to the Utah Procurement Code, as well as to be more aligned with the Division of Purchasing and General Services' rules.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs that are expected. The changes update the rule in order to implement and provide provisions related to the Utah Procurement Code, as well as to be more aligned with the Division of Purchasing and General Services' rules.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no anticipated affects that the rule will have on businesses. The changes updated the rule to implement and provide provisions related to the Utah Procurement Code, as well as to be more aligned with the Division of Purchasing and General Services' rules.

**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
- ◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov
- ◆ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015**

**AUTHORIZED BY: Bruce Whittington, Acting Director**

**R23. Administrative Services, Facilities Construction and Management.**

**[R23-2. Procurement of Architect-Engineer Services:**

**~~R23-2-1. Purpose and Authority:~~**

~~\_\_\_\_\_ (1) In accordance with Subsection 63G-6-208(2), this rule establishes procedures for the procurement of architect-engineer services by the Division.~~

~~\_\_\_\_\_ (2) The statutory provisions governing the procurement of architect-engineer services by the Division are contained in Title 63G, Chapter 6 and Title 63A, Chapter 5.~~



**R23-2-2. Definitions.**

— (1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63G-6-103.

— (2) The following additional terms are defined for this rule:

— (a) "Board" means the State Building Board established pursuant to Section 63A-5-101.

— (b) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

— (c) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

— (d) "Public Notice" means the notice that is publicized pursuant to this rule to notify architects or engineers of Solicitations.

— (e) "Record" shall have the meaning defined in Section 63G-2-103 of the Government Records Access and Management Act (GRAMA).

— (f) "Solicitations" means all documents, whether attached or incorporated by reference, used for soliciting information from architects or engineers seeking to provide architect-engineer services to the Division.

— (g) "State" means the State of Utah.

— (h) "Using Agency" means any state agency or any political subdivision of the state which utilizes the services procured under this rule.

**R23-2-3. Register of Architectural or Engineering Firms.**

— (1) Architects or engineers interested in being considered for architect-engineer services procured by the Division under Section R23-2-19 may submit an annual statement of qualifications and performance data.

— (2) The Division shall maintain a file of information submitted under Subsection (1).

— (3) Except for services procured under Sections R23-2-17 and R23-2-19, an updated or project specific statement of qualifications shall generally be required in order to be considered in procurements of services for a specific project as provided in the solicitation.

**R23-2-4. Public Notice of Solicitations.**

— The Division shall publicize its needs for architect-engineer services in the manner provided in Subsection R23-1-5(2). The public notice shall include:

— (1) the closing time and date by which the first submittal of information is required;

— (2) directions for obtaining the solicitation;

— (3) a brief description of the project; and

— (4) notice of any mandatory pre-submittal meetings.

**R23-2-5. Submittal Preparation Time.**

— Submittal preparation time is the period of time between the date of first publication of the public notice, and the date and time set for the receipt of submittals by the Division. In each case, the submittal preparation time shall be set to provide architects or engineers a reasonable time to prepare their submittals. The time between the first publication of the public notice and the earlier of the first required submittal of information or any mandatory meeting shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular procurement as determined, in writing, by the Director.

**R23-2-6. Form of Submittal.**

— The solicitation may provide for or limit the form of submittals, including any forms for that purpose.

**R23-2-7. Addenda to Solicitations.**

— Addenda to the solicitation may be made in the same manner provided for addenda to the bidding documents in connection with Invitations for Bids set forth in Subsection R23-1-5(6), except that addenda may be issued until the selection of an architect or engineer is completed.

**R23-2-8. Modification or Withdrawal of Submittals.**

— (1) Submittals may be modified prior to the due dates established in the solicitation.

— (2) Architects or engineers may withdraw from consideration until a contract is executed.

**R23-2-9. Late Proposals and Late Modifications.**

— Except for modifications allowed pursuant to negotiation, any proposal or modification received at the location designated for receipt of submittals after the due dates established in the Solicitation shall be deemed to be late and shall not be considered unless no other submittals are received.

**R23-2-10. Receipt and Registration of Submittals.**

— After the date established for the first submittal of information, a register of submitting architects or engineers shall be prepared and open to public inspection. Prior to award, submittals and modifications shall be shown only to procurement officials and other persons involved with the review and selection process, who shall adhere to the requirements of GRAMA and this rule.

**R23-2-11. Disclosure of Submittals, Performance Evaluations, and References.**

— (1) Except as provided in this rule, submittals shall be open to public inspection after notice of the selection results.

— (2) The classification of records as protected and the treatment of such records shall be as provided in Section R23-1-35.

— (3) The Board finds that it is necessary to maintain the confidentiality of performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing performance evaluations and reference information are classified as protected records under the provisions of Subsection 63G-2-305(6) and shall be disclosed only to those persons involved with the performance evaluation, the architect or engineer that the information addresses and persons involved with the review and selection of submittals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the architect or engineer that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.

**R23-2-12. Selection Committee.**

— (1) The Board delegates to the director the authority to appoint a selection committee, which may include representatives of

the Board, the Division, the using agency, and architects or engineers and the general public.

(2) Each member of the selection committee shall certify as to his lack of conflicts of interest.

**R23-2-13. Evaluation and Ranking:**

(1) The selection committee shall evaluate the relative competence and qualifications of architects or engineers who submit the required information.

(2) The evaluation shall be based on evaluation factors set forth in the solicitation and may include:

- (a) past performance and references;
- (b) qualifications and experience of the firm and key individuals;
- (c) plans for managing and avoiding project risks;
- (d) interviews; and
- (e) other factors that indicate the relevant competence and qualifications of the architect or engineer and the architect or engineer's ability to satisfactorily provide the desired services.

(3) The evaluation may be conducted in two phases with the first phase identifying no less than the top three ranked firms to be evaluated further in the second phase unless less than three firms are competing for the contract.

(4) Numerical rating systems may be used but are not required.

(5) The evaluation committee shall rank at least the top three firms.

**R23-2-14. Publicizing Selections:**

(1) Notice. After the selection of the successful firm, notice of the selection shall be available in the principal office of the Division in Salt Lake City, Utah and may be available on the Internet.

(2) Information Diselosed. The following shall be diselosed with the notice of selection:

- (a) the ranking of the firms;
- (b) the names of the selection committee members;
- (c) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; and
- (d) the written justification statement supporting the selection.

(3) Information Classified as Protected. After due consideration and public input, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division and shall be classified as protected records:

- (a) the names of individual selection committee scorers in relation to their individual scores or rankings; and
- (b) non-public financial statements.

**R23-2-15. Negotiation and Appointment:**

The Director shall conduct negotiations as provided for in Section 63G-6-704 until an agreement is reached.

**R23-2-16. Role of the Board:**

(1) The Board has the responsibility to establish and monitor the selection process. It must verify the acceptability of the procedure and make changes in procedure as determined necessary by the Board.

(2) At each regular meeting of the Board, the Division shall submit a list of all architect-engineer services contracts entered into since its previous report and the method of selection used. This shall be for the information of the Board.

**R23-2-17. Performance Evaluation:**

(1) The Division shall evaluate the performance of the architectural or engineering firm and shall provide an opportunity for the using agency to comment on the Division's evaluation.

(2) This evaluation shall become a part of the record of that architectural or engineering firm within the Division. The architectural or engineering firm shall be provided a copy of its evaluation at the end of the project and may enter its response in the file.

(3) Confidentiality of the evaluation information shall be addressed as provided in Subsection R23-2-11(3).

**R23-2-18. Emergency Conditions:**

The Director, in consultation with the chairman of the Board, shall determine if emergency conditions exist and document his decision in writing. The Director may use any reasonable method of awarding contracts for architect-engineer services in emergency conditions.

**R23-2-19. Direct Awards:**

(1) The Director may award a contract to an architectural or engineering firm without following the procedures of this rule if:

- (a) The contract is for a project which is integrally related to, or an extension of, a project which was previously awarded to the architectural or engineering firm;
- (b) The architectural or engineering firm performed satisfactorily on the related project; and
- (c) The Director determines that the direct award is in the best interests of the State.

(2) The Director shall place written documentation of the reasons for the direct award in the project file and shall report the action to the Board at its next meeting.

**R23-2-20. Small Purchases:**

(1) If the Director determines that architect-engineer services can be procured for less than \$100,000, or if the estimated construction cost of the project is less than \$1,500,000, the procedures contained in Subsection (2) may be used.

(2) The Director shall select a qualified firm and attempt to negotiate a contract for the required services at a fair and reasonable price. The qualified firm may be, but is not required to be, selected from the register of architectural or engineering firms provided for in Section R23-2-3. If, after negotiations on price, the parties cannot agree upon a price that, in the Director's judgment, is fair and reasonable, negotiations shall be terminated with that firm and negotiations begun with another qualified firm. This process shall continue until a contract is negotiated at a fair and reasonable price.

**R23-2-21. Alternative Procedures:**

(1) The Division may enhance the process whenever the Director determines that it would be in the best interest of the state. This may include the use of a design competition.

(2) Any exceptions to this rule must be justified to and approved by the Board.

~~(3) Regardless of the process used, the using agency shall be involved jointly with the Division in the selection process.~~

~~KEY: procurement, architects, engineers  
 Date of Enactment or Last Substantive Amendment: July 14, 2008  
 Notice of Continuation: September 16, 2014  
 Authorizing, and Implemented or Interpreted Law: 63A-5-103 et seq.; 63G-2-101 et seq.; 63G-6-208(2)]~~

**Commerce, Occupational and Professional Licensing  
 R156-26a-501  
 Unprofessional Conduct**

**NOTICE OF PROPOSED RULE  
 (Amendment)  
 DAR FILE NO.: 39055  
 FILED: 01/05/2015**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and Utah Board of Accountancy are proposing an amendment to add a new subsection to the unprofessional conduct section of the Certified Public Accountant Licensing Act Rule.

**SUMMARY OF THE RULE OR CHANGE:** Subsection R156-26a-501(3) is being proposed as a new subsection to the unprofessional conduct rules affecting certified public accountants (CPAs) and CPA firms. The proposed subsection makes it unprofessional conduct to include the name of a person who is not licensed as a CPA as part of the CPA firm name. Use of a non-licensee in the CPA firm name improperly implies that the person is a licensed CPA. This problem has previously come to the Division's attention where non-CPAs have been included in the CPA firm name and have improperly represented themselves as CPAs. The Division has taken action against those persons for improperly holding themselves out as a CPA. Accordingly, this rule is to clarify what is already prohibited by other unlawful conduct provisions.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-26a-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**  
 ♦ **THE STATE BUDGET:** This proposed rule amendment will not affect the state budget other than the cost to the Division to republish and distribute the rule of approximately \$75. Any costs incurred will be absorbed in the Division's current budget.

- ♦ **LOCAL GOVERNMENTS:** The proposed amendments apply only to licensed CPAs and CPA firms. As a result, the proposed amendments do not apply to local governments.
- ♦ **SMALL BUSINESSES:** The proposed amendment applies only to licensed CPAs and CPA firms, which may qualify as a small business. However, the Division does not anticipate any cost to CPA firms as a result of the proposed amendment as long as the CPA firm is in compliance with the requirement. Persons or companies applying for the CPA firm licensure will be required to choose a name that does not inappropriately imply non-licensed persons are CPAs at the firm. This proposed amendment should not result in additional costs to applicants becoming licensed.
- ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment applies only to licensed CPAs and CPA firms. However, the Division does not anticipate any cost to CPAs or CPA firms as a result of the proposed amendment as long as the CPA firm is in compliance with the requirement. Persons or companies applying for the CPA firm licensure will be required to choose a name that does not inappropriately imply non-licensed persons are CPAs at the firm. This proposed amendment should not result in additional costs to applicants becoming licensed.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendment applies only to licensed CPAs and CPA firms. However, the Division does not anticipate any cost to CPAs or CPA firms as a result of the proposed amendment as long as the CPA firm is in compliance with the requirement. Persons or companies applying for the CPA firm licensure will be required to choose a name that does not inappropriately imply non-licensed persons are CPAs at the firm. This proposed amendment should not result in additional costs to applicants becoming licensed.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This filing clarifies that a CPA firm may not include in its company name the name of any individual who has not obtained a CPA license. To comply, a business must choose and file an appropriate company name; therefore, no fiscal impact to businesses is anticipated.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 COMMERCE  
 OCCUPATIONAL AND PROFESSIONAL LICENSING  
 HEBER M WELLS BLDG  
 160 E 300 S  
 SALT LAKE CITY, UT 84111-2316  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 02/04/2015 01:30 PM, Heber Wells Bldg, 160 E 300 S, Conference Room 475 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-26a. Certified Public Accountant Licensing Act Rule.  
R156-26a-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) a licensee willfully failing to comply with continuing professional education or fraudulently reporting continuing professional education; or

(2) commission of an act or omission that fails to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Code of Professional Conduct" of the American Institute of Certified Public Accountants (AICPA) as adopted June 1, 2008, which is hereby incorporated by reference; or

(3) a CPA firm using the name of a person who is not a licensed certified public accountant as part of the CPA firm name with the exception that a CPA firm may continue to use the name of a former owner who was a CPA but who has retired or is no longer active in the CPA firm.

**KEY:** accountants, licensing, peer review, continuing professional education

**Date of Enactment or Last Substantive Amendment:** [~~August 10, 2009~~]2015

**Notice of Continuation:** November 15, 2011

**Authorizing, and Implemented or Interpreted Law:** 58-26a-101; 58-1-106(1)(a); 58-1-202(1)(a)

**Commerce, Occupational and  
Professional Licensing  
R156-55a  
Utah Construction Trades Licensing Act  
Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39081

FILED: 01/15/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and the Construction Services Commission are proposing these amendments to: 1) make changes to the requirements for continuing education for contractors in Subsection R156-55a-303b(12); 2) make a technical correction to the pre-licensure education requirement for contractors in Section R156-55a-303f; and 3) make a technical correction to update a reference to a section of rule that has been changed in Subsection R156-55a-302e(2). The proposed amendments are made for the purpose of assuring the quality of continuing education courses provided to contractor licensees.

**SUMMARY OF THE RULE OR CHANGE:** In Subsection R156-55a-302e(2)(a)(ii), this change is a technical correction to update a reference to a section of rule that has been changed. In Subsection R156-55a-302f(12), the proposed amendment makes a technical correction to the exemption subsection of the pre-licensure education requirements. After a prior rule filing became effective, it was noted that the rule needed to be further clarified. The subsection being changed was meant to be an exemption for certain contractors who had met the requirements for license and were active at the date the rule first became effective. This was not adequately stated in the rule when it was originally adopted. In Section R156-55a-303b, several changes are being made in this section. In Subsection R156-55a-303b(1), the proposed amendments require that at least three hours of the total of six hours of the continuing education must be in live seminars. The existing rule allows all of the continuing education hours be obtained through distance learning. In Subsection R156-55a-303b(1)(a), the proposed amendments add continuing education in the subjects of job site safety, finance, and bookkeeping to be core continuing education. In Subsection R156-55a-303b(1)(b), the proposed amendments move continuing education in finance and bookkeeping from professional continuing education to be core continuing education. In Subsection R156-55a-303b(2)(b)(iii), the proposed amendments change the word "recognized" to "regionally or nationally accredited". In Subsection R156-55a-303b(2)(b)(iv), the proposed amendments require associations to have at least 25 Utah licensed contractors as members of their association in order to qualify to be a continuing education provider. In Subsection R156-55a-303b(2)(b)(v), the proposed amendments add additional requirements for a commercial entity to be approved as a continuing education provider. The new qualifications include having a permanent classroom in Utah, having a point of contact located in Utah, and being approved by the Construction Services Commission. In Subsection R156-55a-303b(2)(g), the proposed amendments add additional tracking requirements for continuing education providers who offer distance learning.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-55-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-55-102(39)(a) and Subsection 58-55-308(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The Division anticipates that no other state budgets will be affected by these proposed amendments.

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

◆ **SMALL BUSINESSES:** The proposed amendments will disqualify existing continuing education providers who do not have a substantive presence in Utah, which providers may qualify as a small business. It is impossible for the Division to estimate the amount of revenue or net profit that these providers could lose. The amount of lost profits or revenues could be several thousand dollars for these providers. Licensees who are required to attend live seminars for half of the six-hour requirement rather than distance seminars may pay additional costs to attend live seminars. It is impossible for the Division to estimate the additional costs that these licensed contractors may need to pay. Continuing education courses could be more difficult to obtain for contractors who are located in rural areas, which may also increase their costs to obtain the required continuing education hours. Continuing education providers who provide distance learning may be required to pay additional costs to comply with the additional tracking required under the proposed amendments. It is impossible for the Division to estimate the costs that these providers may need to pay.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments will disqualify existing continuing education providers who do not have a substantive presence in Utah. It is impossible for the Division to estimate the amount of revenue or net profit that these providers could lose. The amount of lost profits or revenues could be several thousand dollars for these providers. Licensees who are required to attend live seminars for half of the six-hour requirement rather than distance seminars may pay additional costs to attend live seminars. It is impossible for the Division to estimate the additional costs that these licensed contractors may need to pay. Continuing education courses could be more difficult to obtain for contractors who are located in rural areas, which may also increase their costs to obtain the required continuing education hours. Continuing education providers who provide distance learning may be required to pay additional costs to comply with the additional tracking required under the proposed amendments. It is impossible for the Division to estimate the costs that these providers may need to pay.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments will disqualify existing continuing education providers who do not have a substantive presence in Utah. It is impossible for the Division to estimate the amount of revenue or net profit that these providers could lose. The amount of lost profits or revenues could be several thousand dollars for these providers. Licensees who are required to attend live seminars for half of the six-hour requirement rather than distance seminars may pay additional costs to attend live seminars. It is impossible for the Division to estimate the additional costs that these licensed contractors may need to pay. Continuing education courses could be more difficult to obtain for contractors who are located in rural areas, which may also increase their costs to obtain the required continuing education hours. Continuing education providers who provide distance learning may be required to pay additional costs to comply with the additional tracking required under the proposed amendments. It is impossible for the Division to estimate the costs that these providers may need to pay.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** As stated in the rule analysis, this filing will prohibit businesses that offer continuing education from operating in Utah without a physical location from which to conduct in-person classes. Businesses that have been operating exclusively online will be required either to cease operations in Utah, with attendant revenue losses, or incur costs to obtain a physical location. Any such fiscal impact will vary and cannot be estimated. In addition, this filing requires an approved continuing education provider to track information regarding student attendance and performance. Any provider that has not been tracking this information will incur costs to put a tracking system into place. These costs will vary and cannot be estimated.

**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:**

◆ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2015**

**INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:**

◆ 02/25/2015 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.**

**R156-55a. Utah Construction Trades Licensing Act Rule.**

**R156-55a-302e. Additional Requirements for Construction Trades Instructor Classifications.**

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:

(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.

(2) Any school that provides instruction to students by building houses for sale to the public is also required to be licensed in the appropriate instructor classification.

(a) Before being licensed in a construction trades instruction facility classification, the school shall submit the name of an individual person who acts as the qualifier in each of the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

(i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a; and

(ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b([4]3).

(3) Each individual employed by a school licensed as a construction trades instruction facility and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades instruction facility classification as determined by the qualifier.

**R156-55a-302f. Pre-licensure Education - Standards.**

(1) Qualifier Education Requirement. The 20-hour pre-licensure education program required by Subsection 58-55-302(1)(e)(iii) shall be completed by the qualifier for a contractor applicant.

(2) Program Pre-Approval. A pre-licensure education provider shall submit an application for approval as a provider on the form provided by the Division. The applicant shall demonstrate compliance with Section R156-55a-302f.

(3) Eligible Providers. The following may be approved to provide pre-licensure education:

(a) a nationally or regionally recognized accredited college or university having a physical campus located within the State of Utah; or

(b) a non-profit Utah construction trades association involved in the construction trades in the State of Utah representing multiple construction trade classifications whose membership includes at least 250 contractors licensed in Utah.

(4) Content. The 20-hour program shall include the following topics and hours of education relevant to the practice of the construction trades consistent with the laws and rules of this state:

(a) ten hours of financial responsibility instruction that includes the following:

(i) record keeping and financial statements;

(ii) payroll, including:

(A) payroll taxes;

(B) worker compensation insurance requirements;

(C) unemployment insurance requirements;

(D) professional employer organization (employee leasing) alternatives;

(E) prohibitions regarding paying employees on 1099 forms as independent contractors, unless licensed or exempted;

(F) employee benefits; and

(G) Fair Labor Standard Act;

(iii) cash flow;

(iv) insurance requirements including auto, liability, and health; and

(v) independent contractor licensure and exemption requirements;

(b) six hours of construction business practices that includes the following:

(i) estimating and bidding;

(ii) contracts;

(iii) project management;

(iv) subcontractors; and

(v) suppliers;

(c) two hours of regulatory requirements that includes the following:

(i) licensing laws;

(ii) Occupational Safety and Health Administration (OSHA);

(iii) Environmental Protection Agency (EPA); and

(iv) consumer protection laws; and

(d) two hours of mechanic lien fundamentals that include the State Construction Registry.

(5) Program Schedule.

(a) A pre-licensure education provider shall offer programs at least 12 times per year.

(b) The pre-licensure education provider is not obligated to provide a course if the provider determines the enrollment is not sufficient to reach breakeven on cost.

(6) Program Instruction Requirements: The pre-licensure education shall meet the following standards:

(a) Time. Each hour of pre-licensure education credit shall consist of 60 minutes of education in the form of live lectures or training sessions. Time allowed for lunches or breaks may not be counted as part of the education time for which education credit is issued.

(b) Learning Objectives. The learning objectives of the pre-licensure education shall be reasonably and clearly stated.

(c) Teaching Methods. The pre-licensure education shall be presented in a competent and well organized manner consistent with the stated purpose and objective of the program. The student must demonstrate knowledge of the course material and must be given a pass/fail grade.

(d) Faculty. The pre-licensure education shall be prepared and presented by individuals who are qualified by education, training or experience.

(e) Distance Learning. Distance learning, internet courses, and home study courses are not allowed to meet pre-licensure education requirements.

(f) Registration and Attendance. The provider shall have a competent method of registration and verification of attendance of individuals who complete the pre-licensure education.

(g) Education Curriculum and Study/Resource Guide. The provider shall be responsible to provide or develop pre-licensure education curriculum and study/resource guide for the pre-licensure education that must be pre-approved by the Commission and the Division prior to use by the provider.

(7) Certificates of Completion. The pre-licensure education provider shall provide individuals completing the pre-licensure education a certificate that contains the following information:

- (a) the date of the pre-licensure education;
- (b) the name of the pre-licensure education provider;
- (c) the attendee's name;
- (d) verification of completion of the 20-hour requirement;

and

- (e) the signature of the pre-licensure education provider.

(8) Reporting of Program Completion. A pre-licensure education provider shall, within seven calendar days, submit directly to the Division verification of attendance and completion on behalf of persons attending and completing the program. This verification shall be submitted on forms provided by the Division.

(9) Program Monitoring. On a random basis, the Division or Commission may assign monitors at no charge to attend a pre-licensure education course for the purpose of evaluating the education and the instructor(s).

(10) Documentation Retention. Each provider shall for a period of four years maintain adequate documentation as proof of compliance with this section and shall, upon request, make such documentation available for review by the Division or the Commission. Documentation shall include:

- (a) the dates of all pre-licensure education courses that have been completed;
- (b) registration and attendance logs of individuals who completed the pre-licensure education;
- (c) the name of instructors for each education course provided as a part of the program; and
- (d) pre-licensure education handouts and materials.

(11) Disciplinary Proceedings. As provided in Section 58-1-401 and Subsection 58-55-302(1)(e)(iii), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any pre-licensure education provider, if the pre-licensure education provider fails to meet any of the requirements of this section or the provider has engaged in other unlawful or unprofessional conduct.

(12) Exemptions. In accordance with Subsection 58-55-302(1)(e)(iii), the following persons are not required to complete the pre-licensure education program requirements:

- (a) a person holding a four-year bachelor degree or a two-year associate degree in Construction Management from an accredited program;
- (b) a person holding an active and unrestricted Utah professional engineer license who is applying for the E100 contractor license classification; or
- (c) a person who;

~~\_\_\_\_\_ (i) is a qualifier on an [existing] active, [and] unrestricted contractor license[who is];~~

~~\_\_\_\_\_ (ii) became the qualifier on the license that satisfies the requirements of R156-55a-302f(12)(c)(i) on or before October 9, 2014; and~~

~~\_\_\_\_\_ (iii)(A) applies[~~

~~\_\_\_\_\_ (i) applying] to add additional contractor classifications to the license; or~~

~~\_\_\_\_\_ ([#]B) [applying] applies to become a qualifier on a new entity that is applying for initial licensure.~~

**R156-55a-303b. Continuing Education - Standards.**

(1) Required Hours. Pursuant to Subsection 58-55-302.5, each licensee shall complete a total of six hours of continuing education during each two year license term ~~[except that for the renewal term].~~ A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours. A minimum of three hours shall consist of live in-class attendance. The remaining three hours may consist of courses provided through distance learning.

(a) "Core continuing education" is defined as construction codes, construction laws, job site safety, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices, finance and bookkeeping.

(b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, ~~[finance and bookkeeping,]~~ marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal and business motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

(d) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) Provider. The course provider shall meet the requirements of this Section and shall be one of the following:

(i) a ~~[recognized]~~ regionally or nationally accredited college or university;

(ii) a state or federal agency;

~~\_\_\_\_\_ (iii) an officially recognized International Code Council chapter;~~

~~(iii)iv) [a professional association or organization involved in the construction trades]~~ a non-profit Utah construction trades association that has been actively involved in the construction trades in the state of Utah for five or more years and whose membership includes at least 25 contractors licensed in the state of Utah; or

~~(i)v) a commercial continuing education provider [providing a program related to the construction trades.]~~ who demonstrates in an application that the provider:

(A)(I) has a permanent physical classroom or campus located in the state of Utah;

(II) has an individual point of contact located in the state of Utah; and

(III) will comply with all continuing education requirements in Section R156-56a-303b;

(B) has been approved as a continuing education provider by the Construction Services Commission with the concurrence of the Division; and

(C) meets with the Construction Services Commission upon request to review the application as an approved provider.

(c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course that is provided through Internet or home study may be recognized for continuing education if the course verifies registration and participation in the course by means of a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant. A home study course shall include no fewer than five variations of the final examination, distributed randomly to participants. Home study courses, including the five exam variations, shall be submitted in their entirety to the Division for review. Providers shall be able to track the following:

(i) the amount of time a student has spent in the course;

(ii) what activities the student did or did not access; and

(iii) all of the student's test scores.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate that contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit and type of credit (core or professional);

(vi) the attendee's name; and

(v) the signature of the course provider.

(3) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(4) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (8). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(5) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(6) The continuing education requirement for electricians, plumbers and elevator mechanics as established in Subsection[s] 58-55-302.7[~~and 58-55-303(6), which is completed by an employee or owner of a contractor,~~] shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-302.5 and implemented herein. The contractor licensee shall assure that the course provider has submitted the verification of the electrician's, plumber's or elevator mechanic's attendance on behalf of the licensee to the continuing education registry as specified in Subsection (8).

(7) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(8) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this Section.

(9) As provided in Section 58-1-401 and Subsections 58-55-302.5(2) and 58-55-302.7(4)(a), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any course or provider, if the course or provider fails to meet any of the requirements of this section or the provider has engaged in unlawful or unprofessional conduct.

(10) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs that meet the standards set forth under this Section;

(ii) publish on their website listings of continuing education programs that have been approved by the Division, and which meet the standards for continuing education credit under this rule;



- (iii) maintain accurate records of qualified continuing education approved;
  - (iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and
  - (v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.
- (c) Fees. A continuing education registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

**KEY: contractors, occupational licensing, licensing**  
**Date of Enactment or Last Substantive Amendment:** ~~October 9, 2014~~ **2015**  
**Notice of Continuation:** October 4, 2011  
**Authorizing, and Implemented or Interpreted Law:** 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101; 58-55-308(1)(a); 58-55-102(39)(a)

**Education, Administration**  
**R277-111**  
**Sharing of Curriculum Materials by Public School Educators**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 39078  
 FILED: 01/15/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-111 is amended to update terminology and remove unnecessary language.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Rule R277-111 provide minor terminology changes and delete unnecessary language that is already provided in the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-1-401(3) and Subsection 53A-1-402(1)(e)

- ANTICIPATED COST OR SAVINGS TO:**
- ◆ **THE STATE BUDGET:** The amendments update terminology and delete unnecessary language which likely will not result in a cost or savings to the state budget.
  - ◆ **LOCAL GOVERNMENTS:** The amendments update terminology and delete unnecessary language which likely will not result in a cost or savings to local government.
  - ◆ **SMALL BUSINESSES:** The amendments update terminology and delete unnecessary language which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments update terminology and delete unnecessary language which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The amendments update terminology and delete unnecessary language which likely will not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed this rule and believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Brad Smith by phone at 801-538-7510, by FAX at 801-538-7768, or by Internet E-mail at brad.smith@schools.utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015**

**AUTHORIZED BY:** Brad Smith, State Superintendent of Public Instruction

**R277. Education, Administration.**  
**R277-111. Sharing of Curriculum Materials by Public School Educators.**

- R277-111-1. Definitions.**
- A. "Board" means the Utah State Board of Education.
  - B. "Creative Commons License" means copyright licenses that grant certain rights such as the right to distribute the copyrighted work without changes, at no charge. Works licensed under a Creative Commons License is protected by copyright applicable law. Creative Commons Licenses are non-exclusive and non-revocable.
  - C. "LEA" means a local education agency, including local school boards/public school districts, charter schools and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
  - [E]D. "[District]/LEA materials" means materials purchased or developed by an [school district/charter school]LEA using [district]LEA funds or resources, including materials, resources or activities which the [district]LEA requested employees to create, develop or compile during the employees' contract time.

~~[D]~~E. "Material(s)" means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial or technological reproductions, computer programs, listings, charts, manuals, codes, instructions and software.

[E]E. "Non-commercial use" means use or exchange without payment or compensation of any kind.

[F]G. "Personally developed materials" means materials developed by an educator. These materials may be developed on the educator's contract time using school resources, on the educator's personal time using personal resources, as an individual employment assignment, or in conjunction with other colleagues.

[G]H. "Teacher curriculum materials" means lesson plans, educator research materials, activities, teaching strategies or other printed or electronic materials developed by the public educator.

#### **R277-111-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of Public Education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and by Section 53A-1-402(1)(e) which directs the Board to encourage school productivity and cost effectiveness measures.

B. The purpose of this rule is to provide information and assurance to public school educators about sharing materials created or developed by educators primarily for use in their own classes or assignments. The intent of this rule is to allow or encourage educators to use valuable time and resources to improve instruction and instructional practices with assistance from appropriate materials developed by other educators.

#### **R277-111-3. Educators Sharing Materials.**

A. Utah educators may share materials for noncommercial use that educators have developed primarily for use in their own classes, courses or assignments.

B. Utah educators may only share materials that they developed personally and may not unilaterally share materials that were purchased or developed by or on behalf of their public employer or the State.

C. Utah educators may only share materials that are consistent with R277-515 Utah Educator Professional Standards. For example, educators may not share materials that advocate illegal activities or that are inconsistent with their legal and role model responsibilities as public employees and licensed educators.

D. Utah educators may share materials under a Creative Commons License and shall be personally responsible for understanding and satisfying the requirements of a Creative Commons License.

E. The presumption of this rule is that materials may be shared. The presumption is that Utah educators need not seek permission from their employers to share personally-developed materials. ~~[- However public school employers may provide notice to employees that materials developed with public school funds or during public school employment must be reviewed by the employer prior to sharing or distribution.]~~

F. Public educators may not sell teacher curriculum materials developed in whole or in part with public education funds

or developed within the employee's scope of employment to Utah educators.

#### **R277-111-4. ~~[School District/Charter School]~~LEA Rights.**

A. Utah ~~[school districts or charter schools]~~LEAs may develop and make available a policy that directs employees to seek review and approval before employees share materials that were developed on contract time, developed partially or jointly with ~~[school district/charter school]~~LEA funding, as part of an ~~[district/charter school]~~LEA assignment or if materials reference or imply ~~[school district/charter school]~~LEA use or endorsement.

B. Utah ~~[school districts/charter schools]~~LEAs may prohibit their employees from sharing materials that were purchased with ~~[school district]~~LEA funds or which are licensed specifically for ~~[school district/charter school]~~LEA use.

#### **KEY: curriculum materials, sharing**

**Date of Enactment or Last Substantive Amendment: ~~[January 8, 2010]~~2015**

**Notice of Continuation: January 15, 2015**

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

## Education, Administration **R277-468** Parent/Guardian Review of Public Education Curriculum and Review of Complaint Process

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39079

FILED: 01/15/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of Rule R277-468 is to provide procedures for local education agencies (LEAs) to involve parents in the adoption and review of LEA primary instruction materials to support Utah Core Standards and to include parents in reviewing complaints specific to primary curriculum materials.

**SUMMARY OF THE RULE OR CHANGE:** Rule R277-468 provides responsibilities for LEAs to involve parents who have students who attend LEA schools and instruction staff in the consideration of LEA-purchased material and in reviewing complaints specific to primary curriculum materials. The new rule also directs the Utah State Office of Education (USOE) to develop suggestions for effective parent participation and assist LEAs in policy development, upon request, and to the extent of resources available.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsections 53A-1-402(1)(b) and (c)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: USOE responsibilities to assist LEAs will likely not result in additional cost or savings to the state budget. It is anticipated that existing USOE staff will implement requirements of this rule within existing budgets.
- ◆ LOCAL GOVERNMENTS: LEA responsibilities to involve parents in primary instructional materials and complaint review processes will likely not result in additional cost or savings to local government. It is anticipated that existing LEA staff will implement requirements of this rule within existing budgets.
- ◆ SMALL BUSINESSES: Implementation of this rule will likely not result in a cost or savings to small businesses. The requirements of this new rule do not affect businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Implementation of this rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. Parents will now be involved in the primary instructional materials and complaint review processes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Implementation of this rule will likely not result in any compliance costs for affected persons. It is anticipated that the USOE and LEAs will implement the requirements of this rule within existing budgets.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Brad Smith by phone at 801-538-7510, by FAX at 801-538-7768, or by Internet E-mail at brad.smith@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015

AUTHORIZED BY: Brad Smith, State Superintendent of Public Instruction

**R277. Education, Administration.**

**R277-468. Parent/Guardian Review of Public Education Curriculum and Review of Complaint Process.**

**R280-468-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Instructional materials" means systematically arranged content in text or digital format which may be used within the state curriculum framework for grade levels or courses of study by students in public schools including text books, workbooks, computer software, online or Internet courses, CDs or DVDs and multiple forms of communication media. Such materials may be used by students or teachers or both as principal sources of study to cover any portion of the grade level or course. These materials:
  - (1) shall be designed for student use;
  - (2) may be accompanied by or contain teaching guides and study helps;
  - (3) shall include all text books, workbooks and student materials and supplements necessary for a student to fully participate in coursework; and
  - (4) shall be high quality, research-based and prove to be effective in supporting student learning.
- C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- D. "Parent or guardian" means the individual that establishes the residency of the child under Sections 53A-2-201, 53A-2-202, or 53A-2-207 or another applicable Utah guardianship provision.
- E. "Primary instructional materials" means comprehensive or basal Core textbook or integrated instructional program for which a publisher seeks a recommendation for Core subjects as outlined in Sections R277-700-4, 5 or 6.

**R277-468-2. Authority and Purpose.**

- A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Sections 53A-1-402(1)(b) and (c) which requires the Board to establish rules regarding competency levels, graduation requirements, school accreditation, curriculum and instruction requirements, and school libraries, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to direct LEAs, consistent with the Board's responsibility to involve parents in the adoption and review of LEA primary instructional materials to support Utah Core Standards, and to include parents in reviewing complaints specific to primary curriculum materials.

**R277-468-3. LEA Board Responsibilities.**

- A. Each LEA shall involve parents who have students who attend LEA schools and instructional staff in the consideration of LEA-purchased instructional materials.
- B. Each LEA shall include parents in reviewing complaints specific to primary curriculum materials.
- C. LEAs may seek assistance from parent organizations or associations or other groups to recruit and select parent members for materials and complaint reviews.

**R277-468-4. USOE Responsibilities.**

A. The USOE shall develop and make readily available to LEAs suggestions for effective parent participation in the instructional materials review process and the complaint review process.

B. The USOE shall assist LEAs in policy development, upon request and to the extent of resources available.

**KEY: parent/guardian, committees, curriculum, complaints**

**Date of Enactment or Last Substantive Amendment: 2015**

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

## Environmental Quality, Drinking Water **R309-500** Facility Design and Operation: Plan Review, Operation and Maintenance Requirements

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39076

FILED: 01/14/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Engineering Section of the Division of Drinking Water was tasked to review the Drinking Water R309-500 series rules for revisions, clarifications, corrections, updates, etc.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendments to Rule R309-500 correct grammar, spelling, punctuation, and capitalization. The text is revised for improved clarity and accuracy. Inaccurate references are corrected and unnecessary and repetitive references are deleted. The rule format is revised for ease of reading and to make references to specific requirements easier to cite. Rule requirements are revised to reflect actual practice related to Plan Approval, Plan Submittal Waivers, and Operating Permits for public water systems. Substantive changes to Rule R309-500 include the following: 1) in Subsection R309-500-4(1)(a), add the requirement that for documents related to plan approval "all submittals shall be from the public water system or its agent"; 2) in Subsection R309-500-5(1)(c)(iii), add "a change or addition of a water treatment process" as an example of a public drinking water project; 3) in Subsection R309-500-5(1)(c)(v), add "deepening a well" as an example of a public drinking water project; 4) in Subsection R309-500-6(1), delete the list of information required to be included on a project notification form and state simply that project notification to be made on a form provided by the Division; 5) in Subsection R309-500-6(2)(b),

add the following examples as information that may be required to be submitted to the Division prior to construction: "hydraulic analyses of the existing system and additions, local requirements for fire flow and duration, proximity of sewers and other utilities."; 6) in Subsection R309-500-6(2)(c), replace the requirement that plans and specifications "be sufficiently detailed to assure that the project shall be properly constructed" with the requirement that they "be complete and sufficiently detailed for actual construction."; 7) in Subsection R309-500-6(2)(b), add that "in some cases, a profile drawing may be required to show potential water line conflicts and clearances" as part of plans submitted for review; 8) in Subsection R309-500-6(2)(d), delete the size restriction on plans submitted for review; 9) in Subsection R309-600-6(3), the Plan Submittal Waiver provision is entirely rewritten. The waiver program remains largely the same with two exceptions: 1) Pressure Reducing Valves are no longer excluded from waivers, and 2) projects that qualify for Plan Submittal Waivers no longer require Operating Permits. In place of obtaining an Operating Permit, the following is required: "submit a certification by a professional engineer, who is responsible for the design and construction of the project or has been designated by the water system in writing as the professional engineer directly responsible for the design of the entire water system, indicating that design and construction will meet the requirements of Rules R309-500 through R309-550, that proper flushing and disinfection will be completed according to the appropriate ANSI/AWWA standard, that satisfactory bacteriological sampler results will be obtained prior to placing the facilities into service, and that the water system will receive a copy of as-built or record drawings."; 10) in Section R309-500-7, add the "Department of Environmental Quality" to the list of agencies authorized to visit drinking water construction sites; 11) in Section R309-500-10, specify that as part of the drinking water plan approval process, public water systems may be required to provide evidence that the methods of "waste and wastewater disposal have been approved or accepted by the Utah Division of Water Quality, the local health agency, or the local authority for new drinking water facilities, including discharges from treatment facilities, discharges related to construction, etc., and new drinking water facilities serving proposed developments."; 12) in Section R309-500-11, the Financial Viability section is deleted in its entirety; 13) in Section R309-500-12, add more expansive language concerning other permits that may be required prior to beginning construction or placing new facilities into service; 14) in Section R309-500-14, the Reference Documents section is deleted in its entirety; and 15) in Section R309-500-15, the Violations of These Rules section is deleted in its entirety.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 104(1)(a)(ii) and Title 19, Chapter 4

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The proposed amendments to Rule R309-500 are not expected to result in a change in the workload of the Division of Drinking Water and should have no effect on the state budget.

◆ LOCAL GOVERNMENTS: Local governments that own and operate public water systems will be affected by the proposed amendments to Rule R309-500. However, the proposed amendments are not expected to result in increased costs and could possibly result in savings for local governments that own and operate public water systems and obtain Plan Submittal Waivers because amendments to the waiver program reduce compliance costs.

◆ SMALL BUSINESSES: Small businesses that own and operate public water systems will be affected by the proposed amendments to Rule R309-500. However, the proposed amendments are not expected to result in new costs or savings for the types of water systems owned and operated by small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Owners, operators, and customers of public water systems are persons directly or indirectly affected by Rule R309-500. Because the proposed amendments to Rule R309-500 are not expected to result in increased costs to public water systems, there should be no new costs for any of these persons because of the proposed amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Plan review, operation, and maintenance costs for public water systems are not expected to change because of the proposed amendments to Rule R309-500. Public water systems eligible to use Plan Submittal Waivers are expected to see slightly lower costs associated with the use of the waivers due to reduced compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule amendment will have no negative fiscal impact on businesses. The changes will not have a significant effect on public water systems and will clarify plan review, operation, and maintenance requirements as they pertain to public water systems.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bernie Clark by phone at 801-536-0092, or by Internet E-mail at [bernieclark@utah.gov](mailto:bernieclark@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015

AUTHORIZED BY: Ken Bousfield, Director

**R309. Environmental Quality, Drinking Water.  
 R309-500. Facility Design and Operation: Plan Review, Operation and Maintenance Requirements.**

**R309-500-1. Purpose.**

The purpose of this rule is to describe plan review procedures and requirements, clarify projects requiring review, and inspection requirements for drinking water projects. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to [general]public health.

**R309-500-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

**R309-500-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

**R309-500-4. General.**

(1) Construction [~~and Operation~~]of New Facilities and Modification of Existing Facilities.

(a) [~~As authorized in 19-4-106(3) of the Utah Code, the Director may review p~~]Plans, specifications, and other data pertinent to [~~proposed or expanded water supply systems to insure proper design and construction~~]new facilities, or existing facilities of public drinking water systems not previously reviewed, shall be submitted to the Director for review for conformance with rules R309-500 through R309-550. All submittals shall be from the public water system or its agent.

[~~Plans and specifications and a business plan as required by R309-800-5, along with a completed project notification form, shall be submitted to the Director for any new water systems or previously un-reviewed water systems unless acceptable data can be presented that the proposed or existing water system will not become a "public water system" as defined in 19-4-102 of the Utah Code or in R309-110.~~

[~~Construction of new facilities for public water systems or existing facilities of previously un-reviewed public drinking water systems shall conform to rules R309-500 through R309-550; the "Facility Design and Operation" rules. There may be times in which the requirements of the Facility Design and Operation rules are not appropriate. Thus, the Director may grant an "exception" to the Facility Design and Operation rules if it can be shown that the granting of such an exception will not jeopardize the public health.~~

[~~(b) The Director has the authority to grant an exception to R309-500 through R309-550 per R309-105-6(2)(b).~~

(c) Construction of a public drinking water project shall not begin until complete plans and specifications have ~~been approved in writing received Plan Approval or a Plan Submittal Waiver has been issued by the Director unless waivers have been issued as allowed by R309-500-6(3). This approval shall be referred to as the Plan Approval.~~

(d) ~~Furthermore, n~~No new public drinking water facility shall be put into operation until ~~the Director has issued an Operating Permit or a Plan Submittal Waiver written approval to do so has been given by the Director or this requirement waived. This approval is referred to as the Operating Permit.~~

(2) Minimum Quantity and Quality Requirements for Existing Facilities.

All existing public drinking water systems shall be capable of reliably delivering water ~~which that~~ meets ~~the minimum~~ current ~~standard of~~ drinking water minimum quantity and quality requirements. The Director may require modification of existing systems in accordance with R309-500 through R309-550 when such modifications are needed to reliably achieve minimum quantity and quality requirements.

(3) Operation and Maintenance ~~of Existing Facilities.~~

Public drinking water system facilities shall be operated and maintained in a manner ~~which that~~ protects ~~the~~ public health. As a minimum, ~~the~~ operation and maintenance procedures ~~of~~ described in R309-500 through R309-550 shall be ~~adhered to~~ met.

### **R309-500-5. Public Drinking Water Project.**

(1) Definition.

A public drinking water project, requiring ~~the~~ submittal of a ~~p~~Project ~~n~~Notification ~~f~~Form ~~along with~~ and plans and specifications, is any of the following:

(a) ~~The e~~Construction of any facility for a proposed drinking water system ~~(see 19-4-106(3) of the Utah Code or R309-500-4(1) above describing the authority of the Director).~~

(b) Any addition to, or modification of, the facilities of an existing public drinking water system ~~which that~~ may affect the quality or quantity of water delivered.

(c) Any activity, other than on-going operation and maintenance procedures, ~~which that~~ may affect the quality or quantity of water delivered by an existing public drinking water system. Such activities may include:

(i) the interior re-coating or re-lining of any raw or drinking water storage tank, or water storage chamber within any treatment facility,

(ii) the <sup>[ ]</sup>in-situ<sup>[ ]</sup> re-lining of any pipeline,

(iii) a change or addition of ~~any primary coagulant~~ a water treatment ~~chemical (excluding filter, flocculent or coagulant aids) when the proposed chemical does not appear on a list of chemicals pre-approved by the Director for a specific treatment facility~~ process, ~~and~~

(iv) the re-development of any spring or well source, ~~or~~ and

(v) replacement of a well pump with one of different capacity or deepening a well.

(2) On-going Operation and Maintenance Procedures.

On-going operation and maintenance procedures are not considered public drinking water projects and, accordingly, are not subject to the project notification, plan approval and operating permit requirements of this rule. However, these activities shall be carried out

in accordance with all ~~operation and maintenance~~ requirements contained in R309-500 through R309-550 and specifically the design, construction, disinfection, flushing and bacteriological sampling and testing requirements ~~of ANSI/AWWA C651-05 for pipelines, ANSI/AWWA C652-02 for storage facilities, and ANSI/AWWA C654-03 for wells~~ before ~~they~~the facilities are placed back into service. The following activities are considered to be on-going operation and maintenance procedures:

(a) pipeline leak repair,

(b) replacement of existing deteriorated pipeline where the new pipeline segment is the same size as the old pipeline or the new segment is upgraded to meet the minimum pipeline sizes required by R309-550-5(4) or larger sizes as determined by a hydraulic analysis in accordance with R309-550-5(3),

(c) tapping existing water mains with corporation stops so as to make connection to new service laterals to individual structures,

(d) distribution pipeline additions where the pipeline size is the same as the main supplying the addition or the pipeline addition meets the minimum pipeline sizes required by R309-550-5(4) or larger sizes as determined by a hydraulic analysis in accordance with R309-550-5(3), the length is less than 500 feet and contiguous segments of new pipe total less than 1000 feet in any fiscal year,

(e) entry into a drinking water storage facility for the purposes of inspection, cleaning and maintenance, and

(f) replacement of equipment or pipeline appurtenances with the same type, size and rated capacity (fire hydrants, valves, pressure regulators, meters, service laterals, chemical feeders and booster pumps including deep well pumps).

### **R309-500-6. Plan Approval Procedure.**

(1) Project Notification.

The Division shall be notified prior to the construction of any "public drinking water project" as defined in R309-500-5(1) above. The notification may be prior to or simultaneous with submission of construction plans and specifications as required by R309-500-6(2) below. Notification shall be made ~~by the management of the regulated public water system~~ on a form provided by the Division. ~~Information required by this form shall be determined by the Division and may include:~~

~~(a) whether the project is for a new or existing public drinking water system;~~

~~(b) the professional engineer, registered in the State of Utah, designing the project and his/her experience designing public drinking water projects within the state;~~

~~(c) the individual(s) who will be inspecting the project during construction and whether such inspection will be full-time or part-time;~~

~~(d) whether required approvals or permits from other governmental agencies (e.g. local planning commissions, building inspectors, Utah Division of Water Rights) are awaiting approval by the Director, the agency's name and contact person;~~

~~(e) the fire marshal, fire district or other entity having legal authority to specify requirements for fire suppression in the project area;~~

~~(f) for community and non-transient non-community public water systems or any public water system treating surface water, the name of the certified operator who is, or will be, in direct responsible charge of the water system;~~

~~(g) whether the water system has a registered professional engineer employed, appointed or designated as being directly responsible for the entire system design and his or her name and whether the system is requesting waiving of plan submittal under conditions of R309-500-6(3);~~

~~(h) the anticipated construction schedule; and~~

~~(i) a description of the type of legal entity responsible for the water system (i.e. corporation, political subdivision, mutual ownership, individual ownership, etc.) and the status of the entity with respect to the rules of the Utah Public Service Commission.]~~

~~(2) Pre-Construction Requirements.~~

~~All of the following shall be accomplished before construction of any public drinking water project [eommenees]begins:~~

~~(a) [Contract documents, p]Plans and specifications for a public drinking water project shall be submitted to the Division at least 30 days prior to the date on which action is desired[ unless the system is eligible for and has requested waiving of plan submittal].~~

~~(b) [Any s]Submittals required [shall]may include engineering reports, [pipe network ]hydraulic analyses of the existing system and additions, local requirements for fire flow and duration, proximity of sewers and other utilities, water consumption data, supporting information, evidence of rights-of-way and reference to any previously submitted master plans pertinent to the project, [along with ]a description of a program for keeping existing water works facilities in operation during construction so as to minimize interruption of service, etc.~~

~~(b)c [Plans and specifications shall be prepared for every anticipated public water system project. The design utilized shall conform to the requirements of R309-500 through R309-550. Furthermore, the p]Plans and specifications submitted shall be complete and sufficiently detailed [to assure that the project shall be properly constructed]for actual construction. [Drawings shall be compatible with Division's document storage and microfilming practice.]In some cases, a profile drawing may be required to show potential water line conflicts and clearances.~~

~~(d) Drawings [which]that are illegible or of unusual size [shall]will not be accepted for review.[ Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".]~~

~~(e)g The plans and specifications shall be stamped and signed by a licensed professional engineer [in accordance with]as required by Section 58-22-602(2) of the Utah Code.~~

~~(d)f [Plans and specifications shall be reviewed for conformance with R309-500 through R309-550. No work shall commence on a public water system project until a plan approval has been issued by the Director unless conditions outlined in R309-500-6(3) are met and waiving of plan submittal has been requested.]If construction or the ordering of substantial equipment has not commenced within one year, a renewal of the Plan Approval shall be obtained prior to proceeding with construction.~~

~~(e) If, in the judgment of the Director, alternate designs or specific solutions can protect the public health to the same or greater extent as achieved in R309-500 through R309-550, the Director may grant an exception thereto (see the third paragraph of R309-500-4(1)).~~

~~(f) Novel equipment or treatment techniques may be developed which are not specifically addressed by these rules. These may be accepted by the Director if it can be shown that:~~

~~(i) the technique will produce water meeting the requirements of R309-200 of these rules;~~

~~(ii) the Director has determined that it will protect public health to the same extent provided by comparable treatment processes outlined in these rules; and~~

~~(iii) the Director has determined the technique is as reliable as any comparable treatment process outlined in these rules.~~

~~(3) Waiving of Plan Submittal Requirement.~~

~~With identification of a professional engineer, as indicated below, on a project notification form the plan submittal requirement may be waived for certain projects. In these instances, in lieu of plans and specifications, a "certification of rule conformance" shall be submitted along with the additional information required for an operating permit (see R309-500-9), signed by the professional engineer identified to Director in (b) or, if the system has not employed, appointed, or designated such, the registered professional engineer who prepared the items in (a). Projects eligible for this waiving of plan submittal are:~~

~~(a) distribution system improvements (excluding pressure-reducing valve stations and in-line booster pump stations) which conform to a "master plan" previously reviewed and approved by the Director and installed in accordance with the system's standard installation drawings, also previously reviewed and approved by the Director; or~~

~~(b) distribution system improvements consisting solely of pipelines and pipeline appurtenances (excluding pressure-reducing valve stations and in-line booster pump stations);~~

~~(i) less than or equal to 4 inches in diameter in water systems (without fire hydrants) serving solely a residential population less than 3,300;~~

~~(ii) less than or equal to 8 inches in diameter in water systems (with fire hydrants) providing water for mixed use (commercial, industrial, agricultural and/or residential) to a population less than 3,300;~~

~~(iii) less than or equal to 12 inches in diameter in water systems (with fire hydrants) providing water for mixed use to a population between 3,300 and 50,000;~~

~~(iv) less than or equal to 16 inches in diameter in water systems (with fire hydrants) providing water for mixed use to a population greater than 50,000.~~

~~Additionally, the above systems in (b) shall employ, appoint or designate a registered professional engineer who is directly responsible for the entire public water system design and identify this individual to the Director as well as have standard installation drawings previously reviewed and approved by the Director before being eligible for waiving of plan submittal requirements.~~

~~(3) Eligibility for Plan Submittal Waivers.~~

~~In lieu of submitting plans and specifications for Plan Approval and obtaining Operating Permits, public water systems may request Plan Submittal Waivers for two types of water line projects (excluding booster pump stations) after first becoming eligible to request the waivers. The Director will issue written notification that a public water system is eligible to request the Plan Submittal Waivers described in R309-500-6(3)(a) and (3)(b) if the information provided is acceptable.~~

~~(a) Water Line Projects Included in an Approved Master Plan. To become eligible to request this type of waiver, a public water system must submit standard installation drawings, which meet the requirements in R309-550, and a master plan, which is supported by a hydraulic analysis, to the Director for approval.~~

(b) Water Line Projects Included in (i) through (iii) below. To become eligible to request this type of waiver, a public water system must submit standard installation drawings, which meet the requirements in R309-550, and identify in writing the professional engineer or engineers responsible for the oversight of the hydraulic analysis for and the design of the entire water system to the Director for approval.

(i) Water lines less than or equal to 8 inches in diameter in water systems providing water to a population less than 3,300;

(ii) Water lines less than or equal to 12 inches in diameter in water systems providing water to a population between 3,300 and 50,000; or

(iii) Water lines less than or equal to 16 inches in diameter in water systems providing water to a population greater than 50,000.

(4) Using Plan Submittal Waivers.

After becoming eligible to request Plan Submittal Waivers per R309-500-6(3), a public water system must complete the following when requesting a Plan Submittal Waiver for a water line project:

(a) Submit a complete Project Notification Form describing the project and specifying which Plan Submittal Waiver, R309-500-6(3)(a) or R309-500-6(3)(b), is being requested;

(b) For projects that will have a hydraulic impact, submit a certification of hydraulic analysis by a professional engineer per R309-511-6(1) indicating that the design will not result in unacceptable pressure and flow conditions (including fire flow if fire hydrants are installed);

(c) Submit a certification by a professional engineer, who is responsible for the design and construction of the project or has been designated by the water system in writing as the professional engineer directly responsible for the design of the entire water system, indicating that design and construction will meet the requirements of R309-500 through 550, that proper flushing and disinfection will be completed according to the appropriate ANSI/AWWA standard, that satisfactory bacteriological sample results will be obtained prior to placing the facilities into service, and that the water system will receive a copy of as-built or record drawings;

(d) Obtain a written Plan Submittal Waiver, in lieu of Plan Approval, from the Director prior to the start of construction; and

(e) Comply with the conditions in R309-500-6(4)(c) prior to placing the new facilities into service.

**R309-500-7. Inspection ~~ⓓ~~during Construction.**

Staff from the Division, ~~or~~the Department of Environmental Quality, or the ~~appropriate~~-local health department, after reasonable notice and presentation of credentials, may make visits to the work site to assure compliance with these rules.

**R309-500-8. Change Orders.**

Any deviations from approved plans or specifications affecting capacity, hydraulic conditions, operating units, the functioning of water treatment processes, or the quality of water to be delivered, shall be reported to the Director. ~~If deemed appropriate,~~ ~~†~~The Director may require that revised plans and specifications be submitted for review. ~~R~~If required, revised plans or specifications shall be submitted to the Division in time to permit the review and

Director's approval of such plans or specifications before any construction work, which will be affected by such changes, is begun.

**R309-500-9. ~~Issuance of~~Operating Permit.**

The Division shall be informed when a public drinking water project, or a well-defined phase thereof, is at or near completion. The new or modified facility shall not be ~~used~~placed into service until an ~~Operating Permit~~ or a Plan Submittal Waiver is issued ~~in writing,~~ by the Director. ~~This p~~The Operating Permit ~~shall~~will not be issued until all of the following items are submitted and found to be acceptable for all projects, ~~with the exception of d~~Distribution lines (not including in-line booster pump stations ~~or pressure reducing stations~~), ~~which~~may be placed into service prior to submittal of all items if the professional engineer responsible for the entire system, as identified to the Director, has received items (1) and (4):

(1) ~~a statement from a registered~~Certification of Rule Conformance by a professional engineer that all conditions of Plan Approval were accomplished ~~(“certification of rule conformance”)~~and if applicable, changes made during construction were in conformance with rules R309-500 through 550,

(2) as-built or ~~record~~drawings incorporating all changes to approved plans and specifications ~~;~~, unless no changes are made from previously submitted and approved plans during construction,

(3) confirmation that a copy of the as-built or ~~record~~drawings has been received by the water system owner,

(4) evidence of proper flushing and disinfection in accordance with the appropriate ANSI/AWWA Standard,

(5) where appropriate, water quality data,

~~(6) a statement from the Engineer indicating what changes to the project were necessary during construction, and certification that all of these changes were in conformance with these rules (“certification of rule conformance”);~~

~~(7)~~all other documentation which may have been required during the plan review process, and

~~(8)~~confirmation that the water system owner has been provided with an Operation and Maintenance manual for the new facility if applicable.

**R309-500-10. ~~Adequacy of~~Waste and Wastewater Disposal.**

~~P~~Approval of plans and specifications ~~for new water systems, or facilities required as a result of proposed subdivision additions to existing water systems, shall only be approved if~~ may require evidence showing that the method~~(s)~~ of waste and wastewater disposal ~~in the affected area~~have been approved or accepted ~~or been determined to be feasible,~~ by the ~~Director of the~~ Utah Division of Water Quality, ~~or~~the ~~appropriate~~-local health agency, or the local authority for ~~;~~:

(1) new drinking water facilities, including discharges from treatment facilities, discharges related to construction, etc., and

(2) new drinking water facilities serving proposed developments.

**~~R309-500-11. Financial Viability.~~**

~~Owners of new or existing water systems are encouraged to develop realistic financial strategies for recouping the costs of constructing and operating their systems. Plans for water system facilities shall not be approved when it is obvious that public health will eventually be threatened because the anticipated usage of the~~



~~system will not generate sufficient funds to insure proper operation and maintenance of the system (see also R309-352-5).~~

**R309-500-~~12~~11. Fee Schedule.**

The Division may charge a fee ~~for~~related to the review of plans and specifications. A fee schedule is available from the Division.

**R309-500-~~13~~12. Other Permits.**

~~Local, county or other state permits may also be necessary before beginning construction of any drinking water project. Local, county, federal, and other state authorities may impose different, more stringent, or additional requirements for public drinking water projects. Water systems may be required to comply with other permitting requirements before beginning construction of drinking water projects or placing new facilities into service.~~

**~~R309-500-14. Reference Documents.~~**

~~All references made in R309-500 through R309-550 are available for inspection at the Division's office.~~

**~~R309-500-15. Violations of These Rules.~~**

~~Violations of rule contained in R309-500 through R309-550 are subject to the provisions of the Utah Safe Drinking Water Act (Title 19, Chapter 4 Section 109 of the Utah Code) and may be subject to fines and penalties.~~

**]KEY: drinking water, plan review, operation and maintenance requirements, permits**

**Date of Enactment or Last Substantive Amendment: ~~[August 28, 2013]~~2015**

**Notice of Continuation: March 22, 2010**

**Authorizing, and Implemented or Interpreted Law: 19-4-104**

**Environmental Quality, Radiation  
Control**

**R313-15-1208**

**Reports of Leaking or Contaminated  
Sealed Sources**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39082

FILED: 01/15/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Incorporate a change identified by the U.S. Nuclear Regulatory Commission (NRC) in order to maintain compatibility of the Utah radiation control rules with those of the NRC in 10 CFR (Code of Federal Regulations).

**SUMMARY OF THE RULE OR CHANGE:** Section R313-15-1208 references Section R313-15-1401 which no longer

exists. Therefore, Section R313-15-1208 is no longer valid and needs to be removed from the Utah Radiation Control Rules. Leak testing of sealed sources will be required by a federal rule or a radioactive materials license condition. Reports of leaking sources will be reported to the director pursuant to a federal rule or a radioactive materials license condition.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 10 CFR and Section 19-3-104 and Section 19-3-108

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The proposed changes do not add or remove significant requirements that affect the radiation control program or the Utah Radiation Control Board.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings for local government agencies that possess sealed sources of radioactive material that require leak testing because proposed changes do not add or remove significant requirements.

◆ **SMALL BUSINESSES:** Small businesses and persons other than businesses may hold a radioactive material license, but there is no anticipated cost or savings for small businesses and persons other than businesses. Leak testing of sealed sources is currently required by the incorporation of federal requirements or a radioactive materials license condition.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities may hold a radioactive material license, but there is no anticipated cost or savings for persons other than small businesses, businesses, or local government entities because proposed changes do not add or remove significant requirements. Leak testing of sealed sources is currently required by the incorporation of federal requirements or a radioactive materials license condition.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no changes in compliance costs for persons affected by Section R313-15-1208. The proposed changes do not add or remove significant requirements that affected persons. Leak testing of sealed sources is currently required by the incorporation of federal requirements or a radioactive materials license condition.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Businesses with a radioactive material license will not see a fiscal impact due to the proposed changes to Section R313-15-1208. The proposed changes do not add or remove significant requirements that affect businesses. Leak testing of sealed sources is currently required by the incorporation of federal requirements or a radioactive materials license condition.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 RADIATION CONTROL  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Spencer Wickham by phone at 801-536-0082, by FAX at 801-533-4097, or by Internet E-mail at swickham@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2015

AUTHORIZED BY: Rusty Lundberg, Director

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**R313. Environmental Quality, Radiation Control.**

**R313-15. Standards for Protection Against Radiation.**

~~[R313-15-1208. Reports of Leaking or Contaminated Sealed Sources.~~

~~\_\_\_\_\_ If the test for leakage or contamination required pursuant to Section R313-15-1401 indicates a sealed source is leaking or contaminated, a report of the test shall be filed within five days with the Director describing the equipment involved, the test results and the corrective action taken.~~

**]KEY:** radioactive materials, contamination, waste disposal, safety

**Date of Enactment or Last Substantive Amendment:** ~~[March 19, 2011]~~ 2015

**Notice of Continuation:** December 3, 2012

**Authorizing, and Implemented or Interpreted Law:** 19-3-104; 19-3-108

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Environmental Quality, Radiation  
 Control  
**R313-38-3**  
 Clarifications or Exceptions

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39083

FILED: 01/15/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Incorporate a change identified by the U.S. Nuclear Regulatory Commission (NRC) to maintain

compatibility of the Utah radiation control rules with those of the NRC in 10 CFR (Code of Federal Regulations).

**SUMMARY OF THE RULE OR CHANGE:** Subsection R313-38-3(4)(h) requires tests for leakage or contamination to be made pursuant to Section R313-15-1208. Section R313-15-1208 references Section R313-15-1401 which no longer exists. Therefore, Subsection R313-38-3(4)(h) is no longer valid and needs to be removed from the Utah Radiation Control Rules. Subsection R313-38-3(4)(e)(iii) is being added to Section R313-38-3 to substitute "Director" for "references to appropriate NRC Regional Office listed in appendix D of part 20 of this chapter" in 10 CFR 39.35(d)(2). Reports of test results for leaking or contaminated sealed sources will be made to the Director pursuant to the incorporation of 10 CFR 39.35(d)(2). Subsection R313-38-3(4)(e) incorrectly states "Director or the Director for references to:" This wording will be corrected to read "Director for references to:".

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 10 CFR 39 and Section 19-3-104 and Section 19-3-108

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The proposed changes do not add or remove significant requirements that affect the radiation control program or the Utah Radiation Control Board.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings for local government agencies. The proposed changes do not add or remove significant requirements that affect local government agencies. There are no local government agencies licensed to perform well logging services that utilize radioactive materials.

♦ **SMALL BUSINESSES:** Small businesses and persons other than businesses may hold a radioactive material license, but there is no anticipated cost or savings for small businesses and persons other than businesses because proposed changes do not add or remove significant requirements. Leak testing of sealed sources is currently required by the incorporation of federal requirements or a radioactive materials license condition.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities may hold a radioactive material license, but there is no anticipated cost or savings for persons other than small businesses, businesses, or local government entities because proposed changes do not add or remove significant requirements. Leak testing of sealed sources is currently required by the incorporation of federal requirements or a radioactive materials license condition.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no changes in compliance costs for persons affected by Section R313-38-3. The proposed changes do not add or

remove significant requirements that affected persons. Leak testing of sealed sources is currently required by the incorporation of federal requirements or a radioactive materials license condition.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses with a radioactive material license will not see a fiscal impact due to the proposed changes to Section R313-38-3. The proposed changes do not add or remove significant requirements for affected businesses. Leak testing of sealed sources is currently required by the incorporation of federal requirements or a radioactive materials license condition.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 RADIATION CONTROL  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Spencer Wickham by phone at 801-536-0082, by FAX at 801-533-4097, or by Internet E-mail at swickham@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2015

AUTHORIZED BY: Rusty Lundberg, Director

**R313. Environmental Quality, Radiation Control.**  
**R313-38. Licenses and Radiation Safety Requirements for Well Logging.**

**R313-38-3. Clarifications or Exceptions.**  
 For purposes of Rule R313-38, 10 CFR 39 (2013), is incorporated by reference with the following clarifications or exceptions:

- (1) The exclusion of the following 10 CFR sections: 39.1, 39.5, 39.8, 39.11, 39.101, and 39.103;
- (2) The exclusion of the following 10 CFR references within 10 CFR 39: Sec. 40.32, and Sec. 70.23;
- (3) The exclusion of "licensed material" in 10 CFR 39.2 definitions;
- (4) The substitution of the following wording:
  - (a) License for reference to NRC license;
  - (b) Utah Radiation Control Rules for the references to:
    - (i) The Commission's regulations;
    - (ii) The NRC regulations;
    - (iii) NRC regulations; and
    - (iv) Pertinent Federal regulations;
  - (c) Director for reference to Commission, except as stated in Subsection R313-38-3(4)(d);

(d) Representatives of the Director for the references to the Commission in:

- (i) 10 CFR 39.33(d);
- (ii) 10 CFR 39.35(a);
- (iii) 10 CFR 39.37;
- (iv) 10 CFR 39.39(b); and
- (v) 10 CFR 39.67(f);
- (e) Director [~~or the Director~~]for references to:
  - (i) NRC in:
    - (A) 10 CFR 39.63(l);
    - (B) 10 CFR 39.77(c)(1)(i) and (ii); and
    - (C) 10 CFR 39.77(d)(9); and
  - (ii) Appropriate NRC Regional Office in:
    - (A) 10 CFR 39.77(a);
    - (B) 10 CFR 39.77(c)(1); and
    - (C) 10 CFR 39.77(d);
  - (iii) Appropriate NRC Regional Office listed in appendix D of part 20 of this chapter in:
    - (A) 10 CFR 39.35(d)(2)

(f) Director, the U.S. Nuclear Regulatory Commission or an Agreement State for the references to:

- (i) Commission or an Agreement State in:
  - (A) 10 CFR 39.35(b); and
  - (B) 10 CFR 39.43(d) and (e); and
- (ii) Commission pursuant to Sec. 39.13(c) or by an Agreement State in:
  - (A) 10 CFR 39.43(c); and
  - (B) 10 CFR 39.51;

(g) In 10 CFR 39.35(d)(1), persons specifically licensed by the Director, the U.S. Nuclear Regulatory Commission, or an Agreement State for the reference to an NRC or Agreement State licensee that is authorized; ~~and~~

~~(h) In 10 CFR 39.35(d)(2), reports of test results for leaking or contaminated sealed sources shall be made pursuant to Section R313-15-1208, for the reference to the following statement:~~

~~(i) The licensee shall submit a report to the appropriate NRC Regional Office listed in appendix D of part 20 of this chapter, within 5 days of receiving the test results. The report must describe the equipment involved in the leak, the test results, any contamination which resulted from the leaking source, and the corrective actions taken up to the time the report is made; and]~~

~~(+)(h)~~ In 10 CFR 39.75(e), a U.S. Nuclear Regulatory Commission or an Agreement State for the reference to the Agreement State;

(5) The substitution of the following Title R313 references for specific 10 CFR references:

- (a) Section R313-12-3 for the reference to Sec. 20.1003 of this chapter;
- (b) Section R313-12-54 for the reference to 10 CFR 39.17;
- (c) Subsection R313-12-55(1) for the reference to 10 CFR 39.91;
- (d) Rule R313-15 for references to:
  - (i) Part 20; and
  - (ii) Part 20 of this chapter;
- (e) Subsection R313-15-901(1) for the reference to Sec. 20.1901(a);
- (f) Section R313-15-906 for the reference to Sec. 20.1906 of this chapter;

(g) Sections R313-15-1201 through R313-15-1203 for the references to:

- (i) Secs. 20.2201-20.2202; and
- (ii) Sec. 20.2203;
- (h) Rule R313-18 for the reference to part 19;
- (i) Section R313-19-30 for the reference to Sec. 150.20 of

this chapter;

- (j) Section R313-19-50 for the references to:
  - (i) Sec. 30.50; and
  - (ii) Part 21 of this chapter;
- (k) Section R313-19-71 for the reference to Sec. 30.71;
- (l) Section R313-19-100 for the references to:

- (i) 10 CFR Part 71; and
- (ii) Sec. 71.5 of this chapter; and
- (m) Section R313-22-33 for the reference to 10 CFR 30.33;
- (n) Rules R313-15, R313-18, and R313-38 for

corresponding references to:

- (i) Parts 19, 20, and 39 of this chapter;
- (ii) A copy of parts 19, 20, and 39 of NRC regulations.

**KEY:** radioactive materials, well logging, surveys, subsurface tracer studies

**Date of Enactment or Last Substantive Amendment:** ~~April 7, 2014~~ 2015

**Notice of Continuation:** October 7, 2013

**Authorizing, and Implemented or Interpreted Law:** 19-3-104; 19-3-108

## Health, Disease Control and Prevention, Health Promotion **R384-300** Parkinson's Disease Reporting Rule

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39052

FILED: 01/02/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the Utah Parkinson's Disease Reporting Rule is to create a registry of these patients for research and public health purposes. Parkinson's Disease affects 1% of persons over the age of 65 years, and, in Utah, 31% of the population falls into this age group. The database created by the Parkinson's Disease Reporting Rule will increase the understanding of risk factors, encourage development of interventions for patients and their families, and promote research that will benefit these patients.

**SUMMARY OF THE RULE OR CHANGE:** The Parkinson's Disease Registry will be located at the University of Utah and will be supported by funding through the University of Utah

Department of Neurology; and philanthropy donations. No costs will be incurred by the Utah Department of Health, except for administrative staff time to manage the reporting rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-30 and Section 26-5-3

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no costs to the state for collecting, storing, and managing the data in the Parkinson's Disease Registry at present. At present, the registry will be funded by University of Utah and philanthropic resources.

◆ **LOCAL GOVERNMENTS:** There are no costs to local governments. The Parkinson's Disease Registry staff will be responsible for all follow-up of providers and patients.

◆ **SMALL BUSINESSES:** There will be a minimal cost to physician offices, laboratories, hospitals, clinics, and other facilities for clerical expenses. These costs are difficult to determine, as it will be based on the salary of the facilities' employees to input the data on the website.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be a minimal cost to physician offices, laboratories, hospitals, clinics, and other facilities for clerical expenses. These costs are difficult to determine, as it will be based on the salary of the facilities' employees to input the data on the website.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The only costs to affected persons will be the time required to complete information on the reporting form. Providers will also be contacted and asked to provide information about patients. Persons in the registry may be contacted in the future for participation in research. All protocols for such research will undergo institutional review, board review by the University of Utah, and Utah Department of Health, to ensure protection of human subjects. Participation in such research will be completely voluntary.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be minimal costs to care providers for the clerical expenses to input data into the website.

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

HEALTH  
DISEASE CONTROL AND PREVENTION,  
HEALTH PROMOTION  
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:**

◆ Heather Borski by phone at 801-538-9998, by FAX at 801-538-9495, or by Internet E-mail at hborski@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

**R384. Health, Disease Control and Prevention, Health Promotion.**

**R384-300. Parkinson's Disease Reporting Rule.**

**R384-300-1. Purpose Statement.**

(1) The Parkinson's Disease Reporting Rule is adopted under authority of sections 26-1-30 and 26-5-3.

(2) Parkinson's Disease (PD) is a common neurodegenerative disease that affects one in 100 persons over the age of 65 years. PD is a progressive, ultimately fatal condition, which may be more common in Utah than in other states. The growth rate of the over-65 segment of the population in Utah is more than 30%. The purpose of the Utah Parkinson's Disease Registry (Registry) is to develop a central database of accurate historical and current information for research and public health purposes. The Parkinson's Disease Reporting Rule will provide for screening and collection of patient data that may be useful in detecting the incidence and possible risk factors concerning PD and related movement disorders. The information gained will help increase understanding of this disease and aid in planning for early diagnosis, developing health education for patients and providers, and providing correct medical or surgical therapy health requirements.

(3) Parkinson's Disease records are managed by the Parkinson's Disease Registry at the University of Utah on behalf of the Utah Department of Health. This Parkinson's Disease Reporting Rule is adopted to specify the reporting requirements for cases of Parkinson's Disease to the Registry. The Utah Department of Health retains ownership and all rights to the records in the Registry.

**R384-300-2. Definitions.**

As used in this rule:

(1) "Parkinson's Disease" means a chronic, progressive disorder marked by resting tremors, muscular rigidity, and slow, imprecise movement, chiefly affecting middle-aged and elderly people. The disease is often asymmetric. It is associated with degeneration of the basal ganglia of the brain and a deficiency of the neurotransmitter dopamine. Treatment with L-DOPA or dopamine agonists is virtually always helpful, although the effects may be as short as 6 months.

(2) "Follow-up data" includes date last seen or date of death, status of disease, date of first recurrence, type of recurrence, distant site(s) of first recurrence, and the name of the physician who is following the case.

(3) "Health care provider" includes any person who renders health care or professional services such as a physician, physician assistant, nurse practitioner, registered nurse, licensed practical nurse, dentist, optometrist, podiatric physician, osteopathic physician, osteopathic physician and surgeon, or others rendering patient care.

(4) "Registrar" means a person who

(a) is employed as a registrar by the Registry and has attended their training program;

(b) has in-depth experience with Parkinson's Disease and medical terminology relating to movement disorders; knowledge of the spectrum of providers and care settings treating PD; and knowledge of medical record discharge analysis, coding, and abstracting.

**R384-300-3. Reportable Cases.**

Each case of Parkinson's Disease or related movement disorder that is diagnosed or treated in Utah shall be reported to the Utah Parkinson's Disease Registry through a website or by mail.

**R384-300-4. Case Report Contents.**

Each report of Parkinson's Disease or related movement disorder shall include information on report forms provided by the Registry. These reports shall be made in the format prescribed by the Registry and shall include the name and address of the patient, date of birth, gender, medical history, date and method of diagnosis, laboratory data, methods and drugs of treatment, follow-up data, physicians' names and addresses, identification of reporting source, and any additional information the Utah Department of Health demonstrates is reasonable to implement the Parkinson's Disease Registry.

**R384-300-5. Agencies or Individuals Required to Report Cases.**

(1) All physicians, hospitals, clinics, pathology laboratories licensed to provide services in the state, nursing homes, and other facilities and health care providers involved in the diagnosis or treatment of Parkinson's Disease shall report to the Registry.

(2) Voluntary self-reports by patients on a confidential website developed and maintained by the University of Utah may be also included in the registry.

(3) Procedures for reporting:

(a) Hospital employed registrars shall report hospital cases.

(b) Individual physicians, e.g., neurologists, and clinics shall report cases seen in their practices.

(c) Pending implementation of electronic reporting by pathology laboratories, pathology laboratories shall allow the Registry to identify reportable cases and extract the required information during routine visits to pathology laboratories.

(d) If the Registry has not received complete information on a reportable case from routine reporting sources (hospitals, clinician's offices, pathology laboratories, nursing homes and other facilities), the Registry may contact health care providers and require them to complete a report form.

**R384-300-6. Time Requirements.**

(1) New Cases:

(a) Providers, hospitals and clinics shall submit reports to the Registry within a year of the date of diagnosis.

(b) Other facilities and health care providers shall submit reportable data to the Registry upon request.

(2) Follow-up Data:

(a) Hospitals, physicians and clinics shall submit follow-up data to the Registry upon request.

**R384-300-7. Reporting Format.**

Reports shall be submitted in the standard format designated by the Registry. Report forms can be obtained by contacting the Registry.

**R384-300-8. Data Quality Assurance.**

Records maintained by hospitals, pathology laboratories, cancer clinics, and physicians are subject to review by Registry personnel acting on behalf of the Utah Department of Health to assure the completeness and accuracy of reported data.

**R384-300-9. Confidentiality of Reports.**

All reports required by this rule are confidential under the provisions of Title 26, Chapter 3 and are not open to inspection except as allowed by Title 26, Chapter 3. The Registry shall maintain all reports according to the provisions of Title 26, Chapter 3.

**R384-300-10. Penalties.**

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Parkinson's Disease Reporting Rule, are prescribed under Section 26-23-6 and are punishable.

**KEY: Parkinson's disease, reporting requirements and procedures, registry**

**Date of Enactment or Last Substantive Amendment: 2015**  
**Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-5-3**

**Health, Family Health and  
Preparedness, Children with Special  
Health Care Needs  
R398-1  
Newborn Screening**

**NOTICE OF PROPOSED RULE**

(Amendment)  
DAR FILE NO.: 39054  
FILED: 01/05/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Newborn Screening Advisory Committee recommends the addition of disorders of creatine metabolism to the Utah Newborn Screening Panel. Additionally, change the time of collection of the first screen to 24 to 48 hours of age to be in-line with national recommendations.

**SUMMARY OF THE RULE OR CHANGE:** Screening for disorders of creatine metabolism is added in Section R398-1-3. Timing of collection of first specimen is changed to 24 to 48 hours of the newborn's life in Section R398-1-5.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-6

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no fiscal impact on state government. It does not impose additional duties or eliminate any duties.

♦ **LOCAL GOVERNMENTS:** There is no fiscal impact on local government. It does not impose additional duties or eliminate any duties.

♦ **SMALL BUSINESSES:** There is no fiscal impact on small business. It does not impose additional duties or eliminate any duties.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no fiscal impact for other parties. It does not impose additional duties or eliminate any duties.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no cost for compliance as the number of required specimens has not changed, the aggregate costs to collect and submit them will not change with this rule. This testing can be added to the already established Newborn Screening Tandem Mass Spectrometry with no additional cost and therefore, there will be no request to increase the newborn screening kit fee for this additional screen.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no fiscal impact on business. It does not impose additional duties or eliminate any duties.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
CHILDREN WITH SPECIAL HEALTH CARE NEEDS  
44 N MARIO CAPECCHI DR  
SALT LAKE CITY, UT 84113  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Kim Hart by phone at 801-584-8256, by FAX at 801-536-0966, or by Internet E-mail at kimhart@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015**

**AUTHORIZED BY: David Patton, PhD, Executive Director**

**R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.****R398-1. Newborn Screening.****R398-1-1. Purpose and Authority.**

(1) The purpose of this rule is to facilitate early detection, prompt referral, early treatment, and prevention of disability and mental retardation in infants with certain genetic and endocrine disorders.

(2) Authority for the Newborn Screening program and promulgation of rules to implement the program are found in Sections 26-1-30(2)(a), (b), (c), (d), and (g) and 26-10-6.

**R398-1-2. Definitions.**

(1) "Abnormal test result" means a result that is outside of the normal range for a given test.

(2) "Appropriate specimen" means a blood specimen submitted on the Utah Newborn Screening form that conforms with the criteria in R398-1-8.

(3) "Blood spot" means a clinical specimen(s) submitted on the filter paper (specially manufactured absorbent specimen collection paper) of the Newborn Screening form using the heel stick method.

(4) "Department" means the Utah Department of Health.

(5) "Follow up" means the tracking of all newborns with an abnormal result, inadequate or unsatisfactory specimen or a quantity not sufficient specimen through to a normal result or confirmed diagnosis and referral.

(6) "Inadequate specimen" means a specimen determined by the Newborn Screening Laboratory to be unacceptable for testing.

(7) "Indeterminate result" means a result that requires another specimen to determine normal or abnormal status.

(8) "Institution" means a hospital, alternate birthing facility, or midwife service in Utah that provides maternity or nursery services or both.

(9) "Medical home/practitioner" means a person licensed by the Department of Commerce, Division of Occupational and Professional Licensing to practice medicine, naturopathy, or chiropractic or to be a nurse practitioner, as well as the licensed or unlicensed midwife who takes responsibility for delivery or the ongoing health care of a newborn.

(10) "Metabolic diseases" means those diseases screened by the Department which are caused by an inborn error of metabolism.

(11) "Newborn Screening form" means the Department's demographic form with attached Food and Drug Administration (FDA)-approved filter paper medical collection device.

(12) "Quantity not sufficient specimen" or "QNS specimen" means a specimen that has been partially tested but does not have enough blood available to complete the full testing.

(13) "Unsatisfactory specimen" means an inadequate specimen.

**R398-1-3. Implementation.**

(1) Each newborn in the state of Utah shall submit to the Newborn Screening testing, except as provided in Section R398-1-11.

(2) The Department of Health, after consulting with the Newborn Screening Advisory Committee, will determine the disorders on the Newborn Screening Panel, based on demonstrated effectiveness and available funding. Disorders for which the infant blood is screened are:

- (a) Biotinidase Deficiency;
- (b) Congenital Adrenal Hyperplasia;
- (c) Congenital Hypothyroidism;
- (d) Galactosemia;
- (e) Hemoglobinopathy;
- (f) Amino Acid Metabolism Disorders:
  - (i) Phenylketonuria (phenylalanine hydroxylase deficiency and variants);
  - (ii) Tyrosinemia type 1 (fumarylacetoacetate hydrolase deficiency);
  - (iii) Tyrosinemia type 2 (tyrosine amino transferase deficiency);

(iv) Tyrosinemia type 3 (4-OH-phenylpyruvate dioxygenase deficiency);

(v) Maple Syrup Urine Disease (branched chain ketoacid dehydrogenase deficiency);

(vi) Homocystinuria (cystathionine beta synthase deficiency);

(vii) Citrullinemia (arginino succinic acid synthase deficiency);

(viii) Argininosuccinic aciduria (argininosuccinic acid lyase deficiency);

(ix) Argininemia (arginase deficiency);

(x) Hyperprolinemia type 2 (pyroline-5-carboxylate dehydrogenase deficiency);

(g) Fatty Acid Oxidation Disorders:

(i) Medium Chain Acyl CoA Dehydrogenase Deficiency;

(ii) Very Long Chain Acyl CoA Dehydrogenase Deficiency;

(iii) Short Chain Acyl CoA Dehydrogenase Deficiency;

(iv) Long Chain 3-OH Acyl CoA Dehydrogenase Deficiency;

(v) Short Chain 3-OH Acyl CoA Dehydrogenase Deficiency;

(vi) Primary carnitine deficiency (OCTN2 carnitine transporter defect);

(vii) Carnitine Palmitoyl Transferase I Deficiency;

(viii) Carnitine Palmitoyl Transferase 2 Deficiency;

(ix) Carnitine Acylcarnitine Translocase Deficiency;

(x) Multiple Acyl CoA Dehydrogenase Deficiency;

(h) Organic Acids Disorders:

(i) Propionic Acidemia (propionyl CoA carboxylase deficiency);

(ii) Methylmalonic acidemia (multiple enzymes);

(iii) Malonic Aciduria;

(iv) Isovaleric acidemia (isovaleryl CoA dehydrogenase deficiency);

(v) 2-Methylbutyryl CoA dehydrogenase deficiency;

(vi) Isobutyryl CoA dehydrogenase deficiency;

(vii) 2-Methyl-3-OH-butyryl-CoA dehydrogenase deficiency;

(viii) Glutaric acidemia type 1 (glutaryl CoA dehydrogenase deficiency);

(ix) 3-Methylcrotonyl CoA carboxylase deficiency;

(x) 3-Ketothiolase deficiency;

(xi) 3-Hydroxy-3-methyl glutaryl CoA lyase deficiency;

(xii) Holocarboxylase synthase (multiple carboxylases) deficiency;

(i) Cystic Fibrosis; ~~and~~

(j) Severe Combined Immunodeficiency syndrome[-]; and

(k) Disorders of Creatine Metabolism.

**R398-1-4. Responsibility for Collection of the First Specimen.**

(1) If the newborn is born in an institution, the institution must collect and submit an appropriate specimen, unless the newborn is transferred to another institution prior to 48 hours of age.

(2) If the newborn is born outside of an institution, the practitioner or other person primarily responsible for providing assistance to the mother at the birth must arrange for the collection and submission of an appropriate specimen.

(3) If there is no other person in attendance of the birth, the parent or legal guardian must arrange for the collection and submission of an appropriate specimen.

(4) If the newborn is transferred to another institution prior to 48 hours of age, the receiving health institution must collect and submit an appropriate specimen.

**R398-1-5. Timing of Collection of First Specimen.**

The first specimen shall be collected between 24 and 48 hours [~~and five days~~] of the newborn's life[~~-age~~]. Except:

(1) If the newborn is discharged from an institution before 48 hours of age, an appropriate specimen must be collected within four hours of discharge.

(2) If the newborn is to receive a blood transfusion or dialysis, the appropriate specimen must be collected immediately before the procedure, except in emergency situations where time does not allow for collection of the specimen. If the newborn receives a blood transfusion or dialysis prior to collecting the appropriate specimen the following must be done:

(a) Repeat the collection and submission of an appropriate specimen 7-10 days after last transfusion or dialysis for a second screening specimen;

(b) Repeat the collection and submission of an appropriate specimen 120 days after last transfusion or dialysis for a first screening specimen.

**R398-1-6. Parent Education.**

The person who has responsibility under Section R398-1-4 shall inform the parent or legal guardian of the required collection and submission and the disorders screened. That person shall give the second half of the Newborn Screening form to the parent or legal guardian with instructions on how to arrange for collection and submission of the second specimen.

**R398-1-7. Timing of Collection of the Second Specimen.**

A second specimen shall be collected between 7 and 28 days of age.

(1) The parent or legal guardian shall arrange for the collection and submission of the appropriate second specimen through an institution, medical home/practitioner, or local health department.

(2) If the newborn's first specimen was obtained prior to 48 hours of age, the second specimen shall be collected by fourteen days of age.

(3) If the newborn is hospitalized beyond the seventh day of life, the institution shall arrange for the collection and submission of the appropriate second specimen.

**R398-1-8. Criteria for Appropriate Specimen.**

(1) The institution or medical home/practitioner collecting the appropriate specimen must:

(a) Use only a Newborn Screening form purchased from the Department. The fee for the Newborn Screening form is set by the Legislature in accordance with Section 26-1-6;

(b) Correctly store the Newborn Screening form;

(c) Not use the Newborn Screening form beyond the date of expiration;

(d) Not alter the Newborn Screening form in any way;

(e) Complete all information on the Newborn Screening form. If the infant is being adopted, the following may be omitted: infant's last name, birth mother's name, address, and telephone number. Infant must have an identifying name, and a contact person must be listed;

(f) Apply sufficient blood to the filter paper;

(g) Not contaminate the filter paper with any foreign substance;

(h) Not tear, perforate, scratch, or wrinkle the filter paper;

(i) Apply blood evenly to one side of the filter paper and be sure it soaks through to the other side;

(j) Apply blood to the filter paper in a manner that does not cause caking;

(k) Collect the blood in such a way as to not cause serum or tissue fluids to separate from the blood;

(l) Dry the specimen properly;

(m) Not remove the filter paper from the Newborn Screening form.

(2) Submit the completed Newborn Screening form to the Utah Department of Health, Newborn Screening Laboratory, 4431 South 2700 West, Taylorsville, Utah 84119.

(a) The Newborn Screening form shall be placed in an envelope large enough to accommodate it without folding the form.

(b) If mailed, the Newborn Screening form shall be placed in the U.S. Postal system within 24 hours of the time the appropriate specimen was collected.

(c) If hand-delivered, the Newborn Screening form shall be delivered within 48 hours of the time the appropriate specimen was collected.

**R398-1-9. Abnormal Result.**

(1) (a) If the Department finds an abnormal result consistent with a disease state, the Department shall send written notice to the medical home/practitioner noted on the Newborn Screening form.

(b) If the Department finds an indeterminate result on the first screening, the Department shall determine whether to send a notice to the medical home/practitioner based on the results on the second screening specimen.

(2) The Department may require the medical home/practitioner to collect and submit additional specimens for screening or confirmatory testing. The Department shall pay for the initial confirmatory testing on the newborn requested by the Department. The Department may recommend additional diagnostic testing to the medical home/practitioner. The cost of additional testing recommended by the Department is not covered by the Department.

(3) The medical home/practitioner shall collect and submit specimens within the time frame and in the manner instructed by the Department.

(4) As instructed by the Department or the medical home/practitioner, the parent or legal guardian of a newborn identified with an abnormal test result shall promptly take the newborn to the Department or medical home/practitioner to have an appropriate specimen collected.

(5) The medical home/practitioner who makes the final diagnosis shall complete a diagnostic form and return it to the Department within 30 days of the notification letter from the Department.



**R398-1-10. Inadequate or Unsatisfactory Specimen, or QNS Specimen.**

If the Department finds an inadequate or unsatisfactory specimen, or QNS specimen, the Department shall inform the institution or medical home/practitioner noted on the Newborn Screening form.

(1) The institution or medical home/practitioner that submitted the inadequate or unsatisfactory, or QNS specimen shall submit an appropriate specimen in accordance with Section R398-1-8. The responsible institution or medical home/practitioner shall collect and submit the new specimen within two days of notice, and the responsible institution or medical home/practitioner shall label the form for testing as directed by the Department.

(2) The parent or legal guardian of a newborn identified with an inadequate or unsatisfactory specimen or QNS specimen shall promptly take the newborn to the institution or medical home/practitioner to have an appropriate specimen collected.

**R398-1-11. Testing Refusal.**

A parent or legal guardian may refuse to allow the required testing for religious reasons only. The medical home/practitioner or institution shall file in the newborn's record documentation of refusal, reason, education of family about the disorders, and a signed waiver by both parents or legal guardian. The practitioner or institution shall submit a copy of the refusal to the Utah Department of Health, Newborn Screening Program, P.O. Box 144710, Salt Lake City, UT 84114-4710.

**R398-1-12. Access to Medical Records.**

(1) The Department shall have access to the medical records of a newborn in order to identify medical home/practitioner, reason appropriate specimen was not collected, or to collect missing demographic information.

(2) The institution shall enter the Newborn Screening form number, also known as the Birth Record Number, into the Vital Records database and the Newborn Hearing Screening database.

**R398-1-13. Noncompliance by Parent or Legal Guardian.**

If the medical home/practitioner or institution has information that leads it to believe that the parent or legal guardian is not complying with this rule, the medical home/practitioner or institution shall report such noncompliance as medical neglect to the Department.

**R398-1-14. Confidentiality and Related Information.**

(1) The Department initially releases test results to the institution of birth for first specimens and to the medical home/practitioner, as noted on the Newborn Screening form, for the second specimen.

(2) The Department notifies the medical home/practitioner noted on the Newborn Screening form as provided in Section R398-1-9(1) of any results that require follow up.

(3) The Department releases information to a medical home/practitioner or other health practitioner on a need to know basis. Release may be orally, by a hard copy of results or available electronically by authorized access.

(4) Upon request of the parent or guardian, the Department may release results as directed in the release.

(5) All requests for test results or records are governed by Utah Code Title 26, Chapter 3.

(6) The Department may release information in summary, statistical, or other forms that do not identify particular individuals.

(7) A testing laboratory that analyzes newborn screening samples for the Department may not release information or samples without the Department's express written direction.

**R398-1-15. Blood Spots.**

(1) Blood spots become the property of the Department.

(2) The Department includes in parent education materials information about the Department's policy on the retention and use of residual newborn blood spots.

(3) The Department may use residual blood spots for newborn screening quality assessment activities.

(4) The Department may release blood spots for research upon the following:

(a) The person proposing to conduct the research applies in writing to the Department for approval to perform the research. The application shall include a written protocol for the proposed research, the person's professional qualifications to perform the proposed research, and other information if needed and requested by the Department. When appropriate, the proposal will then be submitted to the Department's Internal Review Board for approval.

(b) The Department shall de-identify blood spots it releases unless it obtains informed consent of a parent or guardian to release identifiable samples.

(c) All research must be first approved by the Department's Internal Review Board.

**R398-1-16. Retention of Blood Spots.**

(1) The Department retains blood spots for a minimum of 90 days.

(2) Prior to disposal, the Department shall de-identify and autoclave the blood spots.

**R398-1-17. Reporting of Disorders.**

If a diagnosis is made for one of the disorders screened by the Department that was not identified by the Department, the medical home/practitioner shall report it to the Department.

**R398-1-18. Statutory Penalties.**

As required by Subsection 63G-3-201(5): Any medical home/practitioner or institution responsible for submission of a newborn screen that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

**KEY: health care, newborn screening**

**Date of Enactment or Last Substantive Amendment:** ~~July 1, 2014~~ 2015

**Notice of Continuation:** September 4, 2014

**Authorizing, and Implemented or Interpreted Law:** 26-1-6; 26-1-30(2)(a), (b), (c), (d), and (g); 26-10-6

Natural Resources, Wildlife Resources  
**R657-5**  
 Taking Big Game

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39062

FILED: 01/12/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the big game rule.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revision to this rule replace "convention" with "expo".

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule amendment makes technical corrections, it does not increase workload for the agency therefore, the Division of Wildlife Resources (DWR) determines that this amendment does not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since the amendment only changes a name this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment simply makes a name change, it 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 simply makes a name change, it 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. This amendment simply makes a name change.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendments to this rule do not have a potential to 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 03/03/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015

AUTHORIZED BY: Gregory Sheehan, Director

**R657. Natural Resources, Wildlife Resources.**

**R657-5. Taking Big Game.**

**R657-5-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

**R657-5-2. Definitions.**

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

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at

any increment of draw until released by the archer using a trigger mechanism and safety attached to the device.

(l) "Hunter's choice" means either sex may be taken.

(m) "Limited entry hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(n) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, wildlife [convention]expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(o) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(p) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, wildlife [conventions]expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(r) "Spike bull" means a bull elk which has at least one antler beam with no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(s) "Drone" means an autonomously controlled, aerial vehicle of any size or configuration that is capable of controlled flight without a human pilot aboard.

**KEY: wildlife, game laws, big game seasons**

**Date of Enactment or Last Substantive Amendment: [February 10, 2014]2015**

**Notice of Continuation: November 1, 2010**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-16-5; 23-16-6**

## Natural Resources, Wildlife Resources R657-33 Taking Bear

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39063  
FILED: 01/12/2015

#### 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 taking bear.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) set criteria for commercial crop depredation strategies; 2) require the bear orientation course to be mandatory to obtain any bear permit; 3) add requirements for using cross-bows consistent with other species hunts; 4) define "multi season" hunts; 5) set additional requirements for bait stations; and 6) make technical corrections.

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

#### ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This amendment adds a program to help remove damaging bears on commercial crops, requires a free orientation course be taken by all bear hunters, and sets additional requirements to programs that have been in place for years so there is minimal adjustments needed to implement the proposed amendments. 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 additional resources to handle chronic depredation to commercial crops and additional restrictions to programs that are already in place it should have no effect on local governments. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ SMALL BUSINESSES: Since this amendment adds additional resources to crop owners wanting to remove bears causing damages to their crops and required a free orientation course to those wishing to obtain a bear permit, the division feels the amendments will not generate a cost or savings impact to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Since this amendment adds additional resources to crop owners wanting to remove bears causing damages to their crops and requires a free orientation course to those wishing to obtain a bear permit, the division feels the amendments will not generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments do not create additional costs for sportsmen wishing to participate in bear hunts in Utah. Since this amendment adds additional resources to crop owners wanting to remove bears causing damages to their crops and requires a free orientation course to those wishing to obtain a bear permit.

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 03/03/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015

AUTHORIZED BY: Gregory Sheehan, Director

## R657. Natural Resources, Wildlife Resources.

### R657-33. Taking Bear.

#### R657-33-1. 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 bear.

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

#### R657-33-2. Definitions.

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

(2) In addition:

(a) "Accompany" means at a distance within which visual contact and verbal communication are maintained without the assistance of any electronic device.

(b) "Bait" means any lure containing animal, mineral or plant materials.

(c) "Baiting" means the placing, exposing, depositing, distributing or scattering of bait to lure, attract or entice bear on or over any area.

(d) "Bear" means *Ursus americanus*, commonly known as black bear.

(e) "Canned hunt" means that a bear 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 bear.

(f) "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 bear for any purpose.

(g) "Control permit" means a permit issued in response to bear depredation to commercial crops pursuant to R657-33-23(4).

(h) "Cub" means a bear less than one year of age.

([h]i) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound

bow at any increment of draw until released by the archer using a trigger mechanism attached to the device.

(j) "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.

([i]k) "Evidence of sex" means the teats, and sex organs of a bear, including a penis, scrotum or vulva.

([j]l) "Green pelt" means the untanned hide or skin of a bear.

([k]m) "Harvest-objective hunt" means any hunt that is identified as harvest-objective in the hunt table of the guidebook for taking bear.

([l]n) "Harvest-objective permit" means any permit valid on harvest-objective units.

([m]o) "Harvest-objective unit" means any unit designated as harvest-objective in the hunt table of the guidebook for taking bear.

~~[(n) "Limited entry hunt" means any hunt listed in the hunt table, published in the guidebook of the Wildlife Board for taking bear, which is identified as a limited entry hunt and does not include harvest objective hunts or pursuit only.~~

~~[(o) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.~~

~~[(p) ["Premium limited entry hunt" means any hunt listed in the hunt table, published in the guidebook of the Wildlife Board for taking bear, which is identified as a premium limited entry hunt and does not include harvest objective hunts or pursuit only.]~~"Immediate family member" means a landowner's or lessee's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild, and grandchild.

~~[(q) ["Premium limited entry hunt" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.]~~(i) "Limited entry [permit] hunt" means any [permit identified for a premium limited entry hunt as] hunt listed in the hunt table, published in the guidebook of the Wildlife Board for taking bear, which is identified as a limited entry hunt for bear.

(ii) The Wildlife Board may authorize certain limited entry hunts that span multiple seasons, identified in the guidebook for taking bear as multi-season limited entry hunts.

(iii) "Limited entry hunt" does not include harvest objective hunts or pursuit only.

(r) "Limited entry permit" means any permit obtained for a limited entry hunt, including conservation permits, expo permits, and sportsman permits.

(s) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

([s]t) "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.

([t]u) "Pursue" means to chase, tree, corner or hold a bear at bay with dogs.

([u]v) "Restricted pursuit unit" means a bear pursuit unit where pursuit is allowed only by a dog handler who:

(i) possesses a pursuit permit issued for that particular ~~restricted~~ pursuit unit;

(ii) possesses or is accompanied by a person who possesses a limited entry bear permit for the unit, and the pursuit occurs within the area and during the season established for the limited entry bear permit; or

(iii) is engaged in pursuit for compensation as provided in R657-33-26(2).

~~(w)~~(i) "Valid application" means:

(A) it is for a species for which the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may still be considered valid if the application is corrected before the deadline through the application correction process.

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

~~(x)~~(y) "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.

### **R657-33-3. Permits for Taking Bear.**

(1)(a) To harvest a bear, a person must first obtain a valid limited entry bear permit or a harvest objective bear permit for a specified hunt unit as provided in the guidebook of the Wildlife Board for taking bear.

(b) Any person who obtains a limited entry bear permit or a harvest objective bear permit which allows the use of dogs may pursue bear without a pursuit permit while hunting during the season and on the unit for which the take permit is valid, provided the person is the dog handler.

(2)(i) A person may not apply for or obtain more than one bear permit ~~for the same season~~ per year, except:

~~(ii) if the person is unsuccessful in the [limited entry] drawing[-] administered by the division under R657-62, the person may purchase a [harvest objective-] permit[-] available outside of the drawing; and~~

~~(iii) a person may acquire more than one bear control permit as described in R657-33-23(4).~~

(3) Any bear permit purchased after the season opens is not valid until ~~seven~~ three days after the date of purchase.

(4) Residents and nonresidents may apply for and receive limited entry bear permits, and may purchase harvest objective bear permits and bear pursuit permits.

~~(5)[A](a) A person must complete a mandatory orientation course [is required for hunters who obtain a permit to hunt black bear] prior to applying for or obtaining a limited entry, harvest objective, or bear pursuit permit.~~

~~(b) The orientation course is not required to receive a bear control permit under R657-33-23(4).~~

(6) To obtain a ~~bear-~~limited entry ~~[-] permit~~, harvest objective ~~[-] permit~~, or bear pursuit permit, a person must possess a valid Utah hunting or combination license.

### **R657-33-4. Permits for Pursuing Bear.**

(1)(a) To pursue bear without a limited entry or harvest objective bear permit, the dog handler must:

(i) obtain a valid bear pursuit permit from a division office or through the drawing administered pursuant to R657-62; or

(ii) possess the documentation and certifications required in R657-33-26(2) to pursue bear for compensation.

(b) A bear pursuit permit or exemption therefrom does not allow a person to kill a bear.

(2) Residents and nonresidents may purchase bear pursuit permits consistent with the requirements of this rule and the guidebooks of the Wildlife Board.

(3) To obtain a bear pursuit permit, a person must possess a valid Utah hunting or combination license.

### **R657-33-5. Hunting Hours.**

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

### **R657-33-6. Firearms and Archery Equipment.**

(1) ~~[A]~~ For limited entry and harvest objective hunts identified as an "any legal weapon hunt" in the Wildlife Board's guidebook for taking bear, a person may use the following to take bear:

(a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge; ~~and~~

(b) archery equipment meeting the following requirements:

(i) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(ii) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(iii) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and

(iv) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains ~~[-]; and~~

~~(2) The~~ (c) a crossbow meeting the following [equipment or devices may not be used to take bear] requirements:

~~(a) a crossbow, except as provided in Rule R657-12~~ (i) a minimum draw weight of 125 pounds;

~~(b) arrows with chemically treated or explosive arrowheads;~~

~~(c) a mechanical device for holding the bow at any increment of draw;~~

~~(d) a release aid that is not hand held or that supports the draw weight of the bow; or~~ (ii) a minimum draw length of 14 inches from the front of the bow to the nocking point;

~~(iii) a stock that is at least 18 inches long;~~

~~(iv) a positive mechanical safety mechanism; and~~

~~(v) an arrow or bolt that is at least 16 inches long with:~~

~~(A) a fixed broadhead that is at least 7/8 inch wide at the widest point; or~~

~~([e] a bow with an attached electronic range finding device or a magnifying aiming device; [B] an expandable, mechanical broadhead that is at least 7/8 inch wide at the widest point when the broadhead is in the open position.~~

(3) Arrows and bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained a limited entry bear archery permit may not use, possess, or be in control of a firearm~~[or have a firearm in his camp or motor vehicle]~~, crossbow, or draw-lock while in the field during an archery bear hunt.

(i) "Field" for purposes of this subsection, means a location where the permitted species of wildlife is likely to be found. "Field" does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Guidebook and Waterfowl guidebook, respectively, and ~~[possessing]~~possesses only legal weapons authorized to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery bear hunt;

(iii) livestock owners protecting their livestock; or

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

#### **R657-33-7. Traps and Trapping Devices.**

(1) Bear may not be taken with a trap, snare or any other trapping device, except as authorized by the division.

(2) Bear accidentally caught in any trapping device must be released unharmed.

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

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

#### **R657-33-8. State Parks.**

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

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

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

#### **R657-33-9. Prohibited Methods.**

(1) Bear may be taken or pursued only during open seasons and using methods prescribed in this rule and the guidebook of the Wildlife Board for taking and pursuing bear. Otherwise,

under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare, or in any way harm or transport bear.

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

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

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

#### **R657-33-10. Spotlighting.**

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

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

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

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

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

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

#### **R657-33-11. Party Hunting.**

A person may not take a bear for another person.

#### **R657-33-12. Use of Dogs.**

(1) Dogs may be used to take or pursue bear only during ~~[open seasons]~~authorized hunts as provided in the guidebook of the Wildlife Board for taking bear.

(2) A dog handler may pursue bear in a unit and during a season permitting the use of dogs, provided he or she possesses:

(a) a valid limited entry or harvest objective bear permit issued to the dog handler;

(b) a valid bear pursuit permit; or

(c) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation.

(3) When dogs are used to pursue a bear, the licensed hunter intending to take the bear 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 bear and there is not an open pursuit season, the dog handler must have:

(a) a limited entry ~~[bear]~~or harvest objective bear permit authorizing the use of dogs issued to the dog handler for the unit being hunted;

(b)(i) a valid bear pursuit permit; and

(ii) be accompanied, as provided in Subsection (3), by a hunter possessing a limited entry or harvest objective bear permit authorizing the use of dogs for the ~~[area]~~unit being hunted; or

(c)(i) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation; and

(ii) be accompanied, as provided in Subsection (3), by a paying client possessing a limited entry ~~[bear]~~ or harvest objective bear permit authorizing the use of dogs for the [area] unit being hunted.

(5) A dog handler may pursue bear under:

(a) a bear pursuit permit only during the season and in the areas designated by the Wildlife Board in guidebook open to pursuit;

(b) a limited entry ~~[bear]~~ or harvest objective bear permit authorizing the use of dogs only during the season and in the area designated by the Wildlife Board in guidebook 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 guidebook open to pursuit.

(6) When dogs are used to pursue or take a bear, no more than eight dogs may be used in the field at one time while pursuing during the summer pursuit seasons as established by the Wildlife Board in guidebook.

**R657-33-13. Certificate of Registration Required for Bear Baiting.**

(1) A certificate of registration for baiting must be obtained before establishing a bait station.

(2) Certificates of registration for bear baiting are issued only to holders of ~~[valid-]limited entry [bear-archery-]permits authorizing the use of bait, as provided in the guidebook of the Wildlife Board for taking bear.~~

(3) A certificate of registration may be obtained from the division office within the region where the bait station will be established.

(4) A new certificate of registration must be obtained prior to moving a bait station. All materials used as bait must be removed from the old site prior to the issuing of a new certificate of registration.

(5) The following information must be provided to obtain a ~~[Certificate]certificate~~ of ~~[Registration]registration~~ for baiting: a 1:24000 USGS quad map with the bait location marked, or the Universal Transverse Mercator (UTM) or latitude and longitude coordinates of the bait station, including the datum, type of bait used and written permission from the appropriate landowner for private lands.

(6)(a) Any person interested in baiting on lands administered by the U.S. Forest Service or Bureau of Land Management must verify that the lands are open to baiting before applying for ~~[a limited entry bear archery permit]~~ and receiving a certificate of registration for bear baiting.

(b) Information on areas that are open to baiting on National Forests must be obtained from district offices. Baiting locations and applicable travel restrictions must be verified by the district supervisor prior to applying for a ~~[Certificate]certificate~~ of ~~[Registration]registration~~.

(c) Areas generally closed to baiting stations by these federal agencies include:

- (i) designated Wilderness Areas;
- (ii) heavily used drainages or recreation areas; and
- (iii) critical watersheds.

(d) The division shall send a copy of the certificate of registration to the private landowner or appropriate district office of the land management agency that manages the land where the bait

station will be placed, as identified by the hunter on the application for a certificate of registration.

(e) Issuance of a certificate of registration for baiting does not authorize an individual to bait if it is otherwise unlawful to bait under the regulations of the applicable land management agency.

(7) A handling fee must accompany the application.

(8) Only hunters listed on the certificate of registration may hunt over the bait station and the certificate of registration must be in possession while hunting over the bait station.

(9) Any person tending a bait station must be listed on the certificate of registration.

**R657-33-14. Use of Bait.**

(1)(a) A person who has obtained a limited entry bear archery permit may use archery tackle only, even when hunting bear away from the bait station.

(b) A person who has obtained a limited entry bear permit for a season and hunt unit that allows baiting may use firearms and archery equipment as provided in R657-33-6.

(c) Bear lured to a bait station may only be taken using firearms and archery equipment approved by the Wildlife Board and described in the guidebook for taking bear.

(d) A person may establish or use no more than two bait stations. The bait [station(s)]stations may only be used during [both]an open [seasons]season.

[(e)](e) Bear lured to a bait station may not be taken with [any firearm or the use of-]dogs.

[(d)](f) Bait may not be contained in or include any metal, glass, porcelain, plastic, cardboard, or paper.

[(e)](g) The bait station must be marked with a sign provided by the division and posted within 10 feet of the bait.

(2)(a) Bait may be placed only in areas open to hunting and only during the open seasons.

(b) All materials used as bait must be removed within 72 hours after the close of the season or within 72 hours after the person or persons, who are registered for that bait station harvest a bear.

(3) A person may use nongame fish as bait, except those listed as prohibited in Rule R657-13 and the guidebook of the Wildlife Board for Taking Fish and Crayfish. No other species of protected wildlife may be used as bait.

(4)(a) Domestic livestock or its parts, including processed meat scraps, may be used as bait.

(b) A person using domestic livestock or their parts for bait must have in possession:

~~(i) [a certificate from a licensed veterinarian certifying that the domestic livestock or their parts does not have a contagious disease, and stating the cause and date of death, and~~

~~(ii) a certificate of brand inspection, bill of sale, or other proof of ownership or legal possession.~~

(5) Bait may not be placed within:

- (a) 100 yards of water or a public road or designated trail;
- (b) 1/2 mile of any permanent dwelling or campground;

or

(c) any area identified as potentially increasing nuisance bear activity by the division.

(6) Violations of this rule and the guidebook of the Wildlife Board for taking and pursuing bear concerning baiting on

federal lands may be a violation of federal regulations and prosecuted under federal law.

**R657-33-15. Tagging Requirements.**

(1) The carcass of a bear must be tagged in accordance with Section 23-20-30.

(2) The carcass of a bear must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill.

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

(4) The temporary possession tag:

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

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

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

**R657-33-16. Evidence of Sex and Age.**

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

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

(3) The division may seize any pelt not accompanied by its skull.

**R657-33-17. Permanent Tag.**

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

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

**R657-33-18. Transporting Bear.**

Bear that have been legally taken may be transported by the permit holder provided the bear is properly tagged and the permittee possesses a valid permit.

**R657-33-19. Exporting Bear from Utah.**

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

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

**R657-33-20. Donating.**

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

(2) A written statement of donation must be kept with the protected wildlife or parts showing:

(a) the number and species of protected wildlife or parts donated;

(b) the date of donation;

(c) the ~~[license or]~~ permit number of the donor and the permanent possession tag number; and

(d) the signature of the donor.

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

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

**R657-33-21. Purchasing or Selling.**

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

(2) A person may not purchase, sell, offer for sale or barter a green pelt, gall bladder, tooth, claw, paw or skull of any bear.

**R657-33-22. Waste of Wildlife.**

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts in accordance with Section 23-20-8.

(2) The skinned carcass of a bear may be left in the field and does not constitute waste of wildlife, however, the division recommends that hunters remove the carcass from the field.

**R657-33-23. Livestock and Commercial Crop Depredation.**

(1) If a bear 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 bear, may kill the bear;

(b) a landowner or livestock owner may notify the division of the ~~[depredation or human health and safety concerns, which shall]~~ depredating bear and the division may:

(i) authorize a local hunter to take a bear using a valid permit; or

(ii) request that the offending bear [or notify a] be removed by Wildlife Services specialist, supervised by the USDA Wildlife Program; or

(c) the livestock owner may notify a Wildlife Services specialist of the depredation, and that specialist or another agency employee may take the depredating bear.

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

(3) A depredating bear may be taken by those persons authorized in Subsection (1)(a) with:

(a) any weapon authorized for taking bear; 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]~~ verified by Wildlife Services or division personnel where numerous



livestock have been killed by a depredating bear ~~and must be verified by Wildlife Services or division personnel~~.

(4)(a) The division may issue one or more control permits to an owner or lessee of private land to remove a bear causing damage to cultivated crops on cleared and planted land provided the following conditions are satisfied:

(i) the landowner or lessee contacts the appropriate division office within 72 hours of the damage occurring or provides documentation of previous chronic damage incidents;

(ii) the damaged cultivated crop is raised and utilized by the landowner or lessee for commercial gain and with a reasonable expectation of generating a profit;

(iii) at least 5 acres of the private land is placed in agricultural use pursuant to Section 59-2-502 and eligible for agricultural use valuation as provided in Sections 59-2-503 and 59-2-504;

(iv) the division confirms that the private land where the cultivated crop occurs has experienced chronic recurring damage from bears, or that there will likely be chronic recurring damage if offending bears are not immediately removed;

(v) the landowner, an immediate family member, or an employee of the owner on a regular payroll, and not hired specifically to take bear, receives the control permit from the division to remove the bear prior to initiating such action; and

(vi) the bear removal is otherwise in accordance with Utah law.

(b) The division may issue control permits described in Subsection (4)(v) and to identify restrictions necessary to to balance the threat to commercial crops on cleared and planted land and the wildlife resource, such as:

(i) locations on the landowner or lessee's private property where offending bears may be taken;

(ii) the total number of control permits that may be issued; and

(iii) reporting requirements to the division.

(c) Nothing herein mandates the division to issue control permits for a landowner or lessee to remove bears from their private property in lieu of:

(i) the landowner or lessee taking nonlethal preventative measures in protecting their private property; and

(ii) the division undertaking wildlife management techniques as they deem appropriate.

~~(4)(5)(a) Any bear taken pursuant to [this section must]~~ Subsections (1)(a) and (4) shall:

(i) be delivered to a division office or employee within ~~72~~48 hours[-]; and

~~(b) A bear that is killed in accordance with Subsection (4)(a) shall~~ (ii) remain the property of the state, except the division may sell a bear damage permit to a person who has killed a depredating bear if that person wishes to maintain possession of the bear.

(e)b A person may ~~acquire~~ only retain one bear carcass annually under this Section.

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

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

#### **R657-33-24. Questionnaire.**

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

#### **R657-33-25. Taking Bear.**

(1)(a) A person who has obtained a bear permit, excluding limited entry archery bear permit, may use any legal weapon to take one bear during the season and within the hunt unit(s) specified on the permit.

(b) A person who has obtained a limited entry bear archery permit may use only archery tackle to take on bear during the season and within the hunt units(s) specified on the permit.

(c) Harvest objective permits may be purchased on a first-come, first-served basis as provided in the guidebook of the Wildlife Board for taking bear.

~~[(i) A mandatory online orientation course is required for hunters who wish to purchase a harvest objective permit to hunt black bear.~~

(2)(a) A person may not take or pursue a cub, or a sow accompanied by cubs.

(b) Any bear, except a cub or a sow accompanied by cubs, may be taken during the prescribed seasons.

(3) Limited entry permits may be obtained by following the application procedures provided in this rule and the guidebook of the Wildlife Board for taking and pursuing bear.

~~(4)(a) A mandatory orientation course is required for hunters who draw a permit to hunt black bear.~~

~~(b) Permits for bear hunts will be distributed to successful applicants upon completion of the orientation course.~~

~~(5)]~~ Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the guidebook of the Wildlife Board for taking and pursuing bear.

#### **R657-33-26. Bear Pursuit.**

(1)(a) Except as provided in rule R657-33-3(1)(b) and Subsection (2), bear may be pursued only by persons who have obtained a bear pursuit permit.

(b) The bear pursuit permit does not allow a person to:

(i) kill a bear; or

(ii) pursue bear for compensation.

(c) A person may pursue bear for compensation only as provided in Subsection (2).

(d) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.

(2)(a) A person may pursue bear on public lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue bear;

(ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79 of the Utah Code and authorized to pursue bear;

(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 bear for compensation; and

(v) is accompanied by the client or customer at all times during pursuit.

(b) A person may pursue bear on private lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue bear;

(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 bear on public lands and private lands while acting within the scope of their employment.

(3) A pursuit permit is not required to pursue bear under Subsection (2).

(4)(a) A person pursuing bear for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the guidebooks of the Wildlife Board regulating the pursuit and take of bear.

(b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the guidebooks of the Wildlife Board may be grounds for suspension of the privilege to pursue bear for compensation under this subsection, as determined by a division hearing officer.

(5) Except as provided in Subsection (6), a bear pursuit permit authorizes the holder to pursue bear with dogs on any unit open to pursuing bear during the seasons and under the conditions prescribed by the Wildlife Board in guidebook.

(6) The Wildlife Board may establish or designate in guidebook restricted pursuit units as determined necessary or convenient to better manage wildlife resources, including to protect wildlife, curtail over-utilization of resources, reduce conflict with other recreational activities, reduce conflict with private and public land activities, and protect wildlife habitat.

(a) Bear may not be pursued on a restricted pursuit unit unless the dog handler:

(i) possesses a pursuit permit issued for the particular restricted pursuit unit;

(ii) possesses or is accompanied by a person who possesses a limited entry or harvest objective bear permit ~~for~~ allowing the ~~unit~~ use of dogs, and the pursuit occurs within the area and during the season established ~~for~~ by the ~~limited entry bear~~ respective permit; or

(iii) is engaged in pursuit for compensation as provided in Subsection (2), and pursuit occurs within the area and during the season established for the:

(A) paying client's limited entry or harvest objective bear permit allowing the use of dogs; or

(B) restricted pursuit unit.

(b) A pursuit permit issued for a restricted pursuit unit authorizes the holder to pursue bear on:

(i) the particular restricted pursuit unit for which the permit is issued; and

(ii) any other bear pursuit unit not designated as a restricted pursuit unit.

(c) Notwithstanding Subsection (6)(a)(i), when two or more dog owners are in the field pursuing bear together with a

single pack of eight dogs or less on a restricted pursuit unit, only one must possess a restricted pursuit unit permit, provided the dog owners accompany the person possessing the restricted pursuit unit permit at all times.

(i) A dog owner pursuing bear on a restricted pursuit unit may leave the pursuit permit holder to retrieve dogs that separate from the pack, provided the dog owner;

(A) takes reasonable steps to keep the pack together before and during pursuit;

(B) separates from the pursuit permit holder exclusively to retrieve stray dogs and does not attempt to actively pursue bear during the retrieval process; and

(C) immediately releases any bear incidentally treed or held at bay by the stray dogs.

(7) Pursuit permits may be obtained at division offices, through the Internet and at license agents.

(a) The ~~Division~~ division may distribute pursuit permits for restricted pursuit units:

(i) through its offices, license agents, or online resources on a first-come, first-served basis; or

(ii) through a random drawing.

(8) A person may not:

(a) take or pursue a female bear with cubs;

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

(c) individually or in combination with another person, use more than eight dogs in the field to pursue a bear during the summer pursuit season as established by the Wildlife Board in guidebook; or

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

(i) The weapon restrictions set forth in Subsection (d) 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 bear.

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

(10) Season dates, closed areas and bear pursuit permit areas are published in the guidebook of the Wildlife Board for taking and pursuing bear.

#### **R657-33-27. Limited Entry Bear Permit Application Information.**

(1) Limited entry bear permits are issued pursuant to R657-62-~~20~~19.

#### **R657-33-28. Waiting Period.**

(1) Any person who ~~purchases~~ obtains a limited entry permit ~~valid for the current season,~~ may not apply for a permit in a division drawing for a period of two years.

(2) ~~Any person who draws a permit for the current season, may not apply for a permit for a~~ Individuals who obtain a conservation permit, sportsman permit, control permit, or harvest objective permit for bear are not subject to a waiting period ~~of two years~~.

**R657-33-29. Harvest Objective General Information.**

(1) Harvest objective permits are valid only for the open harvest objective management units and for the specified seasons published in the guidebook of the Wildlife Board for taking bear.

(2) Harvest objective permits are not valid in a specified unit after the harvest objective has been met for that harvest objective unit.

**R657-33-30. Harvest Objective Permit Sales.**

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the guidebook of the Wildlife Board for taking bear.

(2) Any bear permit purchased after the season opens is not valid until ~~seven~~ three days after the date of purchase.

(3) A person must possess a valid hunting or combination license to obtain a ~~Harvest~~ harvest objective permit.

**R657-33-31. Harvest Objective Unit Closures.**

(1) ~~To hunt~~ Prior to hunting in a harvest objective unit, a hunter must call 1-888-668-5466 or visit the division's website to verify that the bear ~~management area~~ hunting unit is still open. The phone line and website will be updated each day by 12 noon. Updates become effective the following day thirty minutes before official sunrise.

(2) Harvest objective units are open to hunting until:

(a) the bear harvest objective for that harvest objective unit is met and the division closes the area; or

(b) the end of the hunting season as provided in the guidebook of the Wildlife Board for taking bear.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue bear except as provided in Section R657-33-26.

**R657-33-32. Harvest Objective Unit Reporting.**

(1) Any person taking a bear with a harvest objective permit must report to the division, within 48 hours, where the bear was taken and have a permanent tag affixed pursuant to Section R657-33-17.

(2) Failure to accurately report the correct harvest objective ~~management~~ unit where the bear was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered prima facie evidence of a knowing, intentional or reckless violation for purposes of permit suspension.

**R657-33-33. Fees.**

The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

**R657-33-34. Drawings and Remaining Permits.**

Remaining limited entry bear permits are issued pursuant to R657-62.

**R657-33-35. Bonus Points.**

Bonus points are accrued and used pursuant to R657-62-8.

**R657-33-36. Refunds.**

(1) Unsuccessful applicants will not be charged for a permit.

(2) The handling fees and hunting or combination license fees are nonrefundable.

**R657-33-37. Duplicate License and Permit.**

Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate in accordance with R657-42.

**KEY: wildlife, bear, game laws**

**Date of Enactment or Last Substantive Change:** ~~[April 2, 2012]~~ 2015

**Notice of Continuation:** December 5, 2012

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19; 23-13-2

## Natural Resources, Wildlife Resources R657-38 Dedicated Hunter Program

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39064  
FILED: 01/12/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's Dedicated Hunter Program.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revision to this rule replace "convention" with "expo".

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule amendment makes technical changes and thus the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since the amendment only changes a name, 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:** This amendment simply makes a name change, therefore, the division determines that the amendments do not have the potential to generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment simply makes a name change, therefore,

the division determines that the amendments do not have the potential to generate a cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** DWR determines that this amendment is a name clarification that will not create additional savings or costs for those who wish to participate in the program.

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

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 NATURAL RESOURCES  
 WILDLIFE RESOURCES  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the 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 03/03/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015**

**AUTHORIZED BY: Gregory Sheehan, Director**

**R657. Natural Resources, Wildlife Resources.**

**R657-38. Dedicated Hunter Program.**

**R657-38-1. Purpose and Authority.**

(1) Under the authority of Section 23-14-18, this rule provides the standards and requirements for qualified deer hunters to participate in the Dedicated Hunter Program by obtaining a certificate of registration.

(2) The Dedicated Hunter Program is a program that provides:

- (a) expanded hunting opportunities;
- (b) opportunities to participate in projects that are beneficial to wildlife; and
- (c) education in hunter ethics and wildlife management principles.

**R657-38-13. Obtaining Other Permits.**

(1) Participants may not apply for or obtain any general season buck deer permit, including general landowner buck deer permits, or respective preference points issued by the Division through the big game drawing, license agents, over-the-counter sales, or the internet during an enrollment period in the program.

(a) Any general season deer permit obtained is invalid and must be surrendered prior to the beginning date of that permit. A refund may not be issued pursuant to Section 23-19-3.

(2)(a) Participants may apply for or obtain a limited entry season buck deer permit, including CWMU, limited entry landowner, conservation, [convention]expo, and poaching rewards permits.

(i) The limited entry buck deer permit may be obtained without the completion of the annual program requirements, but does not exempt the participant from fulfilling the minimum requirements of the entire enrollment.

(ii) Obtaining a limited entry buck deer permit during the enrollment shall not extend the enrollment period, but shall take the place of one of the 3 possible permit years.

(iii) Harvest with a limited entry buck deer permit shall not be counted as a program harvest.

(b) If the participant obtains a limited entry buck deer permit and has been issued a Dedicated Hunter permit, that permit or the Dedicated Hunter permit must be surrendered as permissible by R657-38-11 and R657-42. A refund may not be issued pursuant to Section 23-19-38.

(i) A participant who obtains a limited entry buck deer permit may only use that permit in the prescribed area and season listed on the permit. Dedicated Hunter privileges are not transferred to that permit.

(ii) The limited entry buck deer permit may not be obtained if the Dedicated Hunter permit has been in possession of the participant during any open portion of the general buck deer season.

(3)(a) Participants may apply for or obtain antlerless deer permits as provided in Rule R657-5 and the guidebook of the Wildlife Board for taking big game.

(b) Except as provided in R657-38-10, harvest of an antlerless deer with an antlerless deer permit shall not be considered a program harvest.

**KEY: wildlife, hunting, recreation, wildlife conservation**

**Date of Enactment or Last Substantive Amendment: [February 10, 2014] 2015**

**Notice of Continuation: November 1, 2010**

**Authorizing, and Implemented or Interpreted Law: 23-14-18**

**Natural Resources, Wildlife Resources  
 R657-41  
 Conservation and Sportsman Permits**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39065

FILED: 01/12/2015

**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 conservation and sportsman permits.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revision to this rule replace "convention" with "expo".

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This rule amendment makes technical changes. DWR determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.
- ◆ **LOCAL GOVERNMENTS:** Since the amendment only changes a name, 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:** This amendment simply makes a name change, therefore, the amendments do not have the potential to generate a cost or savings impact to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment simply makes a name change, therefore, the amendments do not have the potential to generate a cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This amendment simply makes a name change, therefore, DWR determines that this amendment will not create additional costs for residents and nonresidents wishing to hunt 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 03/03/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015**

**AUTHORIZED BY:** Gregory Sheehan, Director

**R657. Natural Resources, Wildlife Resources.  
 R657-41. Conservation and Sportsman Permits.  
 R657-41-1. Purpose and Authority.**

- (1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:
  - (a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities; and
  - (b) sportsman permits.
- (2) The division and conservation organizations shall use all revenue derived from conservation permits under Subsections R657-41-9(4) and R657-41-9(5)(b) for the benefit of the species for which the permit is issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

**R657-41-12. Special Antelope Island State Park Conservation Permit.**

- (1) If the Wildlife Board authorizes a hunt for bighorn sheep or mule deer on Antelope Island State Park, one permit for each species will be made available as a Special Antelope Island State Park Conservation Permit.
- (2) Special Antelope Island State Park Conservation Permits will be issued for one year.
- (3) Special Antelope Island State Park Conservation Permits will be issued under this section and will not be limited by the requirements of R657-41-3 through R657-41-8.
- (4) Special Antelope Island State Park Conservation Permits will be provided to the conservation group awarded the wildlife [~~convention~~]expo permit series as provided in R657-55 for marketing at the wildlife [~~convention~~]exposition where the wildlife [~~convention~~]expo permits are awarded.
- (5) The division and conservation organization receiving Special Antelope Island State Park Conservation Permits shall enter into a contract
- (6) The conservation organization receiving Special Antelope Island State Park Conservation Permits must insure that the permits are marketed and distributed by lawful means.
- (7) The conservation organization must:
  - (a) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and
  - (b) notify the division of the proposed permit recipient within 10 days of the recipient selection or the permit may be forfeited.
- (8) If a person is selected by a qualified organization to receive a Special Antelope Island State Park Conservation Permit and is also successful in obtaining a permit for the same species in the same year through a division drawing, that person may designate another person to receive the Special Antelope Island State Park Conservation Permit, provided the permit has not been issued by the division to the first selected person.
- (9) If a person is selected by a qualified organization to receive a Special Antelope Island State Park Conservation Permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:
  - (a) the conservation organization selects the new recipient of the permit;

(b) the amount of money received by the division for the permit is not decreased;

(c) the conservation organization relinquishes to the division and otherwise uses all proceeds generated from the redesignated permit, pursuant to the requirements provided below:

(i) the conservation organization and the initial designated recipient of the permit, sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

(ii) the permit has not been issued by the division to the first designated person.

(10) Except as otherwise provided under Subsections (8) and (9), a person designated by a conservation organization as a recipient of a Special Antelope Island State Park Conservation Permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(11) A person cannot obtain a Special Antelope Island State Park Conservation Permit for a bighorn sheep or mule deer and any other permit for a male animal of the same species in the same year.

(12) The person designated to receive a Special Antelope Island State Park Conservation Permit must possess or obtain a current Utah hunting or combination license before being issued the permit.

(13) Within 30 days of the ~~[convention]~~wildlife exposition, but no later than May 1 annually, the conservation organization must submit to the division:

(a) a final report on the distribution of the Special Antelope Island State Park Conservation Permits;

(b) the total funds raised on each permit; and

(c) the funds due to the division.

(14)(a) Permits shall not be issued until the permit fees are paid to the division.

(b) If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization as provided in R657-41-9(5)(a).

(15)(a) Conservation organizations shall remit to the division 90% of the total revenue generated by the Special Antelope Island State Park Conservation Permit sales in that year.

(b) Failure to remit 90% of the total permit revenue to the division by the September 1 deadline may result in criminal prosecution under Title 76, Chapter 6, Part 4 of the Utah Code.

(16) A conservation organization may retain 10% of the revenue generated by the permits for administrative expenses.

(17) Upon receipt of the permit revenue from the conservation organization, the division will transfer the revenue in its entirety to the Division of Parks and Recreation as provided in a cooperative agreement between the two divisions.

**KEY: wildlife, wildlife permits, sportsmen, conservation permits**

**Date of enactment or last Substantive Change: ~~[February 10, 2014]~~2015**

**Notice of Continuation: November 1, 2010**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19**

## Natural Resources, Wildlife Resources R657-42 Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39066

FILED: 01/12/2015

### 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 revision to this rule replace "convention" with "expo".

**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 makes technical changes. It requires no 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 only changes a name, 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 simply makes a name change, it does not have an additional financial requirement and would not generate a cost or saving impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment simply makes a name change, it does not have an additional financial requirement and would not generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment will not create additional costs and does not create a cost or savings impact to individuals who participate in hunting in Utah. This amendment simply makes a name change.

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 03/03/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015

AUTHORIZED BY: Gregory Sheehan, Director

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**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.

**R657-42-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and guidebooks of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "CWMU" means cooperative wildlife management unit.

(c) "Deployed or mobilized" means that a person provides military or emergency services in the interest of national

defense or national emergency pursuant to the demand, request or order of their employer.

(d) "General season permit" means any:

(i) bull elk, buck deer, or turkey permit identified in the guidebooks of the Wildlife Board as a general season permit;

(ii) antlerless permit for elk, deer, or pronghorn antelope;

or

(iii) harvest objective cougar permit.

(e) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) CWMU - landowner association or its designated operator as provided in Rule R657-37.

(f) "Limited entry permit" means any permit, including a CWMU, conservation, [~~convention~~]expo, sportsman, or limited entry landowner permit, identified in the guidebooks of the Wildlife Board as limited entry or premium limited entry for the following:

(i) bull elk, buck deer, buck pronghorn, bear, cougar, or turkey; and

(ii) antlerless moose.

(g) "Once-in-a-lifetime permit" means any permit, including a CWMU, conservation, [~~convention~~]expo, sportsman, or limited entry landowner permit, identified in the guidebooks of the Wildlife Board as once-in-a-lifetime for the following:

(i) bison, bull moose, Rocky Mountain goat, desert bighorn sheep, and Rocky Mountain bighorn sheep.

(h) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the division.

**KEY: wildlife, permits**

**Date of Enactment or Last Substantive Amendment:** [~~January 10, 2012~~]**2015**

**Notice of Continuation:** May 6, 2013

**Authorizing, and Implemented or Interpreted Law:** 23-19-1; 23-19-38; 23-19-38.2

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## Natural Resources, Wildlife Resources **R657-55** Wildlife Convention Permits

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39067

FILED: 01/12/2015

### 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 convention permits.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revisions to the above listed rule: 1) replace the term "convention" with "expo"; 2) allow for the conservation organization named in the expo contract the option to extend for up to five additional years upon mutual agreement of the division and approval of the Wildlife Board; and 3) formalize in rule the amount of application fee revenue that can be retained by the contractor for overhead at \$3.50 per application, and specify that the remaining revenue be utilized for division director approved projects that advance wildlife interests in Utah.

**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 establishes procedures that will allow the group who holds the expo contract to negotiate contracts with vendors further in advance, and puts into rule a process that has already been practiced with the remaining revenue of the application fee. DWR determines that this amendment does not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment only sets in rule a policy that has already been established and followed, this should have little to no effect on local governments. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment places in rule the procedures for the revenue generated by the expo application fees and allows for an extension period of the contract; it does not have the potential to increase the cost to individuals. Therefore, this amendment does not have the potential to generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment places in rule the procedures for the revenue generated by the expo application fees and allows for an extension period of the contract, it does not have the potential to increase the cost to individuals. Therefore, this amendment does not have the potential to generate a cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This amendment places in rule the procedures for the revenue generated by the expo application fees and allows for an extension period of the contract. DWR determines that this amendment will not create additional costs for those participating in the wildlife exposition. Therefore, the rule amendment does not create a cost or savings impact to individuals.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**  
This rule does not create an impact on businesses.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015**

**AUTHORIZED BY: Gregory Sheehan, Director**

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**R657. Natural Resources, Wildlife Resources.**

**R657-55. Wildlife [~~Convention~~]Expo Permits.**

**R657-55-1. Purpose and Authority.**

(1) Under the authority of Sections 23-14-18 and 23-14-19 of the Utah Code, this rule provides the standards and requirements for issuing wildlife [~~convention~~]expo permits.

(2) Wildlife [~~convention~~]expo permits are authorized by the Wildlife Board and issued by the division to a qualified conservation organization for purposes of generating revenue to fund wildlife conservation activities in Utah and attracting a regional or national wildlife [~~convention~~]exposition to Utah.

(3) The selected conservation organization will conduct a random drawing at [~~a convention~~]an exposition held in Utah to distribute the opportunity to receive wildlife [~~convention~~]expo permits.

(4) This rule is intended as authorization to issue one series of wildlife [~~convention~~]expo permits per year [~~beginning in 2012 through 2016~~]to one qualified conservation organization.

**R657-55-2. Definitions.**

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

(2) In addition:

(a) "Conservation organization" means a nonprofit chartered institution, corporation, foundation, or association founded for the purpose of promoting wildlife conservation.

(b) "Special nonresident [~~convention~~]expo permit" means one wildlife [~~convention~~]expo permit for each once-in-a-lifetime species that is only available to a nonresident hunter legally eligible to hunt in Utah.

(c) "Wildlife [~~Convention~~]exposition" means a multi-day event held within the state of Utah that is sponsored by multiple



wildlife conservation organizations as their national or regional convention or event that is open to the general public and designed to draw nationwide attendance of more than 10,000 individuals. The wildlife ~~[convention]~~exhibition may include wildlife conservation fund raising activities, outdoor exhibits, retail marketing of outdoor products and services, public awareness programs, and other similar activities.

(d) "Wildlife ~~[Convention Audit]~~exhibition audit" means an annual review by the division of the conservation organization's processes used to handle applications for ~~[convention]~~expo permits and conduct the drawing, and the protocols associated with collecting and using client data.

(e) "Wildlife ~~[Convention Permit]~~expo permit" means a permit which:

(i) is authorized by the Wildlife Board to be issued to successful applicants through a drawing or random selection process conducted at a Utah wildlife ~~[convention]~~exhibition; and

(ii) allows the permittee to hunt ~~[for]~~the designated species on the designated unit during the respective season for each species as authorized by the Wildlife Board.

(f) "Wildlife ~~[Convention Permit]~~expo permit series" means a single package of permits to be determined by the Wildlife Board for:

- (i) deer;
- (ii) elk;
- (iii) pronghorn;
- (iv) moose;
- (v) bison;
- (vi) rocky mountain goat;
- (vii) desert bighorn sheep;
- (viii) rocky mountain bighorn sheep;
- (ix) wild turkey;
- (x) cougar; or
- (xi) black bear.

(g) "Secured ~~[Opportunity]~~opportunity" means the opportunity to ~~[participate in]~~receive a specified ~~[hunt]~~wildlife expo permit that is secured by an eligible applicant through the ~~[exhibition]~~drawing process.

(h) "Successful ~~[Applicant]~~applicant" means an individual selected to receive a wildlife ~~[convention]~~expo permit through the drawing process.

### **R657-55-3. Wildlife ~~[Convention]~~Expo Permit Allocation.**

(1) The Wildlife Board may allocate wildlife ~~[convention]~~expo permits by May 1 of the year preceding the wildlife ~~[convention]~~exhibition.

(2) Wildlife ~~[convention]~~expo permits shall be issued as a single series to one conservation organization.

(3) The number of wildlife ~~[convention]~~expo permits authorized by the Wildlife Board shall be based on:

- (a) the species population trend, size, and distribution to protect the long-term health of the population;
- (b) the hunting and viewing opportunity for the general public, both short and long term; and
- (c) a percentage of the permits available to nonresidents in the annual big game drawings matched by a proportionate number of resident permits.

(4) Wildlife ~~[convention]~~expo permits, including special nonresident ~~[convention]~~expo permits, shall not exceed 200 total permits.

(5) Wildlife ~~[convention]~~expo permits designated for the ~~[convention]~~exhibition each year shall be deducted from the number of public drawing permits.

### **R657-55-4. Obtaining Authority to Distribute Wildlife ~~[Convention]~~Expo Permit Series.**

~~[(1) The]~~(1)(a) Except as provided in Subsection (b), the wildlife ~~[convention]~~expo permit series is issued for a period of five years~~[ as provided in Section R657-55-1(4)].~~

(b) For expo contracts governing the 2017 expo, and all expo contracts thereafter, the original five year term may be extended an additional period not to exceed five years, so long as:

(i) the division and conservation organization mutually agree in writing to an extension; and

(ii) the contract extension is approved by the Wildlife Board.

(2) The wildlife ~~[convention]~~expo permit series is available to eligible conservation organizations for distribution through a drawing or other random selection process held at a wildlife ~~[convention]~~exhibition in Utah open to the public.

(3) Conservation organizations may apply for the wildlife ~~[convention]~~expo permit series by sending an application to the division between August 1 and September ~~[1, 2010.]~~ of the year preceding the expiration of each wildlife exhibition term, as provide in R657-55-4(1).

(4) Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a description of the conservation organization's mission statement;

(c) the name of the president or other individual responsible for the administrative operations of the conservation organization; and

(d) a detailed business plan describing how the wildlife ~~[convention]~~exhibition will take place and how the wildlife ~~[convention]~~expo permit drawing procedures will be carried out.

(5) An incomplete or incorrect application may be rejected.

(6) The division shall recommend to the Wildlife Board which conservation organization may receive the wildlife ~~[convention]~~expo permit series based on:

(a) the business plan for the ~~[convention]~~wildlife exhibition and drawing procedures contained in the application; and

(b) the conservation organization's, including its constituent entities, ability, including past performance in marketing conservation permits under Rule R657-41, to effectively plan and complete the wildlife ~~[convention]~~exhibition.

(7) The Wildlife Board shall make the final assignment of the wildlife ~~[convention]~~expo permit series based on the:

(a) division's recommendation;

(b) applicant conservation organization's commitment to use ~~[convention]~~expo permit handling fee revenue to benefit protected wildlife in Utah;

(c) historical contribution of the applicant conservation organization, including its constituent entities, to the conservation of wildlife in Utah; and

(d) previous performance of the applicant conservation organization, including its constituent entities.

(8) The conservation organization receiving the wildlife ~~[convention]~~ expo permit series must:

(a) require each wildlife ~~[convention]~~ expo permit applicant to ~~[verify they]~~ possess a current Utah hunting or combination license before ~~[allowing them to apply]~~ applying for a ~~[convention]~~ wildlife expo permit[-];

(b) select successful applicants for ~~[the]~~ wildlife convention permits by drawing or other random selection process in accordance with law, provisions of this rule, proclamation, and order of the Wildlife Board;

(c) allow applicants to apply for ~~[the]~~ wildlife ~~[convention]~~ expo permits without purchasing admission to the wildlife ~~[convention]~~ exposition;

(d) notify the division of the successful applicant of each wildlife ~~[convention]~~ expo permit within 10 days of the applicant's selection;

(e) maintain records demonstrating that the drawing was conducted fairly; and

(f) submit to an annual wildlife ~~[convention]~~ exposition audit by a division[-] appointed auditor.

(9) The division shall issue the appropriate wildlife ~~[convention]~~ expo permit to the designated successful applicant after:

(a) completion of the random selection process;

(b) verification of the recipient being ~~[found]~~ eligible for the permit; and

(c) payment of the appropriate permit fee is received by the division.

(10) The division and the conservation organization receiving the wildlife ~~[convention]~~ expo permit series shall enter into a contract, including the provisions outlined in this rule.

(11) If the conservation organization awarded the wildlife ~~[convention]~~ expo permit series withdraws before the end of the 5 year period or any extension period under R657-55-4(1)(b), any remaining co-~~[participants]~~ participant with the conservation organization may be given an opportunity to assume the contract and to distribute the ~~[convention]~~ expo permit series consistent with the contract and this rule for the remaining years ~~[left]~~ in the ~~[5-year]~~ applicable period, provided:

(a) The original contracted conservation organization submits a certified letter to the division identifying that it will no longer be participating in the ~~[convention]~~ exposition.

(b) The partner or successor conservation organization files an application with the division as provided in ~~[subsection]~~ Subsection (4) for the remaining period.

(c) The successor conservation organization submits its application request at least 60 days prior to the next scheduled ~~[convention]~~ exposition so that the wildlife board can evaluate the request under the criteria in this section.

(d) The Wildlife Board authorizes the successor conservation organization to assume the contract and complete the balance of the ~~[5-year convention]~~ expo permit series period.

(12) The division may suspend or terminate the conservation organization's authority to distribute wildlife

~~[convention]~~ expo permits at any time during the original five year award term or any extension period for:

(a) violating any of the requirements set forth in this rule or the contract; or

(b) failing to bring or organize a wildlife ~~[convention]~~ exposition in Utah, as described in the business plan under R657-55-4(4)(d), in any given year.

#### **R657-55-5. ~~[Hunter]~~ Wildlife Expo Permit Application Procedures.**

(1) Any ~~[hunter]~~ person legally eligible to hunt in Utah may apply for a wildlife ~~[convention]~~ expo permit, except that only a nonresident of Utah may apply for a special nonresident ~~[convention]~~ expo permit.

(2) Any handling fee assessed by the conservation organization to process applications shall not exceed \$5 per application submitted ~~[at the convention]~~.

(3)(a) Except as provided in Subsection (3)(b), applicants must validate their application in person at the wildlife ~~[convention]~~ exposition to be eligible to participate in the ~~[random drawing process, for]~~ wildlife ~~[convention permits, and no]~~ expo permit drawing.

(i) No person may submit an application in behalf of another.

(ii) A person may validate their wildlife expo permit application at the exposition without having to enter the exposition and pay the admission charge.

(b) An applicant that is a member of the United States Armed Forces and unable to attend the wildlife ~~[convention]~~ exposition as a result of being deployed or mobilized in the interest of national defense or a national emergency is not required to validate their application in person; provided ~~[convention]~~ exposition administrators are furnished a copy of the written deployment or mobilization orders and the orders identify:

(i) the branch of the United States Armed forces from which the applicant is deployed or mobilized;

(ii) the location where the applicant is deployed or mobilized;

(iii) the date the applicant is required to report to duty; and

(iv) the nature and length of the applicant's deployment or mobilization.

(c) The conservation organization shall maintain a record, including copies of military orders, of all applicants that are not required to validate their applications in person pursuant to Subsection (3)(b), and submit to a ~~[Division]~~ division audit of these records as part of its annual audit under R657-55-4(8)(f).

(4) Applicants may apply for each individual hunt for which they are eligible.

(5) Applicants may apply only once for each hunt, regardless of the number of permits for that hunt.

(6) Applicants must submit an application for each desired hunt.

(7) Applicants must possess a current Utah hunting or combination license in order to apply for a wildlife expo permit.

(8) The conservation organization shall advertise, accept, and process applications for wildlife ~~[convention]~~ expo permits and conduct the drawing in compliance with this rule and all other applicable laws.

**R657-55-6. Drawing Procedures.**

(1) A random drawing or selection process must be conducted for each wildlife ~~[convention]~~ expo permit.

(2) ~~[No preference or]~~ Preference and bonus points ~~[shall be]~~ are neither awarded nor applied in the drawings.

(3) Waiting periods do not apply, except any person who obtains a wildlife ~~[convention]~~ expo permit for a once-in-a-lifetime species is subject to the once-in-a-lifetime restrictions applicable to obtaining a subsequent permit for the same species through a division application and drawing process, as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(4) No predetermined quotas or restrictions shall be imposed in the application or selection process for wildlife ~~[convention]~~ expo permits between resident and nonresident applicants, except that special nonresident ~~[convention]~~ expo permits may only be awarded to a nonresident of Utah.

(5) Drawings will be conducted within five days of the close of the ~~[convention]~~ exposition.

(6) Applicants do not have to be present at the drawing to be awarded a wildlife ~~[convention]~~ expo permit.

(7) The conservation organization shall identify all eligible alternates for each wildlife ~~[convention]~~ expo permit and provide the division with a finalized list. This list will be maintained by the conservation organization until all permits are issued.

(8) The division shall contact successful applicants by phone or mail, and the conservation organization shall post the name of all successful applicants on a designated website.

**R657-55-7. Issuance of Permits.**

(1) The division shall provide a wildlife ~~[convention]~~ expo permit to the successful applicant, as designated by the conservation organization.

(2) The division must provide a wildlife ~~[convention]~~ expo permit to each successful applicant, except as otherwise provided in this rule.

(3) The division shall provide each successful applicant a letter indicating the permit secured in the drawing, the appropriate fee owed the division, and the date the fee is due.

(4) ~~(a)~~ Successful applicants must provide the permit fee payment in full to the division ~~[and will be issued]~~.

~~(b) Subject to the limitation in Subsection (8), the division will issue the designated wildlife [convention] permit upon receipt of the appropriate permit fee and providing proof they possess a current Utah hunting or combination license. [expo permit to the applicant.]~~

(5) Residents will pay resident permit fees and nonresidents will pay nonresident permit fees.

(6) Applicants are eligible to obtain only one permit per species, except as provided in Rule R657-5, but no restrictions apply on obtaining permits for multiple species.

(7) ~~[If]~~ If an applicant is selected for more than one ~~[convention]~~ expo permit for the same species, the ~~[Division]~~ division will contact the applicant to determine which permit the applicant selects.

(a) The applicant must select the permit of choice within five days of receiving notification.

(b) If the ~~[Division]~~ division is unable to contact the applicant within 5 days, the ~~[Division]~~ division will issue to the applicant the permit with the most difficult drawings odds based on drawing results from the ~~[Division's Big Game]~~ division's big game drawing for the preceding year.

(c) Permits not issued to the applicant will go to the next person on the alternate drawing list for that permit.

(8) Any successful applicant who fails to satisfy the following requirements will be ineligible to receive the wildlife ~~[convention]~~ expo permit and the next drawing alternate for that permit will be selected ~~[-]~~:

(a) The applicant fails to return the appropriate permit fee in full by the date provided in Subsection (3) ~~[-]~~;

(b) The applicant ~~[did]~~ does not possess a valid Utah hunting or combination license at the time the ~~[convention]~~ expo permit application was submitted and the permit received; or

(c) The applicant is legally ineligible to possess the permit.

**R657-55-8. Surrender or Transfer of Wildlife [Convention] Expo Permits.**

(1)(a) ~~[If a]~~ A person selected to receive a wildlife ~~[convention]~~ expo permit that is also successful in obtaining a Utah limited entry permit for the same species in the same year or successful in obtaining a general permit for a male animal of the same species in the same year, ~~[that person cannot]~~ may not possess both permits and must select the permit of choice.

(b) In the event ~~[the]~~ a secured opportunity is willingly surrendered before the permit is issued, the next eligible applicant on the alternate drawing list will be selected to receive the ~~[secured opportunity]~~ permit.

(c) In the event the wildlife ~~[convention]~~ expo permit is surrendered, the next eligible applicant on the alternate drawing list for that permit will be selected to receive ~~[the permit]~~ it, and the permit fee may be refunded, as provided in Sections 23-19-38, 23-19-38.2, and R657-42-5.

(2) A person selected by a conservation organization to receive a wildlife ~~[convention]~~ expo permit, may not sell or transfer the permit, or any rights thereunder to another person in accordance with Section 23-19-1.

(3) If a person is successful in obtaining a wildlife ~~[convention]~~ expo permit but is legally ineligible to hunt in Utah, the next eligible applicant on the alternate drawing list for that permit will be selected to receive ~~[the permit]~~ it.

**R657-55-9. Using a Wildlife [Convention] Expo Permit.**

(1) A wildlife ~~[convention]~~ expo permit allows the recipient to:

(a) take only the species for which the permit is issued;

~~[-and]~~ (b) take only the species and sex printed on the permit;

(c) take the species only in the area and during the season specified on the permit; and

(d) take the species only with the weapon type specified on the permit.

(2) The recipient of a wildlife ~~[convention]~~ expo permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

**R657-55-10. Wildlife Expo Permit -- Application Fee Revenue.**

(1) All wildlife expo permit, application fee revenue generated by the conservation organization under R657-55-5(2) will be deposited in a separate, federally insured account to prevent commingling with any other funds.

(a) All interest earned on application fee revenue may be retained and used by the conservation organization for administrative expenses.

(2) The conservation organization may retain up to \$3.50 of each \$5.00 application fee for administrative expenses.

(3) The remaining balance of each \$5.00 application fee will be used by the conservation organization to fund projects advancing wildlife interests in the state, subject to the following:

(a) project funding will not be committed to or expended on any project without first obtaining the division director's written approval;

(b) cash donations to the Wildlife Habitat Account created under Section 23-19-43 or Division Species Enhancement Funds are authorized projects that do not require the division director's approval; and

(c) application fee revenue dedicated to funding projects must be completely expended on or committed to approved projects by September 1st, two years following the year in which the application fee revenue is collected, unless otherwise authorized in writing by the division director.

(4) All records and receipts for projects under Subsection (3) must be retained by the conservation organization for a period not less than five years, and shall be produced to the division for inspection upon request.

(5) The conservation organization shall submit a report to the division and Wildlife Board each year no later than September 1st that accounts for and documents the following:

(a) gross revenue generated from collecting \$5 wildlife expo permit application fees;

(b) total amount of application fee revenue retained for administrative expenses;

(c) total amount of application fee revenue set aside and dedicated to funding projects; and

(d) description of each project funded with application fee revenue, including the date of funding, the amount of funding contributed, and the completion status of the project.

(6) An organization that individually receives application fee revenue from the expo permit drawing pursuant to a co-participant contract with the conservation organization, is subject to the provisions in Subsections (1) through (5).

**KEY: wildlife, wildlife permits**

**Date of Enactment or Last Substantive Change: [~~February 7, 2011~~]2015**

**Notice of Continuation: May 26, 2010**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19**

**Natural Resources, Wildlife Resources**  
**R657-57**  
**Division Variance Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39068

FILED: 01/12/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is established to provide authority, standards, and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control.

**SUMMARY OF THE RULE OR CHANGE:** This amendment changes the wildlife convention name to wildlife exposition to help alleviate the confusion between convention permits and conservation permits.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule amendment simply makes a name change to the wildlife convention. 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:** 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:** Since this amendment only changes the name of a permit and does not establish anything new, it does not incur any additional cost to participate. This filing does not have the potential to create a direct cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Since this amendment only changes the name of a permit and does not establish anything new, it does not incur any additional cost to participate. This filing does not have the potential to create a direct cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Since this amendment only changes the name of a permit and does not establish anything new, DWR determines that this amendment does not create a cost or savings impact to individuals who participate in wildlife-related activities.

**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 03/03/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015

AUTHORIZED BY: Gregory Sheehan, Director

**R657. Natural Resources, Wildlife Resources.**

**R657-57. Division Variance Rule.**

**R657-57-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 this rule is established to provide authority, standards and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control.

**R657-57-4. Division Variance Authority Scope.**

(1)(a) The Division may grant a season extension variance extending the hunting season on an applicant's wildlife document to the same or substantially similar hunt in the following year, provided:

- (i) the variance request involves a wildlife document for a:
- (A) once-in-a-lifetime hunt under R657-5;
  - (B) conservation permit hunt under R657-41;
  - (C) limited entry landowner permit hunt under R657-43;
  - (D) poaching-reported reward permit hunt under R657-5;
- or
- (E) CWMU hunt obtained through the operator or landowner under R657-37-9.

(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and

(iii) the season extension occurs the following year and is restricted to the same species, gender, unit, weapon type, and season as the original wildlife document;

(iv) any changes in unit descriptions and season dates in the extension year are applied; and

(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(b) Any waiting period associated with a wildlife document for which a season extension variance is granted begins on the date the original wildlife document is obtained.

(2)(a) The Division may grant a variance by restoring forfeited bonus points and waiving an incurred waiting period, provided:

(i) the variance request involves a wildlife document for a:

(A) limited entry hunt or once-in-a-lifetime hunt; or

(B) any other hunt that triggers a waiting period to participate in a Division administered drawing;

(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and

(iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(b) The Division may not restore a bonus point on a wildlife document that did not cause a bonus point forfeiture.

(3)(a) The Division may grant a variance by restoring forfeited preference points, provided:

(i) the variance request involves a wildlife document obtained through a Division administered drawing and for which preference points are awarded to unsuccessful applicants and forfeited by successful applicants;

(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and

(iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(4)(a) The Division may grant a variance by awarding a bonus or preference point to a person who filed an untimely wildlife document application in a Division administered drawing, provided:

(i) the variance request involves a wildlife document for any hunt identified in Subsections (2)(a)(i) or (3)(a)(i);

(ii) the applicant was significantly impaired from filing a timely application in a Division administered drawing because of a qualifying event or condition set forth in R657-57-6;

(iii) the untimely application was rejected and a bonus or preference point was not awarded for the selected species;

(iv) the applicant would have been eligible to receive the bonus or preference point had the application been timely filed; and

(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(5) A Division administered drawing for purposes of subsection (2) does not include a drawing conducted at a wildlife ~~convention~~ exposition pursuant to R657-55.

(6) The Division may not refund wildlife document fees, except as authorized in Sections 23-19-38, 23-19-38.2 and R657-42-5.

**KEY: wildlife, permits**

**Date of Enactment or Last Substantive Amendment:** ~~August 21, 2012~~ **2015**

**Notice of Continuation:** August 5, 2013

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19

## Natural Resources, Wildlife Resources R657-59

### Private Fish Ponds

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39069

FILED: 01/12/2015

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This proposed revision adds sections of rivers to the list which prohibits stocking of fertile rainbow trout.

**SUMMARY OF THE RULE OR CHANGE:** The amendment to this rule removes the requirement to obtain a certificate of registration for possession of sterile rainbows which total pounds are less than 50 in a private fish pond.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-15-10 and Section 23-15-9

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This amendment removes a requirement that was time consuming and difficult for the private pond owner. The Division of Wildlife Resources (DWR) determines that this amendment does not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** 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 removes a requirement that was time consuming and difficult for the

private pond owner. DWR determines that the amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment removes a requirement that was time consuming and difficult for the private pond owner. DWR determines that the amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This amendment removes a requirement that was time consuming and difficult for the private pond owner. There are not any additional compliance costs associated with this amendment.

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

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015**

**AUTHORIZED BY:** Gregory Sheehan, Director

#### **R657. Natural Resources, Wildlife Resources.**

#### **R657-59. Private Fish Ponds.**

#### **R657-59-1. Purpose and Authority.**

(1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for private fish ponds.

(2) This rule does not regulate fee fishing or private aquaculture as provided in Title 4, Chapter 37 of the Utah Code, and Department of Agriculture Rule R58-17.

(3) Any violation of, or failure to comply with, any provision of Title 23 of the Utah Code, this rule, or any specific requirement contained in a certificate of registration or exemption certificate issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

**R657-59-2. Definitions.**

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
  - (a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.
  - (b) "Aquaculture facility" means any facility used for propagating, rearing, or producing aquatic wildlife or aquaculture products. Facilities that are separated by more than 1/2 mile, or facilities that drain to, or are modified to drain to, different drainages are considered to be separate aquaculture facilities, regardless of ownership.
  - (c)(i) "Aquaculture product" means privately purchased aquatic wildlife, or their eggs or gametes.
  - (ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.
  - (d) "Certified sterile salmonid" means any salmonid fish or gamete that originates from a health certified source and is incapable of reproduction due to triploidy or hybridization.
    - (i) Triploid salmonids accepted as sterile under this subsection shall originate from a source that is certified as incapable of reproduction using the following protocols:
      - (A) fish samples shall be collected, prepared, and submitted to a certified laboratory by an independent veterinarian, certified fish health professional, or other professional approved by the division;
      - (B) certified laboratories shall be limited to independent, professional laboratories capable of reliably testing fish sterility and approved by the division; and
      - (C) sterility shall be determined by sampling and testing 60 fish from each egg lot with procedures generally accepted in the scientific community as reliable for verifying triploidy with a 95% or greater success rate.
      - (ii) An aquaculture facility that receives certified sterile salmonid aquaculture product is not required to conduct additional sterility testing prior to stocking the aquaculture product in a private fish pond, provided the sterile salmonids are kept segregated from other fertile salmonids.
      - (iii) Hybrid salmonid fish species accepted as sterile under this subsection are limited to splake trout (lake trout/brook trout cross) and tiger trout (brown trout/brook trout cross).
    - (e) "Exemption certificate" means a document issued by the division pursuant to R657-59-7 that exempts a designated private fish pond from the requirement of obtaining a certificate of registration to stock aquaculture product in the pond.
    - (f)(i) "HUC" or "Hydrologic Unit Code" means a cataloging system developed by the US Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States. HUCs are typically reported at the large river basin (6-digit HUC) or smaller watershed (11-digit and 14-digit HUC) scale.
      - (ii) HUC maps and other associated information are available at <http://water.usgs.gov/wsc/sub/1602.html>.
    - (g)(a) "Ornamental aquatic animal species" means any species of fish, mollu[e]sk, or crustacean that is commonly cultured and sold in the United States' aquarium industry for display.
    - (b) "Ornamental aquatic animal species" does not include:
      - (i) fresh water:

- (A) sport fish - aquatic animal species commonly angled or harvested for recreation or sport;
  - (B) baitfish - aquatic animal species authorized for use as bait in R657-13-12, and any other species commonly used by anglers as bait in sport fishing;
  - (C) food fish - aquatic animal species commonly cultured or harvested from the wild for human consumption; or
  - (D) native species; or
  - (ii) aquatic animal species prohibited for importation or possession by any state, federal, or local law; or
  - (iii) aquatic animal species listed as prohibited or controlled in Sections R657-3-22 and R657-3-23.
- ~~\_\_\_\_\_ (i) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.~~
- \_\_\_\_\_ (h) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.
- (i) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.
  - (j) "Salmonid" means any fish belonging to the trout/salmon family.

**R657-59-3. Certificate of Registration Not Required.**

- (1) A certificate of registration is not required to receive and stock an aquaculture product in a private fish pond, provided the following conditions are satisfied:
  - (a) the pond is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural stream channel;
  - (b) the pond is properly screened consistent with the requirements in R657-59-15 to prevent the movement of aquatic wildlife into the pond or the movement of any aquaculture product out of the pond;
  - (c) the aquaculture product is:
    - \_\_\_\_\_ (i) delivered to the pond by a licensed aquaculture facility as defined in Section 4-37-103; or
    - \_\_\_\_\_ (ii) the owner, lessee, or operator of the private pond;
      - \_\_\_\_\_ (A) receives less than 50 pounds of sterile rainbow trout from a licensed aquaculture facility in a single delivery;
      - \_\_\_\_\_ (B) possesses documentation from the aquaculture facility verifying the information itemized in R657-59-11(2)(b) and R58-17-14(C)(2) during transport; and
      - \_\_\_\_\_ (C) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the private fish pond;
    - (d) the owner, lessee, or operator of the pond obtains from the aquaculture facility [~~delivering~~]providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Section 4-37-501 [~~authorizing the aquaculture facility to culture and transport the species of aquaculture product received at the pond~~];
    - (e) the species, strain, and reproductive capability of the aquaculture product received is authorized for stocking in the area where the pond is located consistent with the requirements in R657-59-16;

(f) the aquaculture product received is of sufficient size to be incapable of escaping the pond through or around the screen;

(g) the owner or operator of the private fish pond provides the aquaculture facility a signed written statement that the pond and aquaculture product received are in compliance with this section; and

(h) the owner, lessee, or operator of a private fish pond or an invitee has not previously been found in violation of any provision of Title 4, Chapter 37 or Title 23 of the Utah Code, or this rule.

**R657-59-5. Certificate of Registration Required.**

(1) A certificate of registration must be obtained from the division to receive, stock, or possess an aquaculture product in a private fish pond where:

(a) the aquaculture product is classified under R657-59-16 as an unauthorized species, strain, or reproductive capability for the area where the pond is located;

(b) the aquaculture facility does not deliver the aquaculture product directly to the private fish pond, unless the transport of fish by the owner, lessee, or operator of the private pond is allowed without a certificate of registration pursuant to R657-59-3(1)(c)(ii); or

(c) the owner, lessee, or operator of a private fish pond or an invitee is found in violation of any provision of Title 4, Chapter 37 or Title 23 of the Utah Code, or this rule.

(2) A separate certificate of registration is required for each private fish pond as defined under "aquaculture facility" in R657-59-2.

**KEY: wildlife, aquaculture, fish**

**Date of Enactment or Last Substantive Amendment:** [~~August 21, 2012~~]**2015**

**Notice of Continuation:** August 5, 2013

**Authorizing, and Implemented or Interpreted Law:** 23-15-9; 23-15-10

## Natural Resources, Wildlife Resources R657-62 Drawing Application Procedures

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39070

FILED: 01/12/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's drawing application process.

**SUMMARY OF THE RULE OR CHANGE:** This rule is being amended to: 1) change the term "convention permit" to "expo permit"; 2) clarify bear in the bonus point section as limited entry; 3) set the requirement for all persons obtaining a bear

permit to complete the online orientation course; 4) add harvest objective bear permits to the list of permits not required to forfeit bonus points; and 5) make technical corrections.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This rule amendment provides for name clarification and the requirement of a free online orientation course and does not create a cost or savings to the division. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** Since this amendment clarifies existing criteria and provides for a free orientation course to hunts that have already been set by rule, 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 amended rule will clarify confusion between permits and increase education in bear hunters with the orientation course, therefore the Division determines that it would not generate a cost or saving impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amended rule will clarify confusion between permits and increase education in bear hunters with the orientation course, therefore, the Division determines that it would not generate a cost or saving impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Since this amendment clarifies existing criteria and provides for a free orientation course to hunts that have already been set by rule, DWR determines that this amendment will 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 03/03/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015

AUTHORIZED BY: Gregory Sheehan, Director

**R657. Natural Resources, Wildlife Resources.**

**R657-62. Drawing Application Procedures.**

**R657-62-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

**R657-62-2. Definitions.**

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

(2) In addition:

(a) "Application" means a form required by the Division which must be completed by a person and submitted to the Division in order to apply for a hunting permit.

(b) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on an executed contract for sale of eligible property.

(c) "Limited entry hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as a premium limited entry hunt or limited entry hunt. "Limited entry hunt" does not include cougar pursuit or bear pursuit.

(d) "Limited entry permit" means any permit obtained for a limited entry hunt, including conservation permits, [convention]expo permits and sportsman permits.

(e)(i) "Valid application" means an application:

(A) for a permit to take a species for which the applicant is eligible to possess;

(B) for a permit to take a species regardless of estimated permit numbers;

(C) for a certificate of registration; and

(D) containing sufficient information, as determined by the division, to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may be considered valid if the application is timely corrected through the application correction process.

(f) "Waiting period" means a specified period of time that a person who has obtained a permit must wait before applying for the same permit type.

(g) "Once-in-a-lifetime hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(h) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including

conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

**R657-62-3. Scope of Rule.**

(1) This rule sets forth the procedures and requirements for completing and filing applications to receive the following hunting permits and/or certificates of registrations:

(a) Dedicated Hunter certificate of registrations;

(b) limited-entry deer;

(c) limited-entry elk;

(d) limited-entry pronghorn;

(e) once-in-a-lifetime;

(f) public cooperative wildlife management unit;

(g) general season deer and youth elk;

(h) limited entry bear;

(i) bear pursuit;

(j) antlerless big game;

(k) sandhill crane;

(l) sharp-tail and greater sage grouse;

(m) swan

(n) cougar;

(o) sportsman; and

(p) turkey.

**R657-62-8. Bonus Points.**

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited-entry permits; or

(ii) each valid application when applying for bonus points.

(b) Bonus points are awarded by species for;

(i) limited-entry deer including cooperative wildlife management unit buck deer and management buck deer;

(ii) limited-entry elk including cooperative wildlife management unit bull elk and management bull elk;

(iii) limited-entry pronghorn including cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime species including cooperative wildlife management units;

(v) limited entry bear;

(vi) antlerless moose;

(vii) cougar; and

(viii) turkey

(3)(a) A person may not apply in the drawing for both a permit and a bonus point for the same species.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(c) Group applications will not be accepted when applying for bonus points.

(d) A person may apply for bonus points only during the applicable drawing application for each species.

(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with the greatest number of bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits are issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who are not selected for reserved permits will be returned to the applicable drawing.

(5)(a) Each applicant receives a random drawing number for:

- (i) each species applied for; and
- (ii) each bonus point for that species.

(6) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species including any permit obtained after the drawing.

(7) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit, ~~convention~~ expo permit ~~[or]~~, sportsman permit, or harvest objective bear permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(8) Bonus points are not transferable.

(9) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(10)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain electronic copies of applications from 1996 to the current drawings for the purpose of researching bonus point records.

(c) Any requests for researching an applicant's bonus point records must be submitted within the time frames provided in Subsection (b).

(d) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may void or otherwise eliminate any bonus point obtained by fraud, deceit, misrepresentation, or in violation of law.

#### **R657-62-19. Black Bear.**

(1) Permit and Pursuit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a limited entry bear permit or bear pursuit permit.

(b) A person may not apply for or obtain more than one bear permit distributed pursuant to this rule within the same calendar year ~~[, except as provided in Subsection R657-33-26(4)]~~.

(c) Limited entry bear permits are valid only for the hunt unit and for the specified

season designated on the permit.

(d)(i) Applicants may select up to three hunt unit choices when applying for limited entry bear permits. Hunt unit choices must be listed in order of preference.

(ii) Applicants must specify in the application ~~[whether they want]~~ a specific season for their limited entry ~~[bear permit or a limited entry bear archery permit and/or ]~~or bear pursuit permit.

(e) Any person ~~[obtaining a limited entry]~~intending to use bait during their bear ~~[archery permit]~~hunt must ~~[also]~~ obtain a

certificate of registration ~~[if intending to use bait]~~as provided in ~~[Section]~~Sections R657-33-13 and 14.

(f) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Sections 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who ~~[draws or purchases]~~obtains a limited entry bear permit ~~[valid for]~~through the ~~[current year]~~division drawing, may not apply for a permit thereafter for a period of two years.

(4) A person must complete a mandatory orientation course prior to applying for any bear permit offered through a division drawing or obtaining bear permits as described in R657-33-3(5).

#### **KEY: wildlife, permits**

**Date of Enactment or Last Substantive Amendment:** ~~[August 11, 2014]~~2015

**Notice of Continuation:** April 14, 2014

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19

## Natural Resources, Wildlife Resources R657-68 Trial Hunting Authorization

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39071

FILED: 01/12/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's trial hunting authorization rule.

**SUMMARY OF THE RULE OR CHANGE:** This amendment changes the "convention permit" name to "expo permit" to help alleviate the confusion between convention permits and conservation permits.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19 and Section 23-19-4.6

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment changes the name of the convention permits to expo permits. The Division of Wildlife Resources (DWR) determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

♦ LOCAL GOVERNMENTS: This name change will have no impact on local governments. Local governments will not be directly or indirectly impacted because the rule does not create a situation requiring services from local governments.  
 ♦ SMALL BUSINESSES: Since this amendment only changes the name of a permit and does not establish anything new, it does not incur any additional cost to participate. This filing does not have the potential to create a direct cost or savings impact to small businesses.  
 ♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Since this amendment only changes the name of a permit and does not establish anything new, it does not incur any additional cost to participate. This filing does not have the potential to create a direct cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since this amendment only changes the name of a permit and does not establish anything new, DWR determines that this amendment will not create a cost or savings impact to individuals in Utah wishing to participate in the Trial Hunting Authorization program.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 NATURAL RESOURCES  
 WILDLIFE RESOURCES  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the 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 03/03/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015

AUTHORIZED BY: Gregory Sheehan, Director

**R657. Natural Resources, Wildlife Resources.**  
**R657-68. Trial Hunting Authorization.**  
**R657-68-1. Purpose and Authority.**

Pursuant to Sections 23-14-18 and 23-14-19, this rule implements the trial hunting authorization program established in Section 23-19-14.6 to expand public participation in hunting sports by allowing a person to temporarily obtain specified hunting licenses and permits and participate in hunting activities on a trial

basis without first satisfying regular hunter education requirements.

**R657-68-2. Definitions.**

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
  - (a) "Commercial hunting area" means a parcel of land where privately owned game birds are released under Section 23-17-6 and R657-22 for the purpose of allowing hunters to take them for a fee.
  - (b) "Division drawing" means a random selection process administered by the division or under its authority for the purpose of allocating hunting permits to the public.
  - (i) "Division drawing" includes the wildlife [convention]expo permit drawing administered under R657-55.
  - (c) "Multi-year license" means a license issued by the division under R657-45-3 that is valid for a period exceeding 365 days.
  - (d) "Supervising hunter" means a person qualified under R657-68-5(1)(b) that accompanies a trial hunter while participating in hunting activities.
  - (e) "Trial hunter" means a person who possesses a valid hunting license or permit obtained with a trial hunting authorization pursuant to this rule.
  - (f) "Trial hunting authorization" means a document issued by the division authorizing the holder to obtain and use specified hunting licenses and permits without having completed an approved hunter education course, subject to the qualifications, requirements and limitations set forth in this rule.
  - (g) "Written consent" means a written or typed document containing the:
    - (i) full name, date of birth, and home address of the trial hunter;
    - (ii) full name, home address, and phone number of the supervising hunter;
    - (iii) nature of the planned hunting activity and the general area where it will occur;
    - (iv) parent or legal guardian's consent for the:
      - (A) trial hunter to participate in the described hunting activity; and
      - (B) supervising hunter to transport and accompany the trial hunter in the activity; and
    - (v) name, signature, and phone number of the authorizing parent or legal guardian.

**KEY: wildlife, game laws, hunter education**  
**Date of Enactment or Last Substantive Amendment: [~~August 11, 2014~~2015**  
**Authorizing, and Implementing or Interpreted Law: 23-14-18, 23-14-19, 23-19-4.6**

**Public Safety, Driver License**  
**R708-7**  
**Functional Ability in Driving: Guidelines**  
**for Physicians**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39072

FILED: 01/13/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to modify the term "functional ability profile" to "safety assessment level", and remove language that incorporates medical guidelines by reference into the rule.

**SUMMARY OF THE RULE OR CHANGE:** The terminology used by the division is being changed from "functional ability profile" to "safety assessment level" in an effort to clarify that an individual is being assessed for safety reasons, rather than being profiled as having a medical condition. In addition, the language is being removed that incorporates the guidelines by reference. The guidelines are made available to physicians and the public both on the Driver License Division (DLD) website, and at DLD headquarters. The portion of the guidelines that results in the automatic denial of an individual's driving privilege is outlined in Section R708-7-5 of the rule. The rest of the document is applied as a guideline for the division to use, in addition to documentation provided by an individual's physician, in an effort to determine whether an individual is able to safely operate a motor vehicle.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 49 CFR 391.43 and Section 53-3-224 and Section 53-3-303 and Section 53-3-304

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The amendments made to this rule will not have any fiscal impact the state budget because the portion of the rule that is changing does not modify any existing requirements with regard to state budget.
- ◆ **LOCAL GOVERNMENTS:** The amendments made to this rule will not have any fiscal impact to local government because the portion of the rule that is changing does not modify any existing requirements with regard to local government.
- ◆ **SMALL BUSINESSES:** The amendments made to this rule will not have any fiscal impact to small businesses because the portion of the rule that is changing does not modify any existing requirements with regards to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments made to this rule will not have any fiscal impact to persons other than small businesses, businesses, or local government entities because the portion of the rule that is changing does not modify any existing requirements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The amendments made to this rule should not have any compliance costs associated with it because the portion of the rule that is changing does not modify any existing requirements for the affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed this rule amendment and found no anticipated fiscal impact on business.

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

PUBLIC SAFETY  
DRIVER LICENSE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 3RD FL  
SALT LAKE CITY, UT 84119-5595  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015

AUTHORIZED BY: Nannette Rolfe, Director

**R708. Public Safety, Driver License.****R708-7. Functional Ability in Driving: Guidelines for Physicians.****R708-7-1. Purpose.**

The purpose of this rule is to establish standards and guidelines to assist health care professionals in determining who may be impaired, the responsibilities of the health care professionals, and the driver's responsibilities regarding their health as it relates to highway safety.

**R708-7-2. Authority.**

This rule is authorized by Sections 53-3-224, 53-3-303, 53-3-304, and 49 CFR 391.43.

**R708-7-3. Definitions.**

(1) "Board" means the Driver License Medical Advisory Board created in Section 53-3-303.

(2) "Division" means the Driver License Division.

(3) "Health care professional" means a physician or surgeon licensed to practice medicine in the state, or when recommended by the Medical Advisory Board, may include other health care professionals licensed to conduct physical examinations in this state.

(4) "Impaired person" means a person who has a mental, emotional, or nonstable physical disability or disease that may impair the person's ability to exercise reasonable and ordinary control at all times over a motor vehicle while driving on the highway. It does not include a person having a nonprogressive or stable physical impairment that is objectively observable and that may be evaluated by a functional driving examination.

**R708-7-4. Health and Driving.**

(1) Every driver operating a vehicle is individually responsible for their health when driving. Each applicant for a Utah

driver license shall be required to answer personal health questions related to driving safety in accordance with recommendations made by the Driver License Medical Advisory Board pursuant to the provisions of Section 53-3-303(8). If the applicant experiences a significant health problem, the applicant is required to take a medical report form furnished by the division to a health care professional who provides all requested information, including a ~~[functional ability profile]~~safety assessment level that reflects the applicant's medical condition.

(2) The health care professional will be expected to discuss the applicant's health as it may affect driving abilities and to make special recommendations in unusual circumstances. Based upon a completed ~~[functional profile]~~safety assessment, the division may deny driving privileges or issue a license with or without limitations in accordance with the standards described in this rule and lists, tables, and charts incorporated herein. Health care professionals have a responsibility to help reduce unsafe highway driving conditions by carefully applying these guidelines and standards, and by counseling with their patients about driving under medical constraints.

**R708-7-5. Driver's Responsibilities.**

(1) The 1979 Utah State Legislature has defined driver operating responsibilities in Section 53-3-303, related to physical, mental or emotional impairments of drivers. Drivers are:

(a) responsible to refrain from driving if there is uncertainty caused from having a physical, mental or emotional impairment which may affect driving safety;

(b) expected to seek competent medical evaluation and advice about the significance of any impairment that relates to driving vehicles safely; and

(c) responsible for reporting a "physical, mental or emotional impairment which may affect driving safety" to the Driver License Division in a timely manner.

**R708-7-6. Health Care Professional's Responsibilities.**

(1) Pursuant to Section 53-3-303, health care professionals shall:

(a) make reports to the division respecting impairments which may affect driving safety when requested by their patients. Nevertheless, the final responsibility for issuing a driver license remains with the director of the division;

(b) counsel their patients about how their condition affects safe driving. For example, if medication is prescribed for a patient which may cause changes in alertness or coordination, the health care professional shall advise the patient about how the medication can affect safe driving, and when it would be safe to operate a vehicle. Or, if a patient's visual acuity drops, the patient should similarly be advised, at least until corrective action has been taken to improve vision; and

(c) in accordance with Section 53-3-303(14)(b), be responsible for making available to their patients without reservation, their recommendations and appropriate information related to driving safety and responsibilities, whether defined by published guidelines or not.

**R708-7-7. Driver License Medical Advisory Board.**

(1) The Driver License Medical Advisory Board, as per Section 53-3-303, shall advise the director of the division and recommend written functional ability ~~[profile]~~and safety assessment guidelines and standards for determining the physical, mental and

emotional capabilities of applicants for licenses, appropriate to various driving abilities.

(2) In case of uncertainty of interpretation of these guidelines and standards, or in special circumstances, applicants may request a review of any division decision by a panel of board members. All of the actions of the director and board are subject to judicial review.

(3) In accordance with Section 53-3-303(8), the board shall administer the functional ability ~~[profile]~~and safety assessment guidelines, which are intended to minimize such conflicts as the individual's desire to drive and the community's desire for highway safety.

**R708-7-8. Persons Authorized to Complete Functional Ability Evaluation Medical Report Form.**

(1) Physicians and surgeons licensed to practice medicine may complete the entire Functional Ability Evaluation Medical Report form.

(2) Nurse practitioners and physician assistants, and in accordance with 49 CFR 391.43, physician assistants, advanced practice nurses, doctors of chiropractic and other health care professionals, may perform physical examinations and report their findings on the Functional Ability Evaluation Medical Report form provided that:

(a) they are licensed by the state as health care professionals;

(b) the physical examination does not require advanced or complex diagnosis or treatment; and

(c) in the event that advanced or complex medical diagnostic analysis is required, the licensed health care professional, consistent with sound medical practices, will be expected to promptly refer the patient to the appropriate physician, surgeon or doctor of osteopathy for further evaluation and for completion of the functional ability evaluations certifications report in those categories.

**R708-7-9. ~~[Functional Ability Profile]~~Safety Assessment Level Categories.**

Functional ability of a driver to operate a vehicle safely may be affected by a wide range of physical, mental or emotional impairments. To simplify reporting and to make possible a comparison of relative risks and limitations, the Medical Advisory Board has adopted physical, emotional and behavioral ~~[functional ability profiles]~~safety assessment levels as defined in 12 separate categories, with multiple levels under each category.

**R708-7-10. Use of the ~~[Functional Ability Profile]~~Safety Assessment Level.**

(1) Health care professionals who evaluate their patients' health status for purposes of the patient obtaining a Utah driver license, shall report ~~[functional ability profiles]~~safety assessment levels on forms provided by the division.

(2) In assessing patient health and completing these report forms, health care professionals shall apply the standards and related information contained in the following lists, charts, and tables, which standards and guidelines are ~~[adopted and incorporated within this rule by reference, and are]~~referred to in a booklet entitled, "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals," ~~(January 2014 ed.)~~. Specific categories are:

- (a) "Category A" - diabetes and other metabolic conditions; narrative listing and table;
- (b) "Category B" - cardiovascular; narrative listing and table;
- (c) "Category C" - pulmonary; narrative listing and table;
- (d) "Category D" - neurologic; narrative listing and table;
- (e) "Category E" - epilepsy and other episodic conditions; narrative listing and table;
- (f) "Category F" - learning, memory and communications; narrative listing and table;
- (g) "Category G" - psychiatric or emotional conditions; narrative listing and table;
- (h) "Category H" - alcohol and other drugs; narrative listing and table;
- (i) "Category I" - visual acuity; narrative listing and table;
- (j) "Category J" - musculoskeletal abnormality or chronic medical debility; narrative listing and table;
- (k) "Category K" - alertness or sleep disorders; narrative listing and table; and
- (L) "Category L" - hearing and balance; narrative listing and table.

(3) Copies of these guidelines are printed in a booklet and distributed by the division in addition to being published on the Driver License Division webpage. These booklets may be obtained at no cost for health care professionals or \$5 per booklet for all other individuals. Copies may be obtained in person or by written request to the Driver License Division Medical Section at P.O. Box 144501, Salt Lake City, Utah 84114-4501.

(4) Report forms completed by a health care professional and received by the division are to be used as a screening tool in assessing an individual's ability to safely operate a motor vehicle.

(a) Some ~~[profile]~~safety assessment levels as identified in the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", may result in the division requesting an individual to complete a driver review, which may include a driving skills test in order to demonstrate the ability to safely operate a motor vehicle before determining whether the individual will maintain the privilege to drive. In some cases when a privilege to drive is granted, driving restrictions may be required in order to ensure public safety.

(b) A health care professional may also request that the division evaluate an individual's driving skill level at the health care professional's discretion.

(5) The division shall notify an individual that their privilege to drive is denied upon receipt of the following:

(a) a medical report that is completed in the categories A, B, C, D, E, F, G, H, J, K, or L, ~~[that is profiled]~~for which the driver is assessed at a level "8" in accordance with the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", or other documentation which indicates that the health care professional recommends that the individual does not drive; or

(b) a medical report that is completed in the category I ~~[that is profiled]~~for which the driver is assessed at a level "10" in accordance with the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", or other documentation which indicates that the health care professional recommends that the individual does not drive.

(6) Upon receipt of a notice of denial of the privilege to drive, an individual may request a review of the division's decision by

a panel of board members. All of the actions of the director and board are subject to judicial review.

**KEY:** administrative procedures, health care professionals, physicians

**Date of Enactment or Last Substantive Amendment:** ~~[February 19, 2009]~~2015

**Notice of Continuation:** January 9, 2012

**Authorizing, and Implemented or Interpreted Law:** 53-3-224; 53-3-303; 53-3-304; 49 CFR 391.43

## Workforce Services, Housing and Community Development **R990-8** Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39085

FILED: 01/15/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the change is to establish a major infrastructure set aside fund.

**SUMMARY OF THE RULE OR CHANGE:** The purpose of this fund is to allow the board to participate and fund major transportation and other significant infrastructure studies and projects where the board participation may exceed \$5,000,000.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-8-306

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no cost to the state budget associated with the proposed amendment. The proposed amendment deals with establishing a major infrastructure set aside fund utilizing existing funds.

◆ **LOCAL GOVERNMENTS:** There will be no cost to local governments associated with the proposed amendment. The proposed amendment deals with establishing a major infrastructure set aside fund utilizing existing funds.

◆ **SMALL BUSINESSES:** There will be no impacts from the proposed amendment on small businesses. Small businesses are ineligible for financial assistance from the board.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no impacts from the proposed amendment on

persons other than small businesses, businesses, or local governmental entities. Such persons are ineligible for financial assistance from the board.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no cost of compliance associated with the proposed amendment. The proposed amendment deals with establishing a major infrastructure set aside fund utilizing existing funds.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be no impacts from the proposed amendment on businesses. Businesses are ineligible for financial assistance from the board.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 WORKFORCE SERVICES  
 HOUSING AND COMMUNITY DEVELOPMENT  
 140 E BROADWAY  
 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 03/03/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2015

AUTHORIZED BY: Jon Pierpont, Executive Director

**R990. Workforce Services, Housing and Community Development.**

**R990-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance.**

**R990-8-1. Purpose.**

The Permanent Community Impact Fund Board (the Board) provides loans and/or grants to State agencies and subdivisions of the State which are or may be socially or economically impacted, directly or indirectly, by mineral resource development. Authorization for the Board is contained in Section 35A-8-301 et seq.

**R990-8-2. Eligibility.**

Only those applications for funding assistance which are submitted by an eligible applicant for an eligible project shall be funded by the Board.

Eligible projects include: a) planning; b) the construction and maintenance of public facilities; and c) the provision of public services. "Public Facilities and Services" means public infrastructure or services traditionally provided by local governmental entities.

Eligible applicants include state agencies and subdivisions of the state and Interlocal agencies as defined in Subsection 35A-8-302,

which are or may be socially or economically impacted, directly or indirectly, by mineral resource development.

**R990-8-3. Application Requirements.**

A. Applicants shall submit their funding requests on the Board's most current application form, furnished by the Housing and Community Development Division (HCD). Applicants submitting incomplete applications will be notified of deficiencies and their request for funding assistance will be held by the Board's staff pending submission of the required information by the applicant.

Complete applications which have been accepted for processing will be placed one of the Trimester's upcoming "Application Review Meeting" agendas.

B. Additional general information not specifically covered by the application form should also be furnished to the Board and its staff when such information would be helpful to the Board in appraising the merits of the project.

C. For proposed drinking water and sewer projects, sufficient technical information must be provided to the Utah Department of Environmental Quality (DEQ) to permit their review. The Board will not act on any drinking water or sewer project unless they receive such review from DEQ.

D. Planning grants and studies normally require a fifty percent cash contribution by the applicant. Planning assistance requests shall be reviewed and/or provided by the Rural Planning Group.

E. The Board requires all applicants to have a vigorous public participation effort. All applicants shall hold at least one formal public hearing to solicit comment concerning the size, scope and nature of any funding request prior to its submission to the Board. In that public hearing, the public shall be advised the financing may be in the form of a loan, even if the application requests a grant.

Complete and detailed information shall be given to the public regarding the proposed project and its financing. The information shall include the expected financial impact including potential repayment terms and the costs to the public as user fees, special assessments, or property taxes if the financing is in the form of a loan. The Board may require additional public hearings if determines the applicant did not adequately disclose to the public the impact of the financial assistance during the initial public hearing.

When the Board offers the applicant a financial package that is substantially different in the amounts, terms or conditions initially requested by an applicant, the Board may require additional public hearings to solicit public comment on the modified funding package.

A copy of the public notice and transcript or minutes of the hearing shall be attached to the funding request. Public opinion polls may be submitted in addition to the transcript or minutes.

F. Letters of comment outlining specific benefits (or problems) to the community and State may be submitted with the application.

G. All applicants are required to notify in writing the applicable Association of Governments of their intention to submit a funding request to the Board. A copy of any comments made by the Association of Governments shall be attached to the funding request. It is the intent of the Board to encourage regional review and prioritization of funding requests to help ensure the timely consideration of all worthwhile projects.

H. Section 9-8-404 requires all state agencies before they expend any state funds or approves any undertaking to take into account the effect of the undertaking on any district, site, building structure or specimen that is included in or eligible for inclusion in the National Register of Historic Places or the State Register and to allow the state historic preservation officer (SHPO) a reasonable opportunity to comment on the undertaking or expenditure. In order to comply with that duty, the Board requires all applicants provide the Board's staff with a detailed description of the proposed project attached to the application. The Board's staff will provide SHPO with descriptions of applications which may have potential historic preservation concerns for SHPO's review and comment in compliance with the CIB/SHPO Programmatic Agreement. SHPO comments on individual applications will be provided to the Board as part of the review process outline in R990-8-4. Additionally the Board requires that if during the construction of the project the applicant discovers any cultural/paleontological resources, the applicant shall cease project activities which may affect or impact the cultural/paleontological resource, notify the Board and SHPO of the discovery, allow the Board to take into account the effects of the project on cultural/paleontological resources, and not proceed until further approval is given by the Board.

I. All applicants must provide evidence and arguments to the Board as to how the proposed funding assistance provides for planning, the construction and maintenance of public facilities or the provision of public services.

J. All applicants must demonstrate that the facilities or services provided will be available and open to the general public and that the proposed funding assistance is not merely a device to pass along low interest government financing to the private sector.

K. All applicants must demonstrate that any arrangement with a lessee of the proposed project will constitute a true lease, and not a disguised financing arrangement. The lessee must be required to pay a reasonable market rental for the use of the facility. In addition, the applicant shall have no arrangement with the lessee to sell the facility to the lessee, unless fair market value is received.

L. Each applicant must submit evidence and legal opinion that it has the authority to construct, own and lease the proposed project. In the case of a request for an interest bearing loan, the applicant must provide an opinion of nationally-recognized bond counsel that the interest will not be subject to federal income taxes.

M. All applicants shall certify to the Board that they will comply with the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000e), as amended, which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agree to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90, as amended, which prohibits discrimination on the basis of age; Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and 28 CFR 35, as amended, which prohibit discrimination on the basis of disabilities; Utah Anti-Discrimination Act, Section 34A-5-101 et seq., which prohibits discrimination against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or handicap, and to certify compliance with the ADA to the Board on an annual basis and upon completion of the project.

#### **R990-8-4. Board Review Procedures.**

A. The Board will review applications and authorize funding assistance on a "Trimester" basis. The initial meetings of each "Trimester" are "Project Review Meetings". The final meeting of each "Trimester" is the "Project Funding Meeting". Board meetings shall be held monthly on the 1st Thursday of each month, unless rescheduled or cancelled by the chairman or by formal motion of the board. The Trimesters shall be as follows:

1. 1st Trimester: application deadline, June 1st; Project Review Meetings, July, August, September; Project Funding Meeting October.

2. 2nd Trimester: application deadline, October 1st; Project Review Meetings, November, December, January; Project Funding Meeting, February.

3. 3rd Trimester: application deadline, February 1st; Project Review Meetings, March April, May; Project Funding Meeting, June.

B. The process for review of new applications for funding assistance shall be as follows:

1. Submission of an application, on or before the applicable deadline to the Board's staff for technical review and analysis.

2. Incomplete applications will be held by the Board's staff pending submission of required information.

3. Complete applications accepted for processing will be placed on one of the Trimester's upcoming "Project Review Meeting" agendas.

4. At the "Project Review Meeting" the Board may either:

a. deny the application;

b. place the application on the "Pending List" for consideration at a future "Project Review Meeting" after additional review, options analysis and funding coordination by the applicant and the Board's staff;

c. place the application on the "Priority List" for consideration at the next "Project Funding Meeting".

C. Applicants and their representatives shall be informed of any "Project Review Meeting" at which their applications will be considered. Applicants shall make formal presentations to the Board and respond to the Board's questions during the "Project Review Meetings". If an applicant or its representatives are not present to make a presentation, the board may either:

1. deny the application;

2. place the application on the "Pending List" for consideration at a future "Project Review Meeting".

D. No funds shall be committed by the Board at the "Project Review Meetings", with the exception of circumstances described in Subsection F.

E. Applications for funding assistance which have been placed on the "Priority List" will be considered at the "Project Funding Meeting" for that Trimester. At the "Project Funding Meeting" the Board may either:

1. deny the application;

2. place the application on the "Pending List" for consideration at a future "Project Review Meeting".

3. authorize funding the application in the amount and terms as determined by the Board.

F. In instances of bona fide public safety or health emergencies or for other compelling reasons, the Board may suspend the provisions of this section and accept, process, review and authorize funding of an application on an expedited basis.



**R990-8-5. Local Capital Improvement Lists.**

A. A consolidated list of the anticipated capital needs for eligible entities shall be submitted from each county area, or in the case of state agencies, from HCD. This list shall be produced as a cooperative venture of all the eligible entities within each county area.

B. The list shall contain a short term (one year) and a medium term (five year) component.

C. The list shall contain the following items: jurisdiction, summary description, project time frame, anticipated time of submission to the Board, projected overall cost of project, anticipated funding sources, the individual applicant's priority for their own projects, and the county area priority for each project. The county area priority for each project shall be developed as a cooperative venture of all eligible entities within a county area.

D. Projects not identified in a county area's or HCD's list, will not be funded by the Board, unless they address a bona fide public safety or health emergency or for other compelling reasons.

E. An up-dated list shall be submitted to the Board no later than April 1st of each year. The up- dated list shall be submitted in the uniform format required by the Board.

F. If the consolidated list from a county area does not contain the information required in R990-8-5-C, or is not in the uniform format required in R990-8-5-E, all applications from the affected county area will be held by the Board's staff until a future Trimester pending submission of the required information in the uniform format.

G. The Board has authorized its staff to hold any application that does not appear on the applicable local capital improvement list. Such applications will be held until a future Trimester to allow the applicant time to pursue amending the local capital improvement list.

H. The amendment to include an additional project must follow the process used for the original list, and it must contain the required information and be submitted in the uniform format, particularly the applicant and county area prioritization.

I. The regional Association of Governments are the compilers of the capital improvement lists. The AOG cannot simply add additional applications to any given list without the applicant meeting the process requirements outlined in Subsection C.

J. Notwithstanding Subsection I, allowing an applicant to add a project to the capital improvement list just prior to the application deadline subverts the intent of the capital improvement list process. Such applications will be held by the Board's staff until the next Trimester.

**R990-8-6. Modification or Alteration of Approved Projects.**

A recipient of PCIFB grant funds may not, for a period of ten years from the approval of funding by the Board, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. A recipient of PCIFB loan funds may not, for the term of the loan, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. The recipient shall submit a written request for such approval and provide such information as requested by the Board or its staff, including at a minimum a description of the modified project sufficient for the Board to determine whether the modified project is an eligible use of PCIFB funds.

The Board may place such conditions on the proposed modifications or modified project as it deems appropriate, including but not limited to modifying or changing the financial terms, requiring additional project actions or participants, or requiring purchase or other satisfaction of all or a portion of the Board's interests in the approved project. Approval shall only be granted if the modified project, use or ownership is also an eligible use of PCIFB funds, unless the recipient purchases or otherwise satisfies in full the Board's interest in the previously approved or the proposed project.

**R990-8-7. Procedures for Electronic Meetings.**

A. These provisions govern any meeting at which one or more members of the Board or one or more applicant agencies appear telephonically or electronically pursuant to Section 52-4-7.8.

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

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

D. Notice of the possibility of an electronic meeting shall be given to the members of the Board and applicant agencies at least 24 hours before the meeting. In addition, the notice shall describe how the members of the Board and applicant agencies may participate in the meeting electronically or telephonically.

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

F. The anchor location shall be designated in the notice. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location has space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

**R199-8-8. Major Infrastructure Set Aside Fund.**

**A. Creation of Fund**

1. There is hereby created within the Permanent Community Impact Fund the Major Infrastructure Set Aside Fund.

2. The Purpose of this Fund is to allow the Board to participate and fund major transportation and other significant infrastructure studies and projects where the Board participation may exceed five million dollars (\$5,000,000).

B. Transfer of Monies to the Fund

1. At each funding meeting, after action is taken on all projects on the prioritization list, the Board shall consider whether to transfer any money in the Permanent Community Impact Fund to the Major Infrastructure Set Aside Fund. The Board may transfer such amounts as it deems appropriate, in its discretion, based on motion and a majority vote of the Board.

2. When money is transferred to the Major Infrastructure Set Aside Fund the Board shall identify whether the money being transferred is Bonus or Mineral Lease money. The status of the money as Bonus monies or Mineral Lease monies shall continue while the monies are in the Major Infrastructure Set Aside Fund and may only be granted or loaned in accordance with that status.

3. The Division shall maintain an accounting of the funds in the Major Infrastructure Set Aside Fund as bonus funds or mineral lease funds and shall separately identify the status of the money in the Major Infrastructure Set Aside Fund in its briefings to the Board.

C. Use of the Fund

1. Money in the Major Infrastructure Set Aside Fund may only be used to fund major transportation and other significant infrastructure studies and projects. These projects would include pipelines, roadways, rail lines, and other major infrastructure activities where the cost may exceed five million dollars (\$5,000,000) and where the project is within the purposes for the creation and use of the Fund. The Board, on motion and majority vote, shall designate and allow the

use of the money from the Fund, specifying whether the money comes from the Bonus or Mineral Lease monies in the Fund.

2. Repayment on any loans from the Major Infrastructure Set Aside Fund shall be credited to and placed in the Major Infrastructure Set Aside Fund. Payments on Bonus money loans shall maintain their status as Bonus monies. The Division shall maintain a separate accounting of all loan payments in the Major Infrastructure Set Aside Fund.

D. Reconversion of Monies from the Fund

1. The Board may, at any time on motion and majority vote, reconvert and transfer funds from the Major Infrastructure Set Aside Fund back to the general Permanent Community Impact Fund. The motion and action of the Board shall specify if the money being transferred back to the general Permanent Community Impact Fund is Bonus or Mineral Lease money, and that status of the money shall continue in the general Permanent Community Impact Fund.

**KEY: grants**

**Date of Enactment or Last Substantive Amendment: ~~July 9, 2012~~2015**

**Authorizing, and Implemented or Interpreted Law: 35A-8-305(1)(a), (b), and (c); 35A-8-306; 35A-8-307(1)(a)**

**End of the Notices of Proposed Rules Section**

## NOTICES OF 120-DAY (EMERGENCY) RULES

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An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Division of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

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### Education, Administration **R277-419-9**

#### Provisions for Maintaining Student Membership and Enrollment Documentation and Documentation of Student Education Services Provided by Third Party Vendors

##### **NOTICE OF 120-DAY (EMERGENCY) RULE**

DAR FILE NO.: 39080  
FILED: 01/15/2015

##### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Following approval by the Utah State Board of Education (Board), Section R277-419-9 was published in the November 1, 2014, issue of the Utah State Bulletin, subject to a 30-day comment period. Within the 30-day comment period, on 11/14/2014, a request was sent to the Utah State Office of Education from ten interested persons requesting a public hearing concerning Section R277-419-9. A Board hearing to receive public input was held on 12/04/2014. At the Board's January 2015 meeting, a summary of comments and recommendations was presented to the Board for

discussion and possible action. This emergency filing is a result of the discussion.

**SUMMARY OF THE RULE OR CHANGE:** New language in Section R277-419-9 allows for local education agencies (LEAs) to provide written authorization to third party vendors to receive public school enrollment verification records, consistent with the federal Family Educational Rights and Privacy Act (FERPA), 34 CFR 99.31(a)(1)(i)(B). New language also allows an LEA to provide internet reimbursement for K-6 students, consistent with a Free and Appropriate Public Education and Rule R277-407, School Fees. Additionally, new language addresses grades 7-12 students to receive internet reimbursement, consistent with Rule R277-407.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-1-401(3) and Subsection 53A-1-402(1)(e)

**EMERGENCY RULE REASON AND JUSTIFICATION:**  
**REGULAR RULEMAKING PROCEDURES WOULD** cause an imminent peril to the public health, safety, or welfare; and place the agency in violation of federal or state law.  
**JUSTIFICATION:** Without the new language allowing for internet reimbursement to K-6 students, LEAs may be in violation of state law to provide a Free and Appropriate Public Education to K-6 students. Without new language allowing

LEAs to provide written authorization to third party vendors to collect and have access to public school enrollment verification records, LEAs may be in violation of the federal Family Educational Rights and Privacy Act. Some students in grades 7-12, enrolled in online or distance learning programs through third party vendors, may suffer economic hardship if internet reimbursement is not provided.

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The changes to Section R277-419-9 provide for third party vendors to have access to public school enrollment verification records, consistent with federal FERPA, and for LEAs to provide internet reimbursement to K-6 and eligible grades 7-12 students, consistent with federal and state laws and rules, and will likely not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** There will be additional costs to LEAs to provide internet reimbursement to K-6 and eligible grades 7-12 students. Without knowing the number of K-6 and eligible grades 7-12 students participating in online and distance learning programs and eligible for reimbursement, costs would be speculative at this time.

◆ **SMALL BUSINESSES:** Third party vendors that are also small businesses will be able to collect and have access to public school enrollment verification records which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes to Section R277-419-9 provide for third party vendors to have access to public school enrollment verification records, consistent with federal FERPA, and for LEAs to provide internet reimbursement to K-6 and eligible grades 7-12 students, consistent with federal and state laws and rules, will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Third party vendors having access to public school enrollment verification records and LEAs providing internet reimbursement to K-6 and eligible grades 7-12 students, consistent with federal and state laws and rules, will likely not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Brad Smith by phone at 801-538-7510, by FAX at 801-538-7768, or by Internet E-mail at brad.smith@schools.utah.gov

**EFFECTIVE:** 01/15/2015

**AUTHORIZED BY:** Brad Smith, State Superintendent of Public Instruction

**R277. Education, Administration.**

**R277-419. Pupil Accounting.**

**R277-419-9. Provisions for Maintaining Student Membership and Enrollment Documentation and Documentation of Student Education Services Provided by Third Party Vendors.**

A. R277-419-1 through 8 provide direction for student membership and enrollment and eligibility criteria for both traditional and nontraditional schools and programs.

B. A traditional program is a public school program that consists of eligible enrolled public education students who physically attend school in classrooms.

C. A nontraditional program is a public school program that consists of eligible, enrolled public education students where students primarily receive instruction either online or through a distance learning program.

D. LEAs may enroll students in both traditional and nontraditional programs.

E. Home school courses do not qualify for public education funding for both traditional and non-traditional programs. Home school courses are those where the curriculum and instructional methods, reporting, or evaluation of student progress or mastery is provided or administered by the parent, guardian, custodian, or other group of individuals, not directly supervised by an LEA.

F. LEA and Third Party Vendor Use of Public Funds for Incentives and Reimbursements

(1) LEAs or their third party vendors shall not use public funds, as defined under Section 51-7-3(26), to provide monetary or other incentives for enrollment or referral bonuses to individuals or groups of individuals.

(2) LEAs or their third party vendors shall not use public funds to provide educational, curriculum, instruction, private lessons, or technology reimbursements to individuals, groups of individuals or third party vendors that are not available to all students enrolled in the LEA or required by an IEP or 504 plan that is approved by the LEA. This section shall not prohibit an LEA from providing internet reimbursements for students on the K-6 grade level. Furthermore, such internet reimbursement may be provided to students in grades 7-12 if failure to provide such reimbursement will cause economic hardship. This determination should be made in accordance with the fee waiver policy language set forth in R277-407-6.

(3) LEAs or their third party vendors that purchase items or technology devices and provide them to students shall ensure that these items are the property of the LEAs and are subject to the LEAs asset policies.

(4) LEAs shall establish provisions identified in R277-419-9F(1) through (3) in their contracts with third party vendors and shall monitor compliance with these provisions.

G. LEAs shall ensure school enrollment verification records are collected consistent with sound data collection and storage procedures, established by the LEA, and that these records are transmitted securely. It is the LEAs' responsibility to verify the accuracy and validity of student enrollment records, prior to enrolling students in an LEA, and provide students and their parents with notification of enrollment in a public school. An LEA is [~~the only entity authorized~~]required by the Board to collect and store public school enrollment verification records including:

- (1) birth certificates or other verification of age and identity;
- (2) verification of immunization or exemption form;
- (3) proof of Utah public school residency;
- (4) family income verification; or
- (5) special education records, including:
  - (a) individualized education program;
  - (b) 504 plan; or
  - (c) English learner plan.

LEAs may provide written authorization to third party vendors who meet the definition of school official under 34 CFR 99.31(a)(1)(i)(B) to collect and have access to public school enrollment verification records. In the event that such authorization is provided, parents or guardians of the affected students shall be notified in writing.

H. All LEAs that enroll public school students shall maintain documentation of the following:

- (1) that the LEA complied with all provisions of R277-419-1 through 8;
- (2) that the LEA complied with all educator licensure requirements of R277-502;
- (3) that the LEA complied with all fingerprint and background check requirements for educators, employees and volunteers consistent with Section 53A-3-410, 53A-1a-512.5, R277-516, and R277-520;
- (4) that the LEA established a school schedule consistent with R277-419-4A(1);
- (5) that the LEA only enrolled students who met the eligibility requirements of R277-419-5A(1) (a-e);
- (6) that the LEA directed the instruction of the core curriculum consistent with Section 53A-1-402(1)(a) and R277-700; and
- (7) that the LEA scheduled and administered all statewide assessments, as required under Sections 53A-1-606.6 through 53A-1-611 and R277-404.

I. In addition to R277-419-9D, LEAs that enroll students in traditional programs shall also satisfy the requirements of R277-419-5A(1)(f).

J. In addition to R277-419-9D, LEAs that enroll students in nontraditional programs shall also maintain documentation that the LEA satisfied the following:

- (1) adopted a written policy that designates a continuing enrollment measurement to document the continuing membership or enrollment status for individual students consistent with R277-419-5A(1)(c);

(2) measured and documented each student's continued enrollment using the adopted continuing enrollment measurement at least every ten consecutive school days;

(3) documented that LEA employees confirmed students' continued enrollment consistent with R277-419-9J(2) and updated student membership records in the student information system; and

(4) documented that the LEA adjusted the student membership information for students that did not meet the continuing enrollment measurement, consistent with R277-419-5A(1)(c).

K. The continuing enrollment measurement may include some or all of the following components, in addition to other components, as determined by the LEA:

- (1) a minimum student login or teacher contact requirement;
- (2) required periodic contact with a licensed educator;
- (3) a minimum hourly requirement, per day or week, when students are engaged in course work; or
- (4) required timelines for a student to provide or demonstrate completed assignments, coursework or progress toward academic goals.

L. LEA Nontraditional Program and Third Party Vendor Compliance

(1) An LEA offering a nontraditional program that contracts for curricular and instructional services which are administered by third party vendors shall submit documentation of compliance with law and Board rules (as prescribed by the Board) to the Superintendent's office for review prior to the initiation of the program.

(2) An LEA offering a nontraditional program that contracts for curricular and instructional services from a third party vendor and does not resolve a corrective action item, may not qualify for some or all Minimum School Program funds.

M. An LEA that contracts with a third party vendor to provide curricular and instructional services to students for nontraditional programs shall monitor and supervise the vendor throughout the administration of the services and ensure compliance, at a minimum, with the following:

- (1) all student eligibility and membership/enrollment requirements of R277-419 are met;
- (2) all educator licensure requirements of R277-502 are satisfied;
- (3) all fingerprint and background check requirements for educators, employees and volunteers, consistent with Section 53A-3-410, 53A-1a-512.5, R277-516, and R277-520, are met;
- (4) the Board-directed core standards are used in student instruction, consistent with Section 53A-1-402(1)(a) and R277-700;
- (5) all required statewide assessments are administered by the LEA, as required under Sections 53A-1-606.6 through 53A-1-611 and R277-404;
- (6) the LEA has a written supervision plan for the vendor administration of curricular and instructional services; and
- (7) the LEA maintains documentation of supervisory activities ensuring compliance with the written supervision plan (copy of the agreement, assignment of supervising personnel by title, meeting notes, correspondence with vendor) consistent with the LEA's administrative records retention schedule.

N. Consistent with R277-114, the Superintendent may withhold funds from traditional or nontraditional public education programs for non-compliance with R277-419. An LEA may appeal the decision of the Superintendent to the Board.

**Notice of Continuation: September 14, 2012**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(e); 53A-1-404(2); 53A-1-301(3)(d); 53A-3-404; 53A-3-410**

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**KEY: education finance, school enrollment**

**Date of Enactment or Last Substantive Amendment: January 15, 2015**

**End of the Notices of 120-Day (Emergency) Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

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## Agriculture and Food, Animal Industry **R58-7** Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39075  
FILED: 01/13/2015

### 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 4-30-3 authorizes the Department to make and enforce rules as in its judgment are necessary to administer, enforce, and promote the legal sale of livestock and fair market practices. The rules specify procedures and minimum requirements for applying and renewing licenses for the operation of a permanent and temporary livestock sales; governs the bonding and licensing of livestock dealers and weigh persons; sets standards and requirements for operating a livestock market. All in an effort to protect the livestock industry as well as the markets.

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: Livestock markets provide a process by which producers and buyers can do business in a situation where fair market value is provided for and by the livestock industry. The legal, fair, and protected transactions that markets provide are a viable portion of Utah's agricultural economy. 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:

- ◆ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at [codyjames@utah.gov](mailto:codyjames@utah.gov)
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at [kmathews@utah.gov](mailto:kmathews@utah.gov)
- ◆ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at [sericson@utah.gov](mailto:sericson@utah.gov)

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/13/2015

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## Agriculture and Food, Animal Industry **R58-11** Slaughter of Livestock and Poultry

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 39073  
 FILED: 01/13/2015

**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 Title 4, Chapter 32, Utah Meat and Poultry Products Inspection Licensing Act. This rule gives the animal owner a choice to have their animals slaughtered and/or processed by the license farm custom permittee or in the official inspected facility.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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: The Department of Agriculture licenses and inspects custom exempt establishments and farm custom slaughter tripod rig and/or establishments. This allows the animal owner flexibility to have their animals slaughtered and/or processed at the time and location convenient for them, it also helps ensure that the animal owner will receive his product back that has been slaughter and/or processed under sanitary 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:

- ◆ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/13/2015

Agriculture and Food, Animal Industry  
**R58-17**  
 Aquaculture and Aquatic Animal Health

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 39074  
 FILED: 01/13/2015

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R58-17 is promulgated under the authority of Section 4-37-101 et seq., Subsection 4-5-2(j), and Section 4-37-503. Section 4-37-101 et seq., Subsection 4-2-2(j), and Section 4-37-503 authorize the Department to enact a rule to regulate the aquaculture industry, protect fishery resources from disease and pathogens, and to utilize the land and water resources of 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 has not received any 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 is essential to provide direction for regulating the aquaculture industry. The rule is necessary to control the spread of disease in public and private fishing waters. Fish health certifications are required to sell fish both in and out of state. The fish health certification maintains the economic viability of aquaculture operations by certifying the quality/disease free status of aquaculture products. This rule should be continued to maintain the quality of aquaculture in Utah and prevent the spread of disease.

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:

- ◆ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov



♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/13/2015

**Alcoholic Beverage Control,  
Administration  
R81-4E  
Resort Licenses**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 39059  
FILED: 01/08/2015

**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 32B-2-202 authorizes the Alcoholic Beverage Control Commission to adopt and issue policy, rules and procedures that establish criteria and procedures for issuing, denying, not renewing, suspending, or revoking retail licenses and permits, including resort license issued under Title 32B, Chapter 8, Resort License Act, and prescribe the conduct, management, and equipment of any premises where alcohol is sold, served, consumed, or stored. Additionally, Section 32B-8-102 authorizes the commission to define certain terms by rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: To the department's knowledge, 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: This rule regulates operations at establishments holding resort licenses. Section R81-4E-1 requires that any transaction that may alter the organizational structure or owner interest of the license holder must first be approved by the Department of Alcoholic Beverage Control (DABC). Section R81-4E-2 outlines requirements of the application for a resort license. Section R81-4E-3 elaborates on regulations regarding the bond required by statute to be carried by resort licensees, including penalties for noncompliance. Section R81-4E-4 elaborates on regulations regarding requirements for resort licensee insurance

coverage and penalties for noncompliance. Section R81-4E-5 regulates how resort licensees may place liquor orders at state liquor stores. Section R81-4E-6 permits the licensee to open the storage area at other times for the limited purposes of inventory, restocking, repair, and cleaning. Resort licensees are the only licensee in the Liquor Act that operate their restaurants as sublicensees of the resort license. Section R81-4E-7 provides guidelines for where alcoholic beverages may be dispensed and consumed and how they may be sold in restaurants with sublicenses. The section also establishes how liquor sales records should be maintained. Section R81-4E-8 permits sublicensees in resorts to store all types of liquor in the same storage area on the licensed premises. Section R81-4E-9 regulates the use of alcoholic product flavorings used by resort licensees. Section R81-4E-10 allows wine service at a patron's table. Section R81-4E-11 establishes where on the premises of a restaurant sublicense alcoholic beverages may be consumed by a patron. Section R81-4E-12 establishes guidelines and regulations for posting liquor prices and liquor service prices and practices in sublicensed establishments licensed under a resort license. Section R81-4E-13 establishes regulations for employees of sublicenses established under the resort license for wearing a unique identification badge when selling and serving alcoholic beverages. Section R81-4E-14 addresses when it is legal and appropriate to permit brown-bagging on the premises of a sublicensee. Section R81-4E-15 defines the term resort spa, establishes application requirements, and addresses minors in spas with lounges. Section R81-4E-16 states that the rules for sublicenses issued under the larger resort license must comply with the same type of licenses issued by the DABC. All of the regulations set forth in this rule remain important and applicable to the operations of a resort license. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ALCOHOLIC BEVERAGE CONTROL  
ADMINISTRATION  
1625 S 900 W  
SALT LAKE CITY, UT 84104-1630  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

AUTHORIZED BY: Sal Petilos, Executive Director

EFFECTIVE: 01/08/2015

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

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 39056  
 FILED: 01/05/2015

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 17b, provides for the licensure of pharmacists, pharmacy interns, pharmacy technicians, dispensing medical practitioners, pharmacy technician trainees, and various classifications of pharmacies. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-17b-201(3) provides that the Utah State Board of Pharmacy's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division director. This rule was enacted to clarify the provisions of Title 58, Chapter 17b, with respect to pharmacists, pharmacy interns, pharmacy technicians, dispensing medical practitioners, pharmacy technician trainees, and various classifications of pharmacies.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in February 2010, it has been amended several times with the following different effective dates of rule amendments which have been filed (08/21/2014, 12/23/2013, 08/08/2013, 11/29/2012, 11/21/2011, 07/26/2011, 10/22/2010, and 08/02/2010). The Division received an 08/11/2014 letter from Eagle Gate College Group with respect to pharmacy technician license education requirements. The Division and Board considered the written comments, but no additional changes to the proposed rule were filed based on the written comments. The Division also received a 12/16/2013 letter from Lis Houchen with the National Association of Chain Drug Stores with respect to proposed rule amendments filed in November 2013. The Division and Board considered the written comments, but no additional changes to the proposed rule were filed based on the written comments. The Division also received July 2013 written comments from Linda Duke with respect to pharmacy technician-in-training amendments and July 2013 written comments from David Pittan with respect to licensing exemption amendments under which a prescribing practitioner may dispense certain medications in the practitioner's place of business. The Division and Board considered the written comments received, but no additional changes to the proposed rule were filed based on the written comments and comments made during a July 2013 public rule hearing. The Division also received a 11/04/2012 email from Hunter Finch in which he notified the Division of an incorrect statute citation in the rule. The Division filed a

nonsubstantive rule change with Administrative Rules on 11/29/2012 in DAR No. 37082 in response to the written email from Mr. Finch. The Division also received too many numerous comments to list here which were submitted in June 2010 in response to a Division proposed rule filing filed in June 2010 which proposed changing the supervising ratio of pharmacist to pharmacy technician. The Division and Board considered the written comments received, but no additional changes to the proposed rule were filed based on the written comments and comments made during a June 2010 public rule hearing.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 17b, with respect to pharmacists, pharmacy interns, pharmacy technicians, dispensing medical practitioners, pharmacy technician trainees, and various classifications of pharmacies. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 01/05/2015

**Corrections, Administration  
 R251-303  
 Offenders' Use of Telephones**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 39060  
 FILED: 01/08/2015

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 63G-3-201 and 64-13-10 which allow the Department to adopt standards and rules in accordance with its responsibilities. The purpose of this rule is to provide the Department's policy and procedures governing offenders' access to and use of telephones.

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: This administrative rule and Department policy help to ensure community correctional centers' telephones are used for authorized purposes, and that staff may listen to the offender's conversation, with the exception of calls made to legal counsel. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steven Turley by phone at 801-545-5633, by FAX at 801-545-5726, or by Internet E-mail at sturley@utah.gov

AUTHORIZED BY: Rollin Cook, Executive Director

EFFECTIVE: 01/08/2015

**Education, Administration  
R277-111**

**Sharing of Curriculum Materials by  
Public School Educators**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 39077  
FILED: 01/15/2015

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR

STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities and Subsection 53A-1-402(1)(e) directs the Board to encourage school productivity and cost effective measures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides provisions encouraging public school employees to share materials they develop to benefit public education generally. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Brad Smith by phone at 801-538-7510, by FAX at 801-538-7768, or by Internet E-mail at brad.smith@schools.utah.gov

AUTHORIZED BY: Brad Smith, State Superintendent of Public Instruction

EFFECTIVE: 01/15/2015

**Judicial Conduct Commission,  
Administration**

**R595-1**

**General Provisions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 39048  
FILED: 01/02/2015

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Pursuant to Subsection 78A-11-

103(11), the Judicial Conduct Commission is required to make rules "outlining its procedures and the appointment of masters".

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during or since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of the rule is necessary in order for the Judicial Conduct Commission to conduct its constitutionally and statutorily mandated obligation to investigate and resolve allegations of judicial misconduct or judicial disability.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 JUDICIAL CONDUCT COMMISSION  
 ADMINISTRATION  
 ROOM 703  
 2540 WASHINGTON BLVD  
 OGDEN, UT 84401  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Colin Winchester by phone at 801-626-3359, by FAX at 801-626-3390, or by Internet E-mail at [cwinchester@utah.gov](mailto:cwinchester@utah.gov)

AUTHORIZED BY: Colin Winchester, Director

EFFECTIVE: 01/02/2015

Judicial Conduct Commission,  
 Administration  
**R595-2**  
 Administration

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 39049  
 FILED: 01/02/2015

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Pursuant to Subsection 78A-11-103(11), the Judicial Conduct Commission is required to make rules "outlining its procedures and the appointment of masters".

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during or since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of the rule is necessary in order for the Judicial Conduct Commission to conduct its constitutionally and statutorily mandated obligation to investigate and resolve allegations of judicial misconduct or judicial disability.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 JUDICIAL CONDUCT COMMISSION  
 ADMINISTRATION  
 ROOM 703  
 2540 WASHINGTON BLVD  
 OGDEN, UT 84401  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Colin Winchester by phone at 801-626-3359, by FAX at 801-626-3390, or by Internet E-mail at [cwinchester@utah.gov](mailto:cwinchester@utah.gov)

AUTHORIZED BY: Colin Winchester, Director

EFFECTIVE: 01/02/2015

Judicial Conduct Commission,  
 Administration  
**R595-3**  
 Procedure

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 39050  
 FILED: 01/02/2015

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Pursuant to Subsection 78A-11-103(11), the Judicial Conduct Commission is required to make rules "outlining its procedures and the appointment of masters".

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

**OPPOSING THE RULE:** In January 2014, an attorney requested that the Judicial Conduct Commission amend Section R595-3-13 to provide that a complainant could require the Judicial Conduct Commission, upon dismissal of the complainant's complaint, to seek, from the Judicial Council's Ethics Advisory Committee, an ethics advisory opinion on the ethical issues raised in the complaint. The Judicial Conduct Commission studied the request and sought and received input from the courts' general counsel, who staffs the Judicial Council's Ethics Advisory Committee. In April 2014, the Judicial Conduct Commission notified the attorney that although it was declining to amend Section R595-3-13, the Judicial Conduct Commission would consider requests to seek ethics advisory opinions on a case-by-case basis.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** Continuation of the rule is necessary in order for the Judicial Conduct Commission to conduct its constitutionally and statutorily mandated obligation to investigate and resolve allegations of judicial misconduct or judicial disability.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 JUDICIAL CONDUCT COMMISSION  
 ADMINISTRATION  
 ROOM 703  
 2540 WASHINGTON BLVD  
 OGDEN, UT 84401  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Colin Winchester by phone at 801-626-3359, by FAX at 801-626-3390, or by Internet E-mail at [cwinchester@utah.gov](mailto:cwinchester@utah.gov)

AUTHORIZED BY: Colin Winchester, Director

EFFECTIVE: 01/02/2015

Judicial Conduct Commission,  
 Administration  
**R595-4**  
 Sanctions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 39051  
 FILED: 01/02/2015

### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE:** Pursuant to Subsection 78A-11-103(11), the Judicial Conduct Commission is required to make rules "outlining its procedures and the appointment of masters".

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** No written comments have been received during or since the last five-year review.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** Continuation of the rule is necessary in order for the Judicial Conduct Commission to conduct its constitutionally and statutorily mandated obligation to investigate and resolve allegations of judicial misconduct or judicial disability.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 JUDICIAL CONDUCT COMMISSION  
 ADMINISTRATION  
 ROOM 703  
 2540 WASHINGTON BLVD  
 OGDEN, UT 84401  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Colin Winchester by phone at 801-626-3359, by FAX at 801-626-3390, or by Internet E-mail at [cwinchester@utah.gov](mailto:cwinchester@utah.gov)

AUTHORIZED BY: Colin Winchester, Director

EFFECTIVE: 01/02/2015

Public Safety, Criminal Investigations  
 and Technical Services, Criminal  
 Identification  
**R722-310**

Regulation of Bail Bond Recovery and  
 Enforcement Agents

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 39057  
 FILED: 01/07/2015

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Department of Public Safety has been tasked in Section 53-11-103 to: 1) administer and manage the issuance of bail bond recovery licenses; 2) present to the Bail Bond Recovery Licensure Board recommendations for suspension or revocation of said licenses when a determination is made that would make the licensee ineligible to hold a license; and 3) maintain and update as required, a database of licensee information. This rule is established to outline a process by which the Bureau of Criminal Identification can administer, manage, and maintain the tasks above.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received during and since the last five-year review of the rule from interested persons supporting 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: The requirement to administer, manage, and maintain the licensure of bail bond recovery agents is statutorily required and the need to continue with the current rule still exists.

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

AUTHORIZED BY: Alice Moffat, Bureau Chief

EFFECTIVE: 01/07/2015

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**Public Safety, Criminal Investigations  
and Technical Services, Criminal  
Identification  
R722-330  
Licensing of Private Investigators**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 39058  
FILED: 01/07/2015

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Department of Public Safety has been tasked in Section 53-9-103 to: 1) administer and manage the issuance of private investigator licenses; 2) present to the Private Investigator Hearing and Licensure Board recommendations of suspension or revocation of said licenses when a determination is made that would make the licensee ineligible to hold a license; and 3) maintain and update as required, a database of licensee information. This rule is established to outline a process by which the Bureau of Criminal Identification can administer, manage, and maintain the tasks above.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received during and since the last five-year review of the rule from interested persons supporting 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: The requirement to administer, manage, and maintain the licensure of private investigators is statutorily required and the need to continue with the current rule still exists.

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

AUTHORIZED BY: Alice Moffat, Bureau Chief

EFFECTIVE: 01/07/2015

**NOTICES OF  
FIVE-YEAR REVIEW EXTENSIONS**

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Division of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

**EXTENSIONS** are governed by Subsection 63G-3-305(6).

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Governor, Criminal and Juvenile  
Justice (State Commission on)

**R356-1**

Procedures for the Calculation and  
Distribution of Funds to Reimburse  
County Correctional Facilities Housing  
State Probationary Inmates or State  
Parole Inmates

**FIVE-YEAR REVIEW EXTENSION**

DAR FILE NO.: 39053

FILED: 01/02/2015

EXTENSION REASON AND NEW DEADLINE: Due to changes in personnel, the Commission needs more time to review this rule. New deadline is 05/04/2015.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Ronald Gordon, Executive Director

EFFECTIVE: 01/02/2015

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**End of the Notices of Five-Year Review Extensions Section**





## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Education

Administration

No. 38956 (AMD): R277-487. Public School Data

Confidentiality and Disclosure

Published: 12/01/2014

Effective: 01/07/2015

Rehabilitation

No. 38930 (AMD): R280-203. Certification Requirements for Interpreters for the Hearing Impaired

Published: 11/15/2014

Effective: 01/02/2015

### Governor

Energy Development (Office of)

No. 38931 (AMD): R362-3. Energy Efficiency Fund

Published: 11/15/2014

Effective: 01/07/2015

### Health

Health Care Financing, Coverage and Reimbursement Policy

No. 38952 (AMD): R414-11. Podiatric Services

Published: 12/01/2014

Effective: 01/13/2015

### Human Services

Substance Abuse and Mental Health

No. 38917 (NEW): R523-8. Evidence-Based Prevention

Registry

Published: 11/15/2014

Effective: 01/06/2015

### Insurance

Administration

No. 38934 (AMD): R590-142. Continuing Education Rule

Published: 12/01/2014

Effective: 01/12/2015

No. 38935 (AMD): R590-244. Individual and Agency

Licensing Requirements

Published: 12/01/2014

Effective: 01/12/2015

### Natural Resources

Wildlife Resources

No. 38949 (AMD): R657-69. Turkey Depredation

Published: 12/01/2014

Effective: 01/08/2015

### Public Safety

Criminal Investigations and Technical Services, Criminal Identification

No. 38947 (AMD): R722-330. Licensing of Private

Investigators

Published: 12/01/2014

Effective: 01/07/2015

### Public Service Commission

Administration

No. 38936 (AMD): R746-341-5. Duties of ETCs

Published: 12/01/2014

Effective: 01/07/2015



**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2015 through January 15, 2015. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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**RULES INDEX - BY AGENCY (CODE NUMBER)**

**ABBREVIATIONS**

|                                  |   |
|----------------------------------|---|
| AMD = Amendment (Proposed Rule)  | LNR = Legislative Nonreauthorization                              |
| CPR = Change in Proposed Rule    | NEW = New Rule (Proposed Rule)                                    |
| EMR = 120-Day (Emergency) Rule   | NSC = Nonsubstantive Rule Change                                  |
| EXD = Expired Rule               | R&R = Repeal and Reenact (Proposed Rule)                          |
| EXP = Expedited Rule             | REP = Repeal (Proposed Rule)                                      |
| EXT = Five-Year Review Extension | 5YR = Five-Year Notice of Review and<br>Statement of Continuation |
| GEX = Governor's Extension       |   |

| CODE REFERENCE                                 | TITLE  | FILE NUMBER | ACTION | EFFECTIVE DATE | BULLETIN ISSUE/PAGE |
|--|--|-------------|--------|----------------|---------------------|
| <b>AGRICULTURE AND FOOD</b>                    |  |             |        |                |                     |
| <u>Animal Industry</u>                         |  |             |        |                |                     |
| R58-7  | Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons                                   | 39075       | 5YR    | 01/13/2015     | Not Printed         |
| R58-11   | Slaughter of Livestock and Poultry   | 39073       | 5YR    | 01/13/2015     | Not Printed         |
| R58-17   | Aquaculture and Aquatic Animal Health  | 39074       | 5YR    | 01/13/2015     | Not Printed         |
| <b>ALCOHOLIC BEVERAGE CONTROL</b>              |  |             |        |                |                     |
| <u>Administration</u>                          |  |             |        |                |                     |
| R81-4E   | Resort Licenses  | 39059       | 5YR    | 01/08/2015     | Not Printed         |
| <b>COMMERCE</b>                                |  |             |        |                |                     |
| <u>Occupational and Professional Licensing</u> |  |             |        |                |                     |
| R156-17b                                       | Pharmacy Practice Act Rule   | 39056       | 5YR    | 01/05/2015     | Not Printed         |
| <b>CORRECTIONS</b>                             |  |             |        |                |                     |
| <u>Administration</u>                          |  |             |        |                |                     |
| R251-303                                       | Offenders' Use of Telephones   | 39060       | 5YR    | 01/08/2015     | Not Printed         |
| <b>EDUCATION</b>                               |  |             |        |                |                     |
| <u>Administration</u>                          |  |             |        |                |                     |
| R277-111                                       | Sharing of Curriculum Materials by Public School Educators   | 39077       | 5YR    | 01/15/2015     | Not Printed         |
| R277-419-9                                     | Provisions for Maintaining Student Membership and Enrollment Documentation and Documentation of Student Education Services Provided by Third Party Vendors | 39080       | EMR    | 01/15/2015     | Not Printed         |
| R277-487                                       | Public School Data Confidentiality and Disclosure  | 38956       | AMD    | 01/07/2015     | 2014-23/6           |
| <u>Rehabilitation</u>                          |  |             |        |                |                     |
| R280-203                                       | Certification Requirements for Interpreters for the Hearing Impaired   | 38930       | AMD    | 01/02/2015     | 2014-22/22          |

GOVERNOR

Criminal and Juvenile Justice (State Commission on)  
 R356-1 Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates 39053 EXT 01/02/2015 Not Printed

Energy Development (Office of)  
 R362-3 Energy Efficiency Fund 38931 AMD 01/07/2015 2014-22/24

HEALTH

Health Care Financing, Coverage and Reimbursement Policy  
 R414-11 Podiatric Services 38952 AMD 01/13/2015 2014-23/22

HUMAN SERVICES

Substance Abuse and Mental Health  
 R523-8 Evidence-Based Prevention Registry 38917 NEW 01/06/2015 2014-22/33

INSURANCE

Administration  
 R590-130-7 Advertisements of Benefits Payable, Losses Covered or Premiums Payable 39029 NSC 01/15/2015 Not Printed  
 R590-142 Continuing Education Rule 38934 AMD 01/12/2015 2014-23/25  
 R590-173 Credit For Reinsurance 39030 NSC 01/15/2015 Not Printed  
 R590-194 Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism 39038 NSC 01/15/2015 Not Printed  
 R590-226-14 Responses 39031 NSC 01/15/2015 Not Printed  
 R590-244 Individual and Agency Licensing Requirements 38935 AMD 01/12/2015 2014-23/31

JUDICIAL CONDUCT COMMISSION

Administration  
 R595-1 General Provisions 39048 5YR 01/02/2015 Not Printed  
 R595-2 Administration 39049 5YR 01/02/2015 Not Printed  
 R595-3 Procedure 39050 5YR 01/02/2015 Not Printed  
 R595-4 Sanctions 39051 5YR 01/02/2015 Not Printed

NATURAL RESOURCES

Wildlife Resources  
 R657-69 Turkey Depredation 38949 AMD 01/08/2015 2014-23/39

PUBLIC SAFETY

Criminal Investigations and Technical Services, Criminal Identification  
 R722-310 Regulation of Bail Bond Recovery and Enforcement Agents 39057 5YR 01/07/2015 Not Printed  
 R722-330 Licensing of Private Investigators 38947 AMD 01/07/2015 2014-23/40  
 R722-330 Licensing of Private Investigators 39058 5YR 01/07/2015 Not Printed

PUBLIC SERVICE COMMISSION

Administration  
 R746-341-5 Duties of ETCs 38936 AMD 01/07/2015 2014-23/43

**RULES INDEX - BY KEYWORD (SUBJECT)**

**ABBREVIATIONS**

|                                  |   |
|----------------------------------|---|
| AMD = Amendment (Proposed Rule)  | LNR = Legislative Nonreauthorization                              |
| CPR = Change in Proposed Rule    | NEW = New Rule (Proposed Rule)                                    |
| EMR = 120-Day (Emergency) Rule   | NSC = Nonsubstantive Rule Change                                  |
| EXD = Expired Rule               | R&R = Repeal and Reenact (Proposed Rule)                          |
| EXP = Expedited Rule             | REP = Repeal (Proposed Rule)                                      |
| EXT = Five-Year Review Extension | 5YR = Five-Year Notice of Review and<br>Statement of Continuation |
| GEX = Governor's Extension       |   |

| KEYWORD<br>AGENCY   | FILE<br>NUMBER | CODE<br>REFERENCE | ACTION | EFFECTIVE<br>DATE | BULLETIN<br>ISSUE/PAGE |
|---|----------------|-------------------|--------|-------------------|------------------------|
| <u>alcoholic beverages</u><br>Alcoholic Beverage Control, Administration  | 39059          | R81-4E            | 5YR    | 01/08/2015        | Not Printed            |
| <u>aquaculture</u><br>Agriculture and Food, Animal Industry   | 39074          | R58-17            | 5YR    | 01/13/2015        | Not Printed            |
| <u>bail bond recovery licenses</u><br>Public Safety, Criminal Investigations and Technical<br>Services, Criminal Identification | 39057          | R722-310          | 5YR    | 01/07/2015        | Not Printed            |
| <u>certification</u><br>Education, Rehabilitation   | 38930          | R280-203          | AMD    | 01/02/2015        | 2014-22/22             |
| <u>confidentiality</u><br>Education, Administration   | 38956          | R277-487          | AMD    | 01/07/2015        | 2014-23/6              |
| <u>corrections</u><br>Corrections, Administration   | 39060          | R251-303          | 5YR    | 01/08/2015        | Not Printed            |
| <u>curriculum materials</u><br>Education, Administration  | 39077          | R277-111          | 5YR    | 01/15/2015        | Not Printed            |
| <u>depredation</u><br>Natural Resources, Wildlife Resources   | 38949          | R657-69           | AMD    | 01/08/2015        | 2014-23/39             |
| <u>education finance</u><br>Education, Administration   | 39080          | R277-419-9        | EMR    | 01/15/2015        | Not Printed            |
| <u>efficiency</u><br>Governor, Energy Development (Office of)   | 38931          | R362-3            | AMD    | 01/07/2015        | 2014-22/24             |
| <u>energy</u><br>Governor, Energy Development (Office of)   | 38931          | R362-3            | AMD    | 01/07/2015        | 2014-22/24             |
| <u>evidence-based prevention</u><br>Human Services, Substance Abuse and Mental<br>Health  | 38917          | R523-8            | NEW    | 01/06/2015        | 2014-22/33             |
| <u>evidence-based prevention workgroup</u><br>Human Services, Substance Abuse and Mental<br>Health                              | 38917          | R523-8            | NEW    | 01/06/2015        | 2014-22/33             |
| <u>food inspections</u><br>Agriculture and Food, Animal Industry  | 39073          | R58-11            | 5YR    | 01/13/2015        | Not Printed            |
| <u>halfway houses</u><br>Corrections, Administration  | 39060          | R251-303          | 5YR    | 01/08/2015        | Not Printed            |
| <u>insurance</u><br>Insurance, Administration   | 39030          | R590-173          | NSC    | 01/15/2015        | Not Printed            |

|   |                                  |                                      |                          |  |  |
|---|----------------------------------|--------------------------------------|--------------------------|--|--|
| <u>insurance continuing education</u><br>Insurance, Administration  | 38934                            | R590-142                             | AMD                      | 01/12/2015   | 2014-23/25   |
| <u>insurance law</u><br>Insurance, Administration   | 39029<br>39038                   | R590-130-7<br>R590-194               | NSC<br>NSC               | 01/15/2015<br>01/15/2015                             | Not Printed<br>Not Printed                               |
| <u>insurance licensing requirements</u><br>Insurance, Administration  | 38935                            | R590-244                             | AMD                      | 01/12/2015   | 2014-23/31   |
| <u>interpreters</u><br>Education, Rehabilitation  | 38930                            | R280-203                             | AMD                      | 01/02/2015   | 2014-22/22   |
| <u>jail reimbursement</u><br>Governor, Criminal and Juvenile Justice (State Commission on)                                      | 39053                            | R356-1                               | EXT                      | 01/02/2015   | Not Printed  |
| <u>Judicial Conduct Commission</u><br>Judicial Conduct Commission, Administration   | 39048<br>39049<br>39050<br>39051 | R595-1<br>R595-2<br>R595-3<br>R595-4 | 5YR<br>5YR<br>5YR<br>5YR | 01/02/2015<br>01/02/2015<br>01/02/2015<br>01/02/2015 | Not Printed<br>Not Printed<br>Not Printed<br>Not Printed |
| <u>licenses</u><br>Public Safety, Criminal Investigations and Technical Services, Criminal Identification                       | 39058                            | R722-330                             | 5YR                      | 01/07/2015   | Not Printed  |
| <u>licensing</u><br>Commerce, Occupational and Professional Licensing   | 39056                            | R156-17b                             | 5YR                      | 01/05/2015   | Not Printed  |
| <u>life insurance filings</u><br>Insurance, Administration  | 39031                            | R590-226-14                          | NSC                      | 01/15/2015   | Not Printed  |
| <u>lifeline rates</u><br>Public Service Commission, Administration  | 38936                            | R746-341-5                           | AMD                      | 01/07/2015   | 2014-23/43   |
| <u>livestock</u><br>Agriculture and Food, Animal Industry   | 39075<br>39073                   | R58-7<br>R58-11                      | 5YR<br>5YR               | 01/13/2015<br>01/13/2015                             | Not Printed<br>Not Printed                               |
| <u>Medicaid</u><br>Health, Health Care Financing, Coverage and Reimbursement Policy   | 38952                            | R414-11                              | AMD                      | 01/13/2015   | 2014-23/22   |
| <u>municipalities</u><br>Governor, Energy Development (Office of)   | 38931                            | R362-3                               | AMD                      | 01/07/2015   | 2014-22/24   |
| <u>pharmacies</u><br>Commerce, Occupational and Professional Licensing  | 39056                            | R156-17b                             | 5YR                      | 01/05/2015   | Not Printed  |
| <u>pharmacists</u><br>Commerce, Occupational and Professional Licensing   | 39056                            | R156-17b                             | 5YR                      | 01/05/2015   | Not Printed  |
| <u>poultry</u><br>Agriculture and Food, Animal Industry   | 39073                            | R58-11                               | 5YR                      | 01/13/2015   | Not Printed  |
| <u>private investigators</u><br>Public Safety, Criminal Investigations and Technical Services, Criminal Identification          | 39058                            | R722-330                             | 5YR                      | 01/07/2015   | Not Printed  |
| <u>private investigators licenses</u><br>Public Safety, Criminal Investigations and Technical Services, Criminal Identification | 38947                            | R722-330                             | AMD                      | 01/07/2015   | 2014-23/40   |
| <u>records</u><br>Education, Administration   | 38956                            | R277-487                             | AMD                      | 01/07/2015   | 2014-23/6  |

RULES INDEX

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| <u>resorts</u>  |       |            |     |            |             |  |
| Alcoholic Beverage Control, Administration                    | 39059 | R81-4E     | 5YR | 01/08/2015 | Not Printed |  |
| <u>rules and procedures</u>                                   |       |            |     |            |             |  |
| Public Service Commission, Administration                     | 38936 | R746-341-5 | AMD | 01/07/2015 | 2014-23/43  |  |
| <u>school enrollment</u>                                      |       |            |     |            |             |  |
| Education, Administration                                     | 39080 | R277-419-9 | EMR | 01/15/2015 | Not Printed |  |
| <u>schools</u>  |       |            |     |            |             |  |
| Governor, Energy Development (Office of)                      | 38931 | R362-3     | AMD | 01/07/2015 | 2014-22/24  |  |
| <u>sharing</u>  |       |            |     |            |             |  |
| Education, Administration                                     | 39077 | R277-111   | 5YR | 01/15/2015 | Not Printed |  |
| <u>slaughter</u>  |       |            |     |            |             |  |
| Agriculture and Food, Animal Industry                         | 39073 | R58-11     | 5YR | 01/13/2015 | Not Printed |  |
| <u>state parole inmates</u>                                   |       |            |     |            |             |  |
| Governor, Criminal and Juvenile Justice (State Commission on) | 39053 | R356-1     | EXT | 01/02/2015 | Not Printed |  |
| <u>state probationary inmates</u>                             |       |            |     |            |             |  |
| Governor, Criminal and Juvenile Justice (State Commission on) | 39053 | R356-1     | EXT | 01/02/2015 | Not Printed |  |
| <u>statewide registry</u>                                     |       |            |     |            |             |  |
| Human Services, Substance Abuse and Mental Health             | 38917 | R523-8     | NEW | 01/06/2015 | 2014-22/33  |  |
| <u>students</u>   |       |            |     |            |             |  |
| Education, Administration                                     | 38956 | R277-487   | AMD | 01/07/2015 | 2014-23/6   |  |
| <u>telecommunications</u>                                     |       |            |     |            |             |  |
| Public Service Commission, Administration                     | 38936 | R746-341-5 | AMD | 01/07/2015 | 2014-23/43  |  |
| <u>telephones</u>   |       |            |     |            |             |  |
| Public Service Commission, Administration                     | 38936 | R746-341-5 | AMD | 01/07/2015 | 2014-23/43  |  |
| <u>turkey</u>   |       |            |     |            |             |  |
| Natural Resources, Wildlife Resources                         | 38949 | R657-69    | AMD | 01/08/2015 | 2014-23/39  |  |
| <u>wildlife</u>   |       |            |     |            |             |  |
| Natural Resources, Wildlife Resources                         | 38949 | R657-69    | AMD | 01/08/2015 | 2014-23/39  |  |