

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed April 17, 2001, 12:00 a.m. through May 1, 2001, 11:59 p.m.

Number 2001-10  
May 15, 2001

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Nancy L. Lancaster, Editor

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

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

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Bulletin* and *Digest* are printed and distributed semi-monthly by Legislative Printing. Annual subscription rates (24 issues) are \$174 for the *Bulletin* and \$48 for the *Digest*. Inquiries concerning subscription, billing, or changes of address should be addressed to:

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

ISSN 0882-4738



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# EDITOR'S NOTES

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## RULEMAKING LEGISLATION EFFECTIVE MAY 1, 2001

UTAH CODE ANN. Section 63-46a-11.5 provides that "every [administrative] rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature." The statute requires that "the [Legislature's] Administrative Rules Review Committee shall have omnibus legislation prepared for consideration by the Legislature during its annual general session." The form of the legislation is a statement that all administrative rules are reauthorized, followed by an exception list of administrative rules, or portions of administrative rules, that are not reauthorized.

During the 2001 General Session, Rep. David Ure sponsored House Bill (H.B.) 37 entitled "Reauthorization of Administrative Rules." This bill reauthorized all administrative rules except Subsections R156-55b-102(2), and R156-55C-102(3) from the Department of Commerce, Division of Occupational and Professional Licensing. These rules regulate electricians and plumbers, respectively.

The effective date of H.B. 37 was May 1, 2001. In anticipation, the Division of Occupational and Professional Licensing made effective its previously proposed rules published in the January 1, 2001, issue of the *Utah State Bulletin* (DAR No. 23374 and DAR No. 23375), which eliminated the two subsections. These proposed rules were made effective April 30, 2001. Therefore, the Division of Administrative Rules did not need to take action pursuant to H.B. 37.

The enrolled version of H.B. 37 was published in the March 15, 2001, issue of the *Utah State Bulletin*. A copy of the enrolled bill may also be obtained from <http://www.le.state.ut.us/~2001/htmldoc/hbillhtm/HB0037.htm> or from the Office of Legislative Printing, 419 State Capitol, Salt Lake City, UT 84114, (801) 538-1103. The notices of effective date for the rules referred to above appear in this, the May 15, 2001, issue of the *Utah State Bulletin*.

*If you have any questions regarding H.B. 37 or the reauthorization process, please contact Kenneth A. Hansen, Director, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007, phone: (801) 538-3764, FAX: (801) 538-1773, or Internet E-mail: [khansen@das.state.ut.us](mailto:khansen@das.state.ut.us).*

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## 2001 EDITION OF THE UTAH ADMINISTRATIVE CODE NOW AVAILABLE

The Division of Administrative Rules is delighted to announce the 2001 edition of the *Utah Administrative Code (Code)*.

This edition of the *Code* provides many features that make it an invaluable reference tool. History notes, case law annotations, and Shepard citations are included, as well as the full text of all the administrative rules of Utah, but presented in a format that takes up less than one third the shelf-space of the 1995 edition.

The *Code* is presented in a softbound set of ten volumes: nine volumes of rule and annotation text, plus one volume of tables and index. More and smaller volumes mean a *Code* that is more accessible. Subscribers will be able to either purchase the entire *Code*, or only those volumes that are needed.

Relying only on annual replacements of the *Code* would render it obsolete very shortly. That is why the *Code* will be supplemented in print at mid-year. In addition, the *Code* is part of the *Law on Disc for Utah* product, which is updated every two months. This CD-ROM product contains all the materials available in the print *Code*, as well as the added benefits of hypertext linking and sophisticated search capabilities.

Contact LEXIS Publishing for ordering information. Call toll-free at (800) 833-9844; fax toll-free at (800) 643-1280; or send E-mail to: [customer.support@bender.com](mailto:customer.support@bender.com). State agencies may purchase the *Code* under statewide contract PD-934.

**The Special Notices Section Begins on the Following Page**



# SPECIAL NOTICES

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## DEPARTMENT OF TRANSPORTATION

### PUBLIC NOTICE IMPLEMENTATION OF PERMIT FEES FOR OCCUPYING UDOT'S HIGHWAY RIGHTS-OF-WAY

In accordance with Utah Code Section 72-7-102 and Administrative Rule R930-6, the Utah Department of Transportation (UDOT) will update its permit fees for the accommodation of utilities on highway rights-of-way. This change in permit fees will become effective June 1, 2001.

UDOT has established the following rates:

Non-Construction	\$ 20
Small Projects	\$100
Medium Projects	\$200
Large Projects	\$400
(less than a mile)	

*For additional information or if you have any questions, please call Mr. Orlando Jerez, the Chief Utility/Railroad Engineer for the Department at (801) 965-4176.*

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## DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT COMMUNITY DEVELOPMENT, LIBRARY

### PUBLIC NOTICE OF AVAILABLE UTAH STATE PUBLICATIONS

The Utah State Library Division has made available Utah State Publications List No. 01-09, dated April 27, 2001 (<http://www.state.lib.ut.us/01-09.html>). For a copy of the complete list, contact the Utah State Library Division at: 1950 West 250 North, Suite A, Salt Lake City, UT 84116-7901; phone: (801) 715-6777; or the Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007; phone: (801) 538-3218; FAX: (801) 538-1773; or view them on the World Wide Web at the address above.

**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 new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between April 17, 2001, 12:00 a.m., and May 1, 2001, 11:59 p.m., are included in this, the May 15, 2001, issue of the *Utah State Bulletin*.

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

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., ~~example~~). Rules being repealed are completely struck out. A row of dots in the text (••••) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are 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 June 14, 2001. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through September 12, 2001, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

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

Administrative Services, Finance  
**R25-7**  
 Travel-Related Reimbursements for  
 State Employees

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 23699

FILED: 04/30/2001, 11:18

RECEIVED BY: NL

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule was revised as a result of a division review of mileage rates and of per diem for meals and lodging. The review showed the following: The state's per diem for meals is below the per diem for surrounding states. The lodging per diem is not sufficient for some Utah cities. Fuel costs are rising nationwide. In addition, some form numbers were out of date. We also needed to update Section R25-7-2, Authority and Exemptions.

**SUMMARY OF THE RULE OR CHANGE:** The rule was amended to: change the in-state travel meal per diem to \$30 and the out-of-state travel meal per diem to \$38. Change the lodging per diem for Cedar City, St. George, Park City, Heber City, and Midway. Change the reimbursement rate for private vehicle mileage to 27 cents per mile, or 34-1/2 cents per mile if a state fleet vehicle is not available to the employee. Change the reimbursement rate to 27 cents for a traveler who chooses to drive a privately-owned vehicle instead of flying. Update form numbers for the Travel Reimbursement form. Update Section R25-7-2 to reflect the legislative intent from the 2001 session.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63A-3-107, 2000 Utah Laws 344, and 2001 Utah Laws 334

**ANTICIPATED COST OR SAVINGS TO:**

❖**THE STATE BUDGET:** Amending this rule will result in a cost to the state budget because state agencies will spend more to reimburse some travel expenses. Agencies of the Executive Branch will spend \$4 more for each meal per diem they reimburse; 2 cents more for each private vehicle mile they reimburse; \$10 more per night when they reimburse lodging for Cedar City or St. George; and \$13 more per night when they reimburse lodging for Park City, Heber City, or Midway. The legislative staff, the Judicial Branch, and the Utah System of Higher Education will pay 2 cents more for each personal vehicle mile they reimburse when a fleet vehicle is available to the employee. Because we do not know how many total miles, how many total meals, or how many total nights' lodging in the specified cities agencies will reimburse, we cannot anticipate the aggregate cost to the state budget.

❖**LOCAL GOVERNMENTS:** This rule applies only to state agencies and state employees and, therefore, will have no impact on local government.

❖**OTHER PERSONS:** The amendments to this rule may result in savings to state employees who travel on business. Employees of the Executive Branch who drive a personal vehicle for business will receive 2 cents more per mile driven. Employees who receive the meal per diem will receive \$4 more per day. Employees will receive \$10 more per night for lodging reimbursement for Cedar City or St. George and \$13 more per night for lodging reimbursement for Park City, Heber City, or Midway. Employees of the legislative staff, the Judicial Branch, and the Utah System of Higher Education who choose to drive a personal vehicle when a fleet vehicle is available will receive 2 cents more per mile driven.

Because we do not know how many total miles, how many total meals, or how many total nights' lodging in the specified cities employees will be reimbursed for, we cannot anticipate the aggregate savings to employees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs associated with the revisions to Rule R25-7.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Amendments to Rule R25-7 apply only to state agencies and state employees (including legislative staff, the Judicial Branch, and the Utah System of Higher Education) and have no impact on businesses. Raylene G. Ireland, Executive Director

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

Administrative Services  
 Finance  
 2110 State Office Building  
 450 North Main State  
 Salt Lake City, UT 84114-1201, or  
 at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Teddy Cramer at the above address, by phone at (801) 538-3450, by FAX at (801) 538-3244, or by Internet E-mail at tcramer@fi.state.ut.us.

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001**

**AUTHORIZED BY: Kim S. Thorne, Director**

**R25. Administrative Services, Finance.**

**R25-7. Travel-Related Reimbursements for State Employees.**

**R25-7-1. Purpose.**

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

**R25-7-2. Authority and Exemptions.**

(1) This rule is established pursuant to Section 63A-3-107, which authorizes the Division of Finance to adopt rules covering in-state and out-of-state travel.

(2) Senate Bill 1, Line Item 60 of the 2000 legislative session (2000 Utah Laws 344), as continued by House Bill 1, Item 57 of the 2001 legislative session (2001 Utah Laws 334), contains intent language directing that the mileage reimbursement rate authorized in Section R25-7-10 also be applied to legislative staff, the Judicial Branch and to the Utah System of Higher Education.

.....

**R25-7-6. Reimbursement for Meals.**

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is \$[26]30.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$[5]6.00
Lunch	\$[7]9.00
Dinner	\$[44]15.00
Total	\$[26]30.00

(b) The daily travel meal allowance for out-of-state travel is \$[34]38.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$[8]9.00
Lunch	\$[9]11.00
Dinner	\$[47]18.00
Total	\$[34]38.00

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, and Atlanta), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$50 per day.

(a) The traveler must be entitled to all meals for the day in order to qualify for premium rates for a given day.

(b) The traveler must use the same method of reimbursement for an entire day.

(c) Actual meal cost includes tips.

(d) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the reasonable, actual meal cost, with original receipts.

(a) The traveler may combine the reimbursement methods during a trip; however, he must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day he leaves his home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter a.m. 12:01-6:00 *B, L, D In-State	2nd Quarter a.m. 6:01-noon *L, D	3rd Quarter p.m. 12:01-6:00 *D	4th Quarter p.m. 6:01-midnight *no meals
\$[26]30.00	\$[24]24.00	\$[44]15.00	\$0
Out-of-State \$[34]38.00	\$[26]29.00	\$[47]18.00	\$0

\*B=Breakfast, L=Lunch, D=Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day he returns to his home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter a.m. 12:01-6:00 *no meals In-State	2nd Quarter a.m. 6:01-noon *B	3rd Quarter p.m. 12:01-7:00 *B, L	4th Quarter p.m. 7:01-midnight *B, L, D
\$0	\$[5]6.00	\$[42]15.00	\$[26]30.00
Out-of-State \$0	\$[8]9.00	\$[47]20.00	\$[34]38.00

\*B=Breakfast, L=Lunch, D=Dinner

(7) An employee may be authorized by his Department Director or designee to receive a meal allowance when his destination is at least 100 miles from his home base and he does not stay overnight.

(a) Breakfast is paid when the employee leaves his home base before 6:01 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves his home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves his home base and returns after 7 p.m.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

.....

**R25-7-8. Reimbursement for Lodging.**

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) Lodging is reimbursed for single occupancy only.

(2) For non-conference hotel in-state travel, where the department/traveler makes reservations through the State Travel Agency, the state will reimburse the actual cost up to \$55 per night plus tax except in Moab, Cedar City, St. George, metropolitan Salt Lake City (Draper to Centerville), Ogden city, Park City, Heber City, Midway, and Provo/Orem city. In these areas, the rates are:

(a) Moab, Cedar City, and St. George - \$65 per night plus tax

(b) Metropolitan Salt Lake City (Draper to Centerville), Park City, Heber City, and Midway - \$68 per night plus tax

(c) Ogden city and Provo/Orem city - \$63 per night plus tax

(3) The state will reimburse the actual cost per night plus tax for out-of-state travel where the department/traveler makes reservations through the State Travel Agency.

(4) The same rates apply for in-state travel for stays at a non-conference hotel where the department/traveler makes their own reservations.

(5) For out-of-state travel, the state will reimburse the actual cost up to \$65 per night plus tax.

(6) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51[A]B or FI 51D.

(7) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(8) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) The tissue copy of the MasterCard Corporate charge receipt is not acceptable.

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date of occupancy, amount and date paid, signature of agent, number in the party, and single or double occupancy.

(9) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) \$20 per night with no receipts required or

(ii) Actual cost up to \$30 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(10) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - \$46 per day for lodging and meals. No receipt is required.

**R25-7-9. Reimbursement for Incidentals.**

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips and transportation costs.

(a) Tips for maid service, doormen, and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above \$20.00.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) Parking at the Salt Lake City airport will be reimbursed at a maximum of the airport long-term parking rate with a receipt.

(3) Registration should be paid in advance on a state warrant.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when he arrives, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with him.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls made during stays of five nights or more.

(5) Allowances for personal telephone calls made while out of town on state business overnight will be based on the number of nights away from home.

(a) Four nights or less - actual amount up to \$2.50 per night (documentation is not required for personal phone calls made during stays of four nights or less)

(b) Five to eleven nights - actual amount up to \$20.00

(c) Twelve nights to thirty nights - actual amount up to \$30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to \$18.00 per week will be allowed for trips longer than seven days, beginning after the seventh night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

#### **R25-7-10. Reimbursement for Transportation.**

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(d) In order to preserve insurance coverage, travelers must fly on tickets in their names only.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the airport long-term parking rate.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with prior approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of ~~[25]27~~ cents per mile, or ~~[32-1/2]34-1/2~~ cents per mile if a state fleet vehicle is not available to the employee.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Exceptions must be approved in writing by the Director of Finance.

(e) Mileage will be computed from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) The mileage rate is all-inclusive, and additional expenses such as parking and storage will not be allowed unless approved in writing by the Department Director.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if approved by the Department Director.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the

equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of ~~[25]27~~ cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director.

(i) The airline ticket cost in effect between 15 and 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(c) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(d) These reimbursements are all-inclusive, and additional expenses such as parking and toll fees will not be allowed unless approved in writing by the Department Director.

(e) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(f) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Agency, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the travel agency must be approved in advance by the Department Director.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director that he is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, he must certify the existence of at least \$500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that his insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.

- (d) Reimbursement will be made at 50 cents per mile.
- (e) Mileage calculation is based on road mileage computed from the latest official state road map and is limited to the most economical, usually-traveled route.
- (f) An employee may be reimbursed for rental of the aircraft and purchase of gasoline and oil instead of the amount per mile, with prior approval from the Department Director, when it is cost effective for the state.
- (7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 16 cents per mile.
- (8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Department of Administrative Services, and the Governor is required.

**KEY: air travel, per diem allowance, state employees, transportation**

~~September 2, 2000~~ **June 15, 2001** 63A-3-107  
 Notice of Continuation October 30, 1998 63A-3-106  
2000 Utah Laws 344  
2001 Utah Laws 334



**Commerce, Occupational and  
 Professional Licensing**  
**R156-24a**  
**Physical Therapist Practice Act Rules**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 23678  
 FILED: 04/17/2001, 08:19  
 RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Upon counsel from the Assistant Attorney General who represents the Division of Occupational and Professional Licensing (DOPL), DOPL was advised that the section of the rule that permitted foreign-educated applicants to make up any deficiencies in their non-accredited program and become licensed was not consistent with statute, which inconsistency could result in a legal challenge. Currently, a foreign-educated applicant who does not have an accredited physical therapy degree or a physical therapy degree that is determined to be equal to an accredited degree is permitted to make up any coursework and get licensed. This opportunity is not available to U.S. education applicants who do not have an accredited degree in physical therapy. Since foreign educated applicants do not get the humanities, social sciences, and liberal arts in their foreign education program, it does seem reasonable to permit the applicant to make up those deficiencies, but not deficiencies in the core curriculum. The applicant who has deficiencies in the core curriculum would now be required to matriculate into and earn a degree

from an approved physical therapy curriculum to qualify for licensure. Physical therapy assistants are exempt from licensure if they complete an approved education program. Changes made in the proposed rule further clarify what education programs are accepted to qualify for the exemption.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-24a-102(1), the publication entitled "A Course Work Evaluation Tool For Persons Who Received Their Physical Therapy Education Outside the United States" was updated to the March 1999 edition. In Section R156-24a-302a - Education Requirements: in Subsection R156-24a-302a(1), added that a school of physical therapy shall be accredited by Commission on Accreditation in Physical Therapy Education (CAPTE) at the time of graduation. In Subsection R156-24a-302(2), added that a physical therapist assistant shall complete one of the following CAPTE accredited physical therapy education programs: either an associate's, bachelor's, or master's program; or a foreign physical therapy education program approved by the division in collaboration with the board, which program is equivalent to a program set forth in Subsection R156-24a-302a(2)(a). In Subsection R156-24a-302a(3), added that only educational deficiencies in the humanities, social sciences and liberal arts may be corrected with respect to foreign educated physical therapists. In Section R156-24a-302b - Examination Requirements: in Subsection R156-24a-302b(1)(a), the numerical passing score of 600 on the Federation of State Licensing Branch of Physical Therapy (FSBPT) National Physical Therapy Examination was deleted. In Subsection R156-24a-302b(2), changes were made that an applicant must have completed the education requirements set forth in Subsection R156-24a-302a(1) or R156-24-302b(3), or be enrolled in the final semester of a CAPTE-accredited program, in order to be eligible to sit for the FSBPT National Physical Therapy Examination.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-24a-101 and Subsection 58-1-106(1)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Updates the publication entitled "A Course Work Evaluation Tool For Persons Who Received Their Physical Therapy Education Outside the United States" to the March 1999 edition.

- ANTICIPATED COST OR SAVINGS TO:
- ❖THE STATE BUDGET: The Division will incur minimal costs, approximately \$50, to reprint the rule once these proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
  - ❖LOCAL GOVERNMENTS: Proposed rule does not apply to local governments.
  - ❖OTHER PERSONS: The Division receives approximately six applications per year from foreign-educated physical therapy applicants who have not completed an accredited physical therapy education program or have not completed a physical therapy education program determined to be equal to an accredited program. This rule would require these applicants to matriculate into an approved program and complete that

program in order to meet the education requirements. The approximate cost per applicant to complete the program would be approximately \$12,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division receives approximately six applications per year from foreign-educated physical therapy applicants who have not completed an accredited physical therapy education program or have not completed a physical therapy education program determined to be equal to an accredited program. This rule would require these applicants to matriculate into an approved program and complete that program in order to meet the education requirements. The approximate cost per applicant to complete the program would be approximately \$12,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this amendment is to remove an inconsistency between the licensing act and the rule. Under the current rule, a foreign-educated applicant is permitted to make up course deficiencies from his or her non-accredited educational program and become licensed. This same opportunity is not extended to U.S. applicants without a degree in physical therapy from a CAPTE-accredited program, creating a potential equal protection issue due to the favoring of foreign-educated applicants. There will be no fiscal impact upon licensed practitioners, but foreign applicants (approximately six per year) would have to expend up to \$12,000 each to meet the education requirements for licensure. Ted Boyer, Jr., Executive Director

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

Commerce  
Occupational and Professional Licensing  
Fourth Floor, Heber M. Wells Building  
160 East 300 South  
PO Box 146741  
Salt Lake City, UT 84114-6741, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

David Fairhurst at the above address, by phone at (801) 530-6621, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.dfairhur@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/12/2001, 9:00 a.m., 160 East 300 South, Conference Room 428 (Fourth Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: J. Craig Jackson, Director

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

### **R156-24a. Physical Therapist Practice Act Rules.**

#### **R156-24a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 24a, as used in Title 58, Chapters 1 and 24a or these rules:

(1) "Approved course work evaluation tool", as used in Subsection R156-24a-302a(3), means the FSBPT's ~~June 1997~~ March 1999 revised publication entitled "A Course Work Evaluation Tool For Persons Who Received Their Physical Therapy Education Outside the United States", which is hereby adopted and incorporated by reference.

(2) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(3) "FSBPT" means the Federation of State Licensing Boards of Physical Therapy.

(4) "Joint mobilization", as used in Subsection 58-24a-104(2)(b), means passive and active movements of the joints of a patient, including the spine, to increase the mobility of joint systems; but, does not include specific vertebral adjustment and manipulation of the articulation of the spine by those methods or techniques which are generally recognized as the classic practice of chiropractic.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 24a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-24a-502.

#### **R156-24a-302a. Qualifications for Licensure - Education Requirements.**

(1) In accordance with Subsection 58-24a-109(2)(b), the accredited school of physical therapy for a physical therapist shall be accredited by CAPTE at the time of graduation.

(2) In accordance with Subsection 58-24a-102(5), a physical therapist assistant shall complete one of the following CAPTE accredited physical therapy education programs:

(a) an associates, bachelors, or masters program; or

(b) a foreign physical therapy education program approved by the division in collaboration with the board, which program is equivalent to a program set forth in Subsection R156-24a-302a(2)(a)[a physical therapy assistant program accredited by CAPTE].

(3) In accordance with Section 58-1-302, an applicant who has been licensed in a foreign country whose degree was not accredited by CAPTE shall document that his education is equal to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy which shall use the approved course work evaluation tool. Only educational[~~Educational~~] deficiencies in the humanities, social sciences and liberal arts may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas.

#### **R156-24a-302b. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsection 58-24a-109(2), the examination which shall be required for each applicant for licensure, including endorsement applicants, as a physical therapist shall consist of the following:



(a) the FSBPT's National Physical Therapy Examination with a passing score [~~of at least 600~~] as established by the FSBPT; and  
(b) the Utah Physical Therapy Law Examination with a passing score of at least 75%.

(2) An applicant must have [~~successfully~~] completed the education requirements set forth in Subsection R156-24a-302a(1) or (3), or be enrolled in the final semester of a CAPTE accredited program, in order to be [~~all academic and associated clinical requirements before being~~] eligible to sit for the examination[s] required for Utah licensure as set forth in Subsection R156-24a-302b(1)(a).

**KEY: licensing, physical therapy**  
**[~~March 9, 1999~~]2001**  
**Notice of Continuation May 12, 1997**

**58-24a-101**  
**58-1-106(1)**  
**58-1-202(1)**



Commerce, Occupational and  
Professional Licensing  
**R156-60c**  
Professional Counselor Licensing Act  
Rules

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 23679  
FILED: 04/17/2001, 08:19  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of changes made by the 2001 Legislature to the Mental Health Professional Practice Act, Title 58, Chapter 60 (see H.B. 73), changes need to be made in this rule.

(DAR Note: H.B. 73 can be found at 2001 Utah Laws 281 and was effective April 30, 2001.)

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, references to the statute have been updated as a result of the statute changes creating new paragraph numbering. In Section R156-60a-304 with respect to continuing education requirements, added that the continuing education requirements also apply to a certified professional counselor intern. The above-identified statute changes created a new type of license classification for a certified professional counselor intern in Title 58, Chapter 60. In Section R156-60c-402, Subsection R156-60c-402(10), added that a supervisor of professional counselor and mental health therapy training must assure each supervisee is licensed as a certified professional counselor intern.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-60-401, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Division will incur minimal costs, approximately \$30, to reprint this rule once the proposed changes are made effective. Any costs incurred will be absorbed in the Division's current budget. The Division anticipates no additional costs to the state budget as these proposed changes simply reflect the changes made in the statute. Any cost of changes made in the statute were reflected in the fiscal note that was attached to the statute changes.

❖LOCAL GOVERNMENTS: Proposed rule does not apply to local governments.

❖OTHER PERSONS: The Division is unable to determine how many applicants will apply for licensure as a certified professional counselor intern. This new classification of licensees will be required to obtain 40 hours of continuing education in each two year period. The Division anticipates the cost to obtain the 40 hours of continuing education to range from \$200 to \$1,000 per licensee every 2 years.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division anticipates the cost to obtain the 40 hours of continuing professional education for a certified professional counselor intern to range from \$200 to \$1,000 per licensee every 2 years.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT

THE RULE MAY HAVE ON BUSINESSES: The purpose of this filing relates to: updating references to statute that has undergone revised numbering for reference purposes, and ensuring that continuing education requirements for a new licensure category created for a certified professional counselor intern will be consistent with continuing education requirements as is found in other licensing categories. As to the state budget, the proposed changes in the rules would appear to have very minimal or no cost impact at all. There will also be no cost impact on local government. As to particular individuals affected by the changes in the rules, the exact fiscal impact is unknown. Under the new license classification created, those obtaining the license will be required to obtain 40 hours of continuing education every two years and the cost of obtaining such continuing education may range from \$200 to \$1,000 per licensee. Ted Boyer, Jr., Executive Director

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

Commerce  
Occupational and Professional Licensing  
Fourth Floor, Heber M. Wells Building  
160 East 300 South  
PO Box 146741  
Salt Lake City, UT 84114-6741, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dan S. Jones at the above address, by phone at (801) 530-6720, by FAX at (801) 530-6511, or by Internet E-mail at [brdopl.dsjones@email.state.ut.us](mailto:brdopl.dsjones@email.state.ut.us).

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001; OR ATTENDING A PUBLIC

HEARING SCHEDULED FOR 06/13/2001, 10:00 a.m., 160 East 300 South, Conference Room 457 (Fourth Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-60c. Professional Counselor Licensing Act Rules.**  
**R156-60c-302a. Qualifications for Licensure - Education Requirements.**

(1) The recognized accredited institution of higher education in Subsection 58-60-405~~(4)~~(1)(d) is one which is accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education.

(2) The core curriculum in Subsection 58-60-405~~(4)(a)~~(1)(d) shall consist of the following courses:

(a) a minimum of two semester or three quarter hours shall be in ethical standards, issues, behavior and decision-making;

(b) a minimum of two semester or three quarter hours shall be in professional roles and functions, trends and history, professional preparation standards and credentialing;

(c) a minimum of two semester or three quarter hours shall be in individual theory;

(d) a minimum of two semester or three quarter hours shall be in group theory;

(e) a minimum of six semester or nine quarter hours shall be in human growth and development. Examples are:

- (i) physical, social and psychosocial development;
- (ii) personality development;
- (iii) learning theory and cognitive development;
- (iv) emotional development;
- (v) life-span development;
- (vi) enhancing wellness;
- (vii) human sexuality; and
- (viii) career development;

(f) a minimum of three semester or five quarter hours shall be in cultural foundations. Examples are:

- (i) human diversity;
- (ii) multicultural issues and trends;
- (iii) gender issues;
- (iv) exceptionality;
- (v) disabilities;
- (vi) aging; and
- (vii) discrimination;

(g) a minimum of six semester or nine quarter hours shall be in the application of individual and group therapy and other therapeutic methods and interventions. Examples are:

- (i) building, maintaining and terminating relationships;
- (ii) solution-focused and brief therapy;
- (iii) crisis intervention;
- (iv) prevention of mental illness;
- (v) treatment of specific syndromes;
- (vi) case conceptualization;
- (vii) referral, supportive and follow-up services; and
- (viii) lab not to exceed four semester or six quarter hours;

(h) a minimum of two semester or three quarter hours shall be in psychopathology and DSM classification;

(i) a minimum of two semester or three quarter hours shall be in dysfunctional behaviors. Examples are:

- (i) addictions;
- (ii) substance abuse;
- (iii) cognitive dysfunction;
- (iv) sexual dysfunction; and
- (v) abuse and violence;

(j) a minimum of two semester or three quarter hours shall be in a foundation course in test and measurement theory;

(k) a minimum of two semester or three quarter hours shall be in an advanced course in assessment of mental status;

(l) a minimum of three semester or five quarter hours shall be in research and evaluation. This shall not include a thesis, dissertation, or project, but may include:

- (i) statistics;
- (ii) research methods, qualitative and quantitative;
- (iii) use and interpretation of research data;
- (iv) evaluation of client change; and
- (v) program evaluation;

(m) a minimum of three semester or five quarter hours of practicum as defined in Subsection R156-60c-102(2);

(n) a minimum of six semester or nine quarter hours of internship as defined in Subsection R156-60c-102(1); and

(o) a minimum of 16 semester or 23 quarter hours of course work in the behavioral sciences. No more than six semester or nine quarter hours of credit for thesis, dissertation or project hours shall be counted toward the required core curriculum hours in this subsection. These hours are required beginning January 1, 1997.

(3) The supplemental course work shall consist of formal graduate level work meeting the requirements of Subsections (1) and (2) in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the board.

(4) Professional counseling course work required in the core curriculum pursuant to Subsection 58-60-405~~(4)(a)~~(1)(d) may be completed after the applicant received their degree; however, pursuant to Subsection 58-60-405~~(5)~~(1)(f), the experience required must be obtained after the complete education requirement has been met.

**R156-60c-302b. Qualifications for Licensure - Experience Requirements.**

(1) The professional counselor and mental health therapy training qualifying an applicant for licensure as a professional counselor under Subsections 58-60-405~~(5)~~ and ~~(6)~~(1)(e) and (f) shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy under the supervision of a qualified professional counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist; and

(c) be completed under a program of supervision by a mental health therapist meeting the requirements under Sections R156-60c-401 and R156-60c-402.

(4) An applicant for licensure as a professional counselor, who is not seeking licensure by endorsement based upon licensure in

another jurisdiction, who has completed all or part of the professional counselor and mental health therapy training requirements under Subsection (3) outside the state may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-405~~(5) and (6)~~(1)(e) and (f), and Subsections R156-60c-302b(3). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this Subsection.

**R156-60c-302c. Qualifications for Licensure - Examination Requirements.**

(1) An applicant for licensure as a professional counselor under Subsection 58-60-405~~(7)~~(1)(g) must pass the following examinations:

- (a) the Utah Professional Counselor Law, Rules and Ethics Examination;
- (b) the National Counseling Examination of the National Board for Certified Counselors; and
- (c) the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors.

**R156-60c-304. Continuing Education.**

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 4, as a professional counselor and certified professional counselor intern.

(2) During each two year period commencing September 30th of each even numbered year, a professional counselor or certified professional counselor intern shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice.

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

(4) Qualified professional education under this Section shall:

- (a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a mental health therapist professional counselor;
- (b) be relevant to the licensee's professional practice;
- (c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;
- (d) be prepared and presented by individuals who are qualified by education, training, and experience; and
- (e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for professional education shall be recognized in accordance with the following:

- (a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 10 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing professional education courses in the field of mental health therapy professional counseling, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification; and

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist professional counselor.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this Section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this Section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

**R156-60c-401. Requirements to be Qualified as a Professional Counselor Training Supervisor and Mental Health Therapist Training Supervisor.**

In accordance with Subsections 58-60-405~~(5) and (6)~~(1)(e) and (f), in order for an individual to be qualified as a professional counselor training supervisor or mental health therapist trainer, the individual shall have the following qualifications:

(1) be currently licensed in good standing in a profession set forth for a supervisor under Subsection 58-60-405~~(5)~~(1)(e) in the state in which the supervised training is being performed; and

(2) have engaged in lawful practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years prior to beginning supervision activities.

**R156-60c-402. Duties and Responsibilities of a Supervisor of Professional Counselor and Mental Health Therapy Training.**

The duties and responsibilities of a licensee providing supervision to an individual completing supervised professional counselor and mental health therapy training requirements for licensure as a professional counselor are to:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

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

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

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

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

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of professional counseling and report violations to the division;

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

(8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised professional counselor and mental health therapy training, including the supervisor's evaluation of the supervisee's competence in the practice of professional counseling and mental health therapy;

(9) supervise not more than three supervisees at any given time unless approved by the board and division; and

(10) assure each supervisee [~~has met the educational requirement as outlined in Subsection 58-60-405(4) and R156-60c-302a~~] is licensed as a certified professional counselor intern prior to beginning the supervised training of the supervisee as required under Subsection 58-60-405[(5)](1)(e) and (f).

**KEY: licensing, counselors, mental health, professional counselors\***

~~[October 7, 1999]~~2001 **58-60-401**  
 Notice of Continuation April 6, 2000 **58-1-106(1)**  
**58-1-202(1)**

◆ ————— ◆

**Economic Development, Community  
 Development, Library  
 R223-2  
 Public Library Online Access for  
 Eligibility to Receive Public Funds**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 23694  
 FILED: 04/24/2001, 10:22  
 RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule are to avoid redundancy and improve clarity given the passage of H.B. 131 by the 2001 Legislature. These changes will eliminate duplicate language found in this rule and Section 9-7-101 and Section 9-7-216.

(DAR Note: H.B. 131 is found at 2001 Utah Laws 172 and will be effective July 1, 2001.)

SUMMARY OF THE RULE OR CHANGE: Subsection R223-2-1(1): add "and 9-7-216"; delete "defining standards" and replace with "determining"; delete "online access policies" and add "eligibility to receive state funds." Subsection R223-2-1(2): delete "local"; delete "restricts access by minors to Internet or online sites containing obscene material and that meets the Public Library Online Access Policy Standard defined by this rule" and replace with "meets the process and content

standards defined in 9-7-216." Delete Subsection R223-2-2(1). Delete Subsection R223-2-2(4). Delete entire section (Section R223-2-3) and renumber the rest of the sections.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 9-7-213, 9-7-215, and 9-7-216

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no known incremental increases to the budget. Changes to the rule are primarily to eliminate duplication of language in this rule and Sections 9-7-101 and 9-7-216.

❖LOCAL GOVERNMENTS: There are no known incremental increases to the budget. Changes to the rule are primarily to eliminate duplication of language in this rule and Sections 9-7-101 and 9-7-216.

❖OTHER PERSONS: Because this rule is directed to public libraries offering public access to the Internet and other online sites, there is no anticipated cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no incremental costs involved with the changes to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule will not have fiscal impact on businesses.

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

Economic Development  
 Community Development, Library  
 Suite A  
 250 North 1950 West  
 Salt Lake City, UT 84116-7901, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Barbara Forbush at the above address, by phone at (801) 715-6769, by FAX at (801) 715-6767, or by Internet E-mail at bforbush@state.lib.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: Amy Owen, Director

**R223. Community and Economic Development, Community Development, State Library.**

**R223-2. Public Library Online Access for Eligibility to Receive Public Funds.**

**R223-2-1. Authority and Policy.**

(1) The Utah State Library Division hereby adopts this rule in accordance with Sections 63-46a-1 et seq., and 9-7-213, ~~and~~ 9-7-215, ~~and 9-7-216~~ for the purpose of ~~determining~~ [defining standards for] public library eligibility to receive state funds ~~online access policies~~].

(2) For a public library that offers public access to the Internet to retain eligibility to receive state funds, the~~[local]~~ Library Board shall adopt and enforce a Policy that ~~[restricts access by minors to Internet or online sites containing obscene material and that meets the Public Library Online Access Policy Standard defined by this rule]~~meets the process and content standards defined in 9-7-216.

**R223-2-2. Definitions.**

In addition to the terms defined in Section 9-7-101:[

~~— (1) "Library Board" means the library board of directors appointed locally (as authorized by Sections 9-7-402 or 9-7-502) and which exercises general policy authority for library services within a city or county of the state of Utah, regardless of the title by which it is known locally:]~~

~~(2) "Minor" means any individual younger than 18 years of age.~~

~~(3) "Obscene" means materials meeting the standard established by the U.S. Supreme Court in Miller v. California, 413 U.S. 15 (1973) whereby an affirmative answer is required to each of the three following questions:~~

~~(a) whether "the average person applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest;~~

~~(b) whether the work depicts or describes, in a patently offensive way, sexual content specifically defined by the applicable state law; and~~

~~(c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.[~~

~~— (4) "Policy" means the Public Library Online Access Policy adopted by a Library Board to meet the requirements of this rule and Sections 9-7-213 and 9-7-215:]~~

**[R223-2-3. Standards:**

~~— (1) Process Standard:~~

~~— (a) Each Library's Policy shall be developed under the direction of the Library Board, adopted in an open meeting, and have an effective date. The Library Board shall review such a policy at least every three years, and a footnote shall be added to the policy indicating the effective date of the last review:~~

~~— (b) Notice of the availability of the Policy shall be posted in a conspicuous place within the library for all patrons to observe. The Library Board may issue any other public notice it deems appropriate to inform the community about the Policy.~~

~~— (2) Content Standard:~~

~~— (a) The Policy shall state that it restricts access by minors to Internet or online sites that contain obscene material and shall state how the Library Board intends to meet the requirements of Section 9-7-215.~~

~~— (b) The Policy shall inform patrons that administrative procedures and guidelines for the staff to follow in enforcing the policy have been established and are available at the library.~~

~~— (c) The Policy shall inform patrons that procedures to handle complaints about the Policy or its enforcement have been established and are available at the library:]~~

**R223-2-[4]3. Reporting.**

(1) Each Library Board shall submit a copy of its Policy to the Director of the State Library Division no later than July 1, 2001, accompanied by a letter signed by the Library Director and Library

Board Chair affirming that the Policy was adopted in an open meeting, that notice of the Policy's availability has been posted in a conspicuous place within the library, and that the Policy is intended to meet the provisions of this rule and Sections 9-7-213 and 9-7-215.

(2) All documents submitted shall be classified as public records in accordance with the Government Records Access and Management Act (Title 63, Chapter 2).

**R223-2-[5]4. State Library Administrative Procedures.**

(1) The State Library Division shall review all public library policies received by July 1, 2001, for compliance with this rule.

(2) The Director of the State Library Division shall issue notices of compliance or non-compliance within 30 days following the receipt of the policy. Any library not submitting a policy shall receive a notice of non-compliance.

(3) Appeals to the notice of non-compliance shall be submitted in writing, within 30 days of the date of the notice, to the Executive Director of the Department of Community and Economic Development, who shall respond within 30 days.

(4) A public library receiving a notice of non-compliance shall not be eligible to receive state funds until the condition(s) upon which the notice of non-compliance is based are corrected and a notice of compliance is received.

(5) A public library in compliance shall be eligible to receive state funds in state fiscal year 2002 and subsequent years, as long as a current Policy is resubmitted to the State Library Division no later than July 1, 2004, and every three years thereafter.

(6) A public library otherwise in compliance with the provisions of this rule shall not lose eligibility to receive state funds unless a complaint submitted to the Library Board under its Policy results in a ruling from a court of law that a minor has accessed obscene material expressly due to insufficient enforcement of the Policy by the local library.

**KEY: libraries, public library, Internet access\***

**[February 15,]2001**

**9-7-213**

**9-7-215**

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

**R414-309**

**Utah Medical Assistance Program  
(UMAP)**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 23702

FILED: 04/30/2001, 12:58

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The funding for UMAP has been restored by the legislature. The

intent of this rule change is to restore some of the previous benefits and modify or eliminate some of the more restrictive eligibility requirements that were implemented as cost saving measures due to lack of funding for UMAP.

**SUMMARY OF THE RULE OR CHANGE:** Restore eligibility for full-time students. Restore eligibility for spouses of full-time students. Eliminate the requirement that to become income eligible, an individual's averaged monthly income from the 12 months prior to the month of application, as well as the countable income for the month of application, and any ongoing months be at or below the UMAP Basic Maintenance Standard (BMS). Restore the provision that allows persons whose countable income exceeds the UMAP BMS by \$50 or less to spenddown. Allow UMAP coverage to begin up to four days prior to the date of application.

**(DAR Note:** A corresponding 120-day (emergency) rule that is effective as of May 1, 2001, is under DAR No. 23700 in this *Bulletin*.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 26-1-5 and 26-18-10

**ANTICIPATED COST OR SAVINGS TO:**

❖**THE STATE BUDGET:** Anticipated aggregate cost to the Department is \$115,000, but this is covered by the restoration of funding by the legislature.

❖**LOCAL GOVERNMENTS:** This rule does not apply to local government, so there is no budget impact.

❖**OTHER PERSONS:** There will be an increase in the number of eligible individuals as a result of restoration of funding by the legislature.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be an increase in the number of eligible individuals as a result of restoration of funding by the legislature.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These rule changes will have a positive fiscal impact on regulated businesses, made possible by a new ongoing appropriation from the Legislature. Rod L. Betit

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

Health  
Health Care Financing,  
Coverage and Reimbursement Policy  
Cannon Health Building  
288 North 1460 West  
PO Box 143102  
Salt Lake City, UT 84114-3102, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Connie Christensen at the above address, by phone at (801) 538-9349, by FAX at (801) 538-6952, or by Internet E-mail at [christie@email.stste.ut.us](mailto:christie@email.stste.ut.us).

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.**

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

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

**R414-309. Utah Medical Assistance Program (UMAP).**

**R414-309-1. UMAP General Eligibility Requirements.**

(1) The Department complies with Section 26-18-10. The Department adopts Pub. L. No. 105-33(5302)(c)(2) and (3), (5306)(d), (5307)(a), (5563), (5566), and (5571), which is incorporated by reference.

(2) The definitions in R414-1 and R414-301 apply to this rule. In addition, the following definitions apply to this section:

(a) "Unearned income" means cash received by an individual for which the individual performs no service.

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

(c) A "bona fide" loan means a loan that has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.

(d) "Disregard" means a portion of income that is not counted.

(e) "Full-time student" means a person who is enrolled in any educational program, other than high school, and is attending full time as defined by that educational program.

(3) Conditions of eligibility for UMAP:

(a) Medical need is not a requirement for UMAP eligibility.

(b) An individual ineligible for Medicaid because of resources is not eligible for UMAP assistance.

(c) Individuals ineligible for Medicaid because they will not spenddown or because their medical expense is less than the spenddown, are not eligible for UMAP assistance.

(d) ~~Any individual who is a~~ are full-time students ~~is~~ are not eligible for UMAP assistance if the school in which they are enrolled offers any kind of health insurance to the student. ~~The spouse of a full-time student is not eligible for UMAP assistance if the full-time student and his or her spouse are living together or are not legally separated and have been separated for less than six months.]~~

(4) Citizenship requirements for UMAP:

Temporary entrants into the U.S. and those who have no registration card are not eligible for UMAP assistance. To be eligible for UMAP, the individual must be one of the following:

(a) U.S. born or a naturalized citizen;

(b) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply, or who is a member of an Indian tribe as defined in section 4(e) of the Indian Self-determination and Education Assistance Act;

(c) Residents from Freely Associated States;

(d) A qualified alien, as defined in Pub. L. No. 104-193 (431), as amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571) who was admitted into the United States prior to August 22, 1996.

(e) A qualified alien, newly admitted into the United States on or after August 22, 1996, is not eligible for UMAP services for five years from the person's date of entry into the United States, unless the person is:

(i) A refugee admitted under section 207 of the Immigration and Nationality Act;

(ii) An individual granted asylum under section 208 of the Immigration and Nationality Act;

(iii) An individual whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act, (as in effect immediately before the effective date of section 307 of division C of Pub. L. No. 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Pub. L. No. 104-208);

(iv) A Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980;

(v) An Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 100-202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Pub. L. No. 100-461, as amended);

(vi) An honorably discharged veteran from the Armed Forces of the United States, the spouse of a United States veteran, or the unremarried spouse of a deceased United States veteran;

(vii) An individual on active duty in the Armed Forces of the United States or the spouse of such an individual;

(viii) A Hmong or Highland Lao veteran who fought on behalf of the Armed Forces of the United States during the Vietnam conflict who has been lawfully admitted to the United States for permanent residence is considered a veteran for the purpose of determining eligibility.

(5) Residence requirements for UMAP:

To be eligible for UMAP assistance, an individual must be a Utah resident. To be considered a Utah resident, a person must meet one of the following guidelines:

(a) The client must live in Utah for 30 days prior to the need for medical services.

(b) The client must show intent to reside in the state permanently. If a client shows intent to reside in the State permanently, eligibility can begin no earlier than the date the client entered the state.

(c) Any person who is a resident of a prison, jail or halfway house is not eligible for UMAP assistance. A person may qualify in the month in which he enters or leaves a prison, jail or halfway house. The program will not pay for services while the person is in custody. It does not matter if the condition was pre-existing. No payment will be made for any medical problems which arise during the commission of a crime or during an arrest.

(6) All recipients of General Financial Assistance (GA) are eligible for UMAP assistance.

(7) The Department shall determine income eligibility for UMAP as follows:

(a) ~~[At application, the Department shall total the actual countable income received in the 12 months prior to the application month, divide the total by 12 to arrive at a monthly average and compare the monthly average to the UMAP BMS for the household size.]~~ The Department shall budget income and determine the best estimate for the retroactive month, the application month, and any ongoing month in the same manner as described in R414-304-8.

~~(b) Persons whose averaged monthly countable income as determined in R414-309-1(7)(a) exceeds the UMAP BMS are not eligible for UMAP assistance.~~

~~(c) If the averaged monthly countable income as determined in R414-309-1(7)(a) does not exceed the UMAP BMS, the~~

~~Department shall budget income and determine the best estimate for the application month and any ongoing month in the same manner as described in R414-304-7.]~~

~~(d)~~ b The Department shall compare the countable income ~~as determined by R414-309-1(7)(c)]~~ to the UMAP BMS for the household size. Persons with countable income in the retroactive month, the application month, or any ongoing month that exceeds the UMAP BMS ~~[are not eligible for UMAP assistance for that month.]~~ may spenddown to the BMS level if the spenddown amount is \$50 or less. The Department will not collect a spenddown for amounts of less than \$1.00.

~~(e)~~ c In determining the countable income for the ~~[12 months prior to the application month;]~~ the retroactive month, the application month, and ongoing months, the Department shall count all income received except:

- (i) a bona fide loan of money which must be repaid;
- (ii) rental subsidies;
- (iii) trust funds that are not available on demand;
- (iv) GA, AFDC, or Refugee Cash Assistance (RCA) grants;
- (v) HEAT assistance;

(vi) attendant care received by a handicapped person from the Division of Services to the Handicapped if the money is used to pay for attendant care, and the person providing the care is not included in the household's basic maintenance standard (BMS);

(vii) insurance settlements for destroyed property, if the income is actually used to replace the property. If the insurance settlement is more than the replacement cost of the new property, the difference is counted as income.

(viii) unearned income in-kind.

(ix) special payments to American Indians.

~~(f)~~ d The following deductions are allowed:

- (i) payments for a health or accident insurance policy;
- (ii) federal taxes are determined by multiplying the number of exemptions by \$162.50, subtracting that amount from the wages, and comparing the remainder to the appropriate tax tables for a single or married person. Tax computation is as follows:

TABLE			
Single Person Including Head of Household.			
Wages		Income Tax	
<\$ 89		\$ 0	
89 - \$1,575		0 plus 15% of Excess Over	\$ 89
1,576 - 3,683		223.13 plus 28% of Excess Over	1,576
3,684 - 8,461		831.46 plus 33% of Excess Over	3,684
8,462 + 2,390.03		plus 28% of Excess Over	8,462
Married Person Including Head of Household.			
Wages		Income Tax	
<\$ 255		\$ 0	
255 - \$ 2,733		0 plus 15% of Excess Over	\$ 255
2,734 - 6,246		371.88 plus 28% of Excess Over	2,734
6,247 - 15,422		1,355.38 plus 33% of Excess Over	6,247
15,423 + 4,383.40		plus 28% of Excess Over	15,423

(iii) state taxes, as determined by multiplying the federal tax by .45;

FICA. If the client is self-employed, this is determined by multiplying monthly earnings by .1503. If the client is not self-employed, this is determined by multiplying monthly earnings by .0765.

(c) The UMAP income standard is as follows:

TABLE

Household Size	UMAP Income Standard (BMS)
1	337
2	413
3	516
4	602
5	686
6	756
7	792
8	829
9	868
10	904
11	941
12	978
13	1016
14	1053
15	1090
16	1128

(8) When an individual's check amount differs from the entitlement amount, the check amount is used to determine income eligibility only if the reduction is involuntary.

(9) Self-employment income:

Income from self-employment is counted. Deductions are allowed for the cost of doing business. Allowable deductions include:

- (a) labor;
- (b) stock;
- (c) raw materials;
- (d) seed and fertilizer;
- (e) taxes and interest paid for income-producing property;
- (f) insurance premiums;
- (g) transportation costs only if the person must move from place to place in the course of business.

(10) Deductions for income-producing property include:

- (a) property taxes;
- (b) insurance;
- (c) incidental repairs;
- (d) advertising;
- (e) landscaping;
- (f) utilities.

(11) The cost of an addition or increase in value of the rental property is not allowed as a deduction.

(12) UMAP budgeting methods:

(a) Income shall be budgeted prospectively. Information provided by the client is used to determine the amount of income the client expects to receive during the eligibility period.

(b) Farm and self-employment income is prorated over the number of months in which the money was earned if the income is received less often than monthly. The prorated amount is counted for the same number of months in which the money was earned. The month in which the money was received is counted as the first month, even if the money is not actually earned in that month.

(c) Student grants and scholarships are prorated over the number of months the grants or scholarships are intended to cover. The first month it is intended to cover is the first budget month. If it is received after the first month it is intended to cover, the client is not liable for an understated liability based on receipt of this income.

(d) Deferred income counts when it is available if it is not deferred by choice. If it is deferred by choice, it is counted for the months it could have been received.

(e) Only student income and farm or self-employment income are prorated.

(f) Lump sum payments can be earned or unearned income. Lump sums are income in the month received. An overpayment may exist for the month of receipt. Any amount remaining will count as a resource for the month following the month of receipt.

(13) UMAP coverage begins ~~[the date]~~ no earlier than four days before a completed, signed application is received by the Department. ~~[There is no provision for retroactive UMAP coverage.]~~

(14) The income of all individuals included in the BMS is used to determine eligibility.

(15) Individuals included in the UMAP BMS:

(a) A legally married spouse is included in the BMS if the couple lives together or they have not been separated more than six months. The spouse is not included if the couple is legally separated.

(b) An unmarried person of the opposite sex who lives with the client is included in the BMS if the client is emancipated and the couple present themselves to the community as husband and wife.

(c) Unemancipated children living with the client are included in the BMS if the client is emancipated. This includes natural, adopted, or stepchildren. Unborn children are not included in the BMS.

(d) Parents living with the client are included in the BMS if the client is unemancipated. This includes natural, adopted or stepparents.

(e) Unemancipated children of the client's parents are included in the BMS if they live with the parents and the client is unemancipated.

(16) The client must report any change which may affect eligibility within ten days of the day the client learns of the change. Clients must report income from a new source within ten calendar days of the date the client receives money from that new source.

(17) UMAP resource requirements:

(a) The resource limit is \$500 for a BMS of one and \$750 for a BMS of two or more.

(b) Countable resources include anything of value that is available to the person. When a person is part owner of property, the property is a resource only if the person has a legal right to sell the property. Only the equity value of the resource is counted.

(c) If the resource limit is met at any time in the month, it is met for the entire month.

(d) The following resources are exempt and are not counted to determine eligibility:

(i) one home, including a mobile home;

(ii) the lot upon which the home stands if the home is occupied by the client. If the lot on which the home stands exceeds the average size of residential lots in the community where it is, the equity value of the property that is larger than an average size lot is a resource;

(iii) water rights attached to the home or lot occupied by the client;



- (iv) Contents of the home worth less than \$1000 that are essential to daily living;
  - (v) one vehicle;
  - (vi) an irrevocable burial trust;
  - (vii) one burial plot or space for any member of the client's immediate family;
  - (viii) funds from a student loan, grant, or scholarship are exempt until the month following the end of the period the loan, grant, or scholarship is intended to cover;
  - (ix) a life estate which serves as the primary residence of the client;
  - (x) Lump sum insurance payments for destroyed property if the available money is used within ninety days to replace the destroyed property. All other lump sums are a resource in the month following the month of receipt.
- (e) The resources of everyone in the BMS are counted to determine eligibility.
- (f) Individuals are not sanctioned for transferring resources unless the transfer was made to become eligible for UMAP. If property is transferred in order to meet resource limitations, the person is ineligible for the month the transfer is made, and for the next five months. If the client regains the transferred resource and uses the resource to meet normal expenses, the sanction will be removed.
- (18) The UMAP clinic in Utah, Weber, Morgan, and Salt Lake Counties shall determine what services they will cover. The worker in all other counties shall determine what services they will cover.
- (19) Cooperation in collecting third party liability information is an eligibility requirement for UMAP assistance.

**KEY: UMAP**  
 [~~January 17,~~2001] 26-18  
 Notice of Continuation February 6, 1998



**Health, Health Care Financing, Medical Assistance Program**  
**R420-1**

**Utah Medical Assistance Program**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE No.: 23703  
 FILED: 04/30/2001, 12:58  
 RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Legislature has appropriated \$1,400,000 in non-lapsing funds to restore previous cuts in services previously paid for by UMAP to eligible individuals. This rule change will supersede, when it becomes effective, a previously filed emergency rule change on the same subject.

**SUMMARY OF THE RULE OR CHANGE:** In order to restore services from previous cuts, there will be increases in amounts paid to providers, a reduction in pharmacy co-pay from \$2 to \$1 (\$5 maximum per month per client), and a restoring of coverage of certain drugs.

**(DAR Note:** A corresponding 120-Day (emergency) rule that is effective as of may 1, 2001, is under DAR No. 23701 in this *Bulletin*.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 26-1-5 and 26-18-10

**ANTICIPATED COST OR SAVINGS TO:**

❖**THE STATE BUDGET:** The Department would incur an annual cost of \$1,400,000, but the Legislature has appropriated this amount in non-lapsing funds.

❖**LOCAL GOVERNMENTS:** The rule does not apply to local government, so there is no budget impact.

❖**OTHER PERSONS:** Eligibles and providers will gain an increase in benefits. The co-pay for prescription drugs will go from \$2 to \$1, with a \$5 maximum co-pay per client per month.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Eligibles and providers will gain an increase in benefits. The co-pay for prescription drugs will go from \$2 to \$1, with a \$5 maximum co-pay per client per month.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These rule changes will have a positive fiscal impact on regulated businesses, made possible by a new ongoing appropriation from the Legislature. Rod L. Betit

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

Health  
 Health Care Financing,  
 Medical Assistance Program  
 Cannon Health Building  
 288 North 1460 West  
 PO Box 143102  
 Salt Lake City, UT 84114-3102, or  
 at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Hank Welch at the above address, by phone at (801) 538-7087, by FAX at (801) 538-6412, or by Internet E-mail at hwelch@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

**R420. Health, Health Care Financing, Medical Assistance Program.**

**R420-1. Utah Medical Assistance Program.**

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**R420-1-5. Service Coverage.**

(1) The scope of services covered by UMAP is limited to treatment of conditions that meet one or more of the following criteria, unless elsewhere excluded:

- (a) an acute condition characterized by a rapid onset requiring prompt medical attention. UMAP shall not consider a condition to be acute once it is medically established to have been in existence for four months or more, regardless of when the client began experiencing symptoms. Recurring conditions are not acute;
- (b) a life-threatening condition that is not psychiatric;
- (c) a communicable disease that poses a health risk to the general public;
- (d) a condition that will result in irreversible blindness if left untreated, blindness meaning no better than 20/200 visual acuity in the better eye after correction[-];
- (e) cataracts, if the correction is no better than 20/60 visual acuity in the better eye[-];
- (f) eyeglasses for a client in a work or training program if the client cannot participate in the work or training without the eyeglasses, or for a diabetic client who cannot see well enough to administer his own medication.

(2) UMAP may cover the following medical services:

- (a) outpatient hospital services;
- (b) physician services;
- (c) midwife and birthing center services;
- (d) radiology and lab services;
- (e) emergency transportation services for both air and ground;
- (f) dental services;
- (g) pharmacy services;
- (h) rural health services;
- (i) home health services for I.V. antibiotics.

(3) For all UMAP covered services, the principal diagnosis at discharge from the hospital is the reason for the care. UMAP may not consider the other diagnoses when determining whether the service is covered by UMAP.

(a) UMAP shall pay a fixed triage fee for emergency transportation, emergency room physicians, and emergency room facility charges for services that do not result in an inpatient admission, if the admission diagnosis is a UMAP covered medical condition, but the principal diagnosis at discharge is psychiatric.

(b) The fixed triage fee shall constitute payment for the entire service. A notation on the form MI-706 advises the provider that he received authorization for only the minimal set triage fee.

(4) A provider or a client may resolve questions about coverage of a specific condition or service by contacting the appropriate UMAP clinic in Salt Lake, Morgan, Weber, or Utah counties, or the Office of Workforce Services for all other counties, depending upon where the client lives.

**R420-1-6. Limitations and Excluded Services.**

(1) Conditions that are not covered by UMAP include:

- (a) chronic pain, back pain, knee pain, joint pain, from recurring or chronic conditions;

(b) hernias that are not strangulated or incarcerated, carpal tunnel syndrome, bunions, nasal polyps;

(c) mental illness or disorder, drug addiction, alcohol addiction;

(d) obesity, hormonal imbalance, bulimia, anorexia nervosa;

(e) long-standing arthritis, except treatment of acute flare-ups is a covered service;

(f) allergies, cataracts, temporomandibular joint dysfunction, premenstrual syndrome, aseptic (avascular) necrosis;

(g) rhinitis, 24-hour gastritis, common cold, any condition for which there is no accepted medical therapy;

(h) a condition that is disabling, but does not meet the criteria listed in R420-1-5(1);

(i) a condition that is not covered by the Utah Medicaid program;

(j) a condition caused because of a snow skiing or snowboarding accident;

(k) a condition caused when the client was committing a crime. UMAP shall allow the client to present information to prove that involvement in the alleged crime did not cause or contribute to his medical condition. The client must submit this information within 60 days of the date of the denial;

(l) a condition caused when the client was being arrested;

(m) a condition caused when the client was injured by a law enforcement officer;

(n) a condition caused when the client was in custody;

(o) a condition that results from experimental or recreational use of drugs or chemicals, (with the exception of drinking distilled spirits, wine, or malt beverages, and smoking or chewing tobacco). UMAP considers use to be experimental or recreational if, on his own initiative, an individual uses:

(i) prescription drugs in a manner that is contrary to the physician's instructions for their use;

(ii) non-prescription drugs or chemicals in a manner that is contrary to package instructions, e.g., sniffing glue or other substances, drinking rubbing alcohol, laxative abuse;

(iii) illegal drugs, e.g., a drug or controlled substance, the use of which is a violation of state or federal law.

(p) UMAP determines use by an evaluation of the best available medical evidence regarding the condition.

(q) UMAP allows clients to present information to prove that experimental or recreational use of drugs or chemicals did not cause or contribute to the medical condition. Clients must submit this information within 60 days of the date of denial.

(2) Services that are not covered by UMAP include:

(a) cosmetic surgery;

(b) tympanoplasties;

(c) hysterectomies and pelvic surgery, except when there is a reasonable suspicion of a life threatening condition;

(d) back surgeries, knee surgeries, joint surgeries, for recurring or chronic conditions;

(e) psychiatry, or any service provided to a client while he is in a psychiatric facility, wing, ward, or bed;

(f) diagnostic work, unless a covered condition is suspected;

(g) speech pathology, audiology (except to rule out a brain tumor), audiometry (except to rule out a brain stem lesion);

(h) medical supplies, except syringes, lancets, test strips for diabetics, and ostomy supplies;

- (i) medical equipment, except an oxygen concentrator if required 24 hours a day;
- (j) prosthetic devices, except once when the need for the device arises from any authorized surgery;
- (k) care in a long-term care facility, physical therapy, rehabilitative services, chiropractic services;
- (l) dental work (except for exam, x-ray, and extraction of infected teeth), dentures;
- (m) sterilization (tubal ligation, vasectomy, etc.), abortion (unless the life of the mother would be endangered if an abortion were not performed), birth control;
- (n) elective surgery, organ transplants;
- (o) liver biopsy or use of Interferon when being prescribed for treatment of Hepatitis C;
- (p) treatment in a pain clinic;
- (q) non-emergency use of an emergency room or emergency transportation;
- (r) a service that is not covered by the Utah Medicaid program;
- (s) a service if the department determines that there is or was an effective less-costly alternative;
- (t) a service provided to treat a medical condition, if the need for treatment arose while the client was in custody;
- (u) a service for a condition that is a complication of, or a follow-up service for, a non-covered UMAP service. The only exception would be if the service was not covered as a result of lack of client eligibility.;
- ~~(v) medication that is prescribed for the treatment of hypercholesterolemia;~~
- ~~(w) D4K anti-ulcer PPIs;~~
- ~~(x) hormones that are prescribed for the treatment of female hypogonadism.;~~

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**R420-1-9. Reimbursement.**

UMAP shall only reimburse Utah Medicaid providers who accept payment from UMAP as payment in full for the service provided. UMAP adopts the Utah Medicaid reimbursement policies and payment rates for services covered by UMAP, with the following exception[s]:

- ~~(1) outpatient services, and ambulatory surgical center services shall be reimbursed at the Medicaid rate, minus 10%;~~
- ~~(2) physician services, osteopathic services, and services provided by Federally Qualified Health Centers shall be reimbursed at the Medicaid rate, minus 10%;~~
- ~~(3) a client is required to pay a \$[2]1 co-pay for each UMAP covered pharmacy item (those billed using a NDC code) each time the item is dispensed or purchased, not to exceed in aggregate \$5 per client per month.~~

Because inpatient hospital services are not a benefit of UMAP, UMAP shall not reimburse for these services.

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**KEY: indigent, medicaid, UMAP**  
~~January 23,~~2001  
Notice of Continuation July 21, 1997

26-1-5  
26-18-10

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## Human Services, Substance Abuse

# R544-5

### Alcohol Training and Education Seminar Rules of Administration

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 23719  
FILED: 05/01/2001, 13:39  
RECEIVED BY: NL

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** To add definitions required by statute, to delete definitions now included in statute, to add new program requirements, and to clarify some existing language.

**SUMMARY OF THE RULE OR CHANGE:** Added definitions for manager, supervisor, and server; deleted definitions for instructor and provider now included in statute; and added program requirement for three hour minimum for any seminar offered.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-8-103.5

**ANTICIPATED COST OR SAVINGS TO:**

❖**THE STATE BUDGET:** There is no anticipated cost to the State. The present amendment to the rule simply adds some definitions, makes a change in server responsibilities, and makes additional changes to seminar curriculum requirements. No additional cost burdens (e.g., compliance monitoring, enforcement) are imposed on the state.

❖**LOCAL GOVERNMENTS:** Local government is not affected by this rule.

❖**OTHER PERSONS:** Minimal increases for seminar providers if their present curriculum does not cover three hours. The division does not know how many providers fall in this category. These increases may be passed on to those attending the seminar, but the division has no way of knowing which seminar providers will choose to do that, or how many potential students that might affect.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Due to the fact that all curriculums are of different lengths it is impossible to determine. The increase should be minimal, since it will only affect those providers whose curriculums are less than three hours in length.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No anticipated costs have been identified in relation to this change.

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

Human Services  
Substance Abuse  
Room 201, Human Services Building  
120 North 200 West  
Salt Lake City, UT 84103, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Douglas M. Cox at the above address, by phone at (801) 538-3939, by FAX at (801) 538-4696, or by Internet E-mail at dcox@hs.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: Patrick Fleming, Director

**R544. Human Services, Substance Abuse.**  
**R544-5. Alcohol Training and Education Seminar Rules of Administration.**

**R544-5-1. Authority, Intent, and Scope.**

A. These rules are adopted under the authority of Section[s] 62A-8-103.5 authorizing the Division of Substance Abuse to administer the Alcohol Training and Education Seminar Program.

B. The intent of statute and rules is to require every person to complete the Seminar who sells or furnishes alcoholic beverages to the public for on premise consumption in the scope of the person's employment.

- C. These rules include:
1. certification of providers;
  2. approval of the Seminar curriculum;
  3. the ongoing activities of providers;
  4. the process for approval, denial, suspension and revocation of provider certification.

**R544-5-2. Definitions.**

A. "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with ~~or by~~ these rules.

B. "Certification" means written approval from the Division of Substance Abuse stating a person has met the requirements to become a seminar provider.

C. "Director" means the Director of the Division of Substance Abuse.

D. "Division" means the Division of Substance Abuse.

~~[E. "Instructor" means a person who a provider has stated in writing has been trained to present the Seminar.]E. "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.~~

F. "On-premise consumption" means the consumption of alcoholic products by a person within any building, enclosure, room, or designated area which has been legally licensed to allow consumption of alcohol.

~~[G. "Provider" means any person permitted by the Division to establish and administer an Alcohol Training and Education Seminar.~~

~~H]G. "Seminar" means the Alcohol Training and Education Seminar.~~

H. "Server" is an employee who actually makes available, serves to, or provides a drink or drinks to a customer for consumption on the premises of the licensee.

I. "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employees a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the licensee.

**R544-5-3. Provider Certification Application Procedure.**

A. A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

B. Any seminar conducted by a noncertified provider is void and shall not meet the server training requirements authorized under Section 62A-8-103.5.

C. All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-8-103.5 and these rules. If the Division approves the application, the curriculum and determines the provider has met all other requirements, the Division shall certify the provider.

D. Within 30 days after the ~~the Division~~ ~~[approval committee]~~ has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information. Notification of the action taken shall be forwarded in writing to the applicant.

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**R544-5-5. Server Responsibilities.**

A server who has completed the seminar in another state by a provider who is certified in Utah shall not be required to complete the seminar if the current certification is in force. A server is required within ~~[six months]~~ 30 days of employment to pass the portion of the examination which applies to Utah alcohol laws.

**R544-5-6. Division Responsibilities.**

The Division shall maintain the list of servers who have completed the seminar and provide this information to licensing agencies and licensees.

**R544-5-8. Approved Curriculum.**

Each provider must have a curriculum approved by the Division. This curriculum must provide at least three hours of classroom instruction both for original certification and for any and

all recertifications. The contents of an approved curriculum shall include the following components:

- A. Alcohol as a drug and its effect on the body and behavior.
- B. Facts about alcohol.
- C. What is alcohol?
- D. Alcohol's path through the body.
- E. Factors influencing the effect of alcohol:
  - 1. Food and digestive factors;
  - 2. Weight, physical fitness and gender factors;
  - 3. Psychological factors;
  - 4. Tolerance;
  - 5. Alcohol used in combination with other drugs.
- F. Recognizing drinking levels:
  - 1. Explanation of behavioral signs and indications of impairment;
  - 2. Classification of behavioral signs;
  - 3. Defining intoxication.
- G. Recognizing the problem drinker and techniques for servers to help control consumption:
  - 1. Use of classification system;
  - 2. Use of alcohol facts;
  - 3. Continuity of service;
  - 4. Drink counting.
- H. Overview of state alcohol laws:
  - 1. Utah liquor distribution and control;
  - 2. Legal age;
  - 3. Prohibited sales;
  - 4. Third party liability and the Dram Shop Law;
  - 5. Legal definition of intoxication;
  - 6. Legal responsibilities of servers.
    - 1. Techniques for [D]dealing with the problem customer including rehearsal or practice of these techniques.
- J. Intervention techniques:
  - 1. Slowing down service;
  - 2. Offering food or nonalcoholic beverages;
  - 3. Serving water with drinks;
  - 4. Not encouraging reorders;
  - 5. Cutting off service.
- K. Establishing house rules for regulating alcoholic beverages:
  - 1. Management and co-workers' support;
  - 2. Dealing with minors.
- L. Alternative means of transportation and getting the customer home safely:
  - 1. Ask customer to arrange alternative transportation;
  - 2. Call a taxi for transportation service;
  - 3. Accommodations for the night;
  - 4. Telephone the police.

**R544-5-9. Examination.**

The examination shall include questions concerning alcohol as a drug and its effect on the body and behavior, recognizing and dealing with the problem drinker, Utah alcohol laws, ~~drinking with the problem customer,~~ terminating service, and alternative means of transportation to get the customer safely home. The portion of the exam concerning Utah's alcohol laws shall be uniform questions approved by the Commission or as updated and approved by the Division.

**R544-5-10. Alcohol Training and [e]Education Seminar Provider Standards.**

- The Division may certify an applicant who:
- (1) Has a program course that;
  - (2) does not have a history of liquor law violations or any convictions showing disregard for laws related to being a responsible liquor provider;
  - (3) identifies all program instructors and instructor trainers and certifies in writing that they have been trained to present the course material and that they have never been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, or involving moral turpitude;
  - (4) agrees to notify the Division in writing of any changes in instructors and submit the authorization called for in item (2) for all new instructors;
  - (5) Can show adequate facilities, instructional equipment and materials, personnel, and financial resources to provide a successful program for the length of time the license is in effect;
  - (6) will establish and maintain course completion records.

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**KEY: substance abuse, server training**  
~~November 5, 1997~~ **2001** **62A-8-103.5**  
**Notice of Continuation June 25, 1997**



**Insurance, Administration**  
**R590-206**  
**Privacy of Consumer Financial and Health Information Rule**

**NOTICE OF PROPOSED RULE**  
(New)  
DAR FILE NO.: 23720  
FILED: 05/01/2001, 16:39  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to govern the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the Utah Insurance Department. The rule gives guidance to licensees of the department in regard to the requirements under Title V of the Gramm-Leach-Bliley (GLB) Act of 1999.

SUMMARY OF THE RULE OR CHANGE: The rule requires licensees to provide notice to individuals about their privacy policies and practices. The rule also describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and non-affiliated third parties. Additionally, the rule provides methods for individuals to prevent a licensee from disclosing such information.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-2-202, and 31A-25-317  
 FEDERAL REQUIREMENT FOR THIS RULE: 15 U.S.C. 6805

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The rule adopts state regulations and give those subject to the regulations guidelines by which they can develop safeguards, procedures and systems to protect their customers' nonpublic personal information consistent with the regulations. It will also preserve the State's ability to regulate the disclosure of such information. The only cost to the department will be printing and mailing costs to notify the insurance industry about this rule. Mailing will be sent to 1,360 insurers, associations, and other interested parties. The cost will be approximately \$559.20 for mailing and printing costs.

❖LOCAL GOVERNMENTS: This rule will not require any action by local government. Therefore, no costs will result nor will it generate any savings to local government.

❖OTHER PERSONS: The persons affected by the rule will be state-chartered financial institutions that conduct the business of insurance, domestic insurance companies, resident agents, resident agencies, resident brokers, insurance consultants, adjusters, and other individuals or entities regulated by the Utah Insurance Department. The department estimates that the rule will not result in savings to those impacted by the rule. It will result in costs to those licensees of the department that are subject to the rule. The costs have not been determined and the department is unable to estimate the costs. It will ask each interested person or entity to provide those costs resulting from this federally-mandated regulation. If the state fails to adopt the regulation it will not be eligible to enact these consumer protections in the future. The benefits to the individual and the general public in having nonpublic personal health and financial information protected against misuse and improper and unlawful disclosure outweigh the costs associated with compliance.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The persons affected by the rule will be state-chartered financial institutions that conduct the business of insurance, domestic insurance companies, agents, agencies, brokers, insurance consultants, adjusters, and other individuals or entities regulated by the Utah Insurance Department. The department estimates that the rule will not result in savings to those impacted by the rule. It will result in costs to those licensees of the department that are subject to the rule. The federal government has not determined the cost for compliance and the department is unable to estimate the costs. It will ask each interested person or entity to provide those costs resulting from this federally-mandated regulation. If the state fails to adopt the regulation, it will not be eligible to enact these consumer protections in the future. The benefits to the individual and the general public in having nonpublic personal health and financial information protected against misuse and improper and unlawful disclosure outweigh the costs associated with compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule adopts guidelines that permit the department's licensees to be in

compliance with Section V of the Gramm-Leach-Bliley (GLB) Act. The GLB Act requires state insurance regulators to adopt regulations governing the treatment of nonpublic personal health and financial information by its licensees. If the department fails to enact such regulation, the state will not be eligible for protection from preemption by the federal regulator rules. The federal regulators have stated that the fiscal impact of the federal regulations will not be more than \$100 million dollars for state, local, tribal governments in the aggregate or on the private sector as a whole in the United States but have not provided actual numbers. The department is unable at this time to estimate the fiscal impact on the banking, securities, and insurance industries in Utah. However, the benefits of this rule to the general public and the individual counter balance the cost. The department intends to request interested persons to provide compliance and fiscal impact costs as part of the hearing required by the Rulemaking Act.

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

Insurance  
 Administration  
 3110 State Office Building  
 Salt Lake City, UT 84114, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/04/2001, 10:00 a.m., Auditorium of the State Office Building (on the First Floor), 450 North Main (behind the Capitol), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2001

AUTHORIZED BY: Jilene Whitby, Information Specialist

**R590. Insurance, Administration.**

**R590-206. Privacy of Consumer Financial and Health Information Rule.**

**R590-206-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805)) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999(15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805(b)(2)) authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b) of the federal act. The commissioner is also authorized under Subsection 31A-23-317(3) to adopt rules

implementing the requirements of Title V, Section 501(b) of the federal act.

**R590-206-2. Purpose and Scope.**

(1) Purpose. This rule governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the Utah Insurance Department. This rule:

(a) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(b) Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and

(c) Provides methods for individuals to prevent a licensee from disclosing that information.

(2) Scope. This rule applies to:

(a) Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This rule does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and

(b) All nonpublic personal health information.

(3) Compliance. A licensee domiciled in this state that is in compliance with this rule in a state that has not enacted laws or rules that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

(4) This rule does not apply to a financial institution, securities broker or dealer, or a credit union that engages in activities or functions that do not require a license from the Utah insurance commissioner.

**R590-206-3. Rule of Construction.**

The examples in this rule and the sample clauses in Appendix A are not exclusive. Appendix A - Sample Clauses, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," adopted September 26, 2000, by the National Association of Insurance Commissioners, is incorporated by reference and available for inspection at the Department of Insurance and the Department of Administrative Rules. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this rule.

**R590-206-4. Definitions.**

As used in this rule, unless the context requires otherwise:

(1) "Affiliate" means any company that controls, is controlled by or is under common control with another company.

(2)(a) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(b) Examples.

(i) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

(A) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Uses short explanatory sentences or bullet lists whenever possible;

(C) Uses definite, concrete, everyday words and active voice whenever possible;

(D) Avoids multiple negatives;

(E) Avoids legal and highly technical business terminology whenever possible; and

(F) Avoids explanations that are imprecise and readily subject to different interpretations.

(ii) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(A) Uses a plain-language heading to call attention to the notice;

(B) Uses a typeface and type size that are easy to read;

(C) Provides wide margins and ample line spacing;

(D) Uses boldface or italics for key words; and

(E) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(iii) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensures that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(A) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(3) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(4) "Commissioner" means the Utah insurance commissioner.

(5) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

(6)(a) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service, from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, directly or through a legal representative.

(b) Examples.

(i) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(ii) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(iii) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(iv) An individual is a licensee's consumer if:

(A)(I) the individual is a beneficiary of a life insurance policy underwritten by the licensee;

(II) the individual is a claimant under an insurance policy issued by the licensee;

(III) the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(IV) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

(B) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 14, 15 and 16 of this rule.

(v) Provided that the licensee provides the initial, annual and revised notices under Sections 5, 6 and 9 of this rule to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, workers' compensation plan policyholder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under Sections 14, 15 and 16 of this rule, an individual is not the consumer of the licensee solely because he or she is:

(A) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

(B) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee; or

(C) A beneficiary in a workers' compensation plan.

(vi)(A) The individuals described in Subsection R590-206-4.(6)(b)(v)(A) through (C) of this Paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subsection R590-206-4.(6)(b)(v).

(B) In no event shall the individuals, solely by virtue of the status described in Subsection R590-206-4.(6)(b)(v)(A) through (C) above, be deemed to be customers for purposes of this rule.

(vii) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(viii) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

(7) "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(8) "Control" means:

(a) Ownership, control or power to vote 25% or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(b) Control in any manner over the election of a majority of the directors, trustees or general partners, or individuals exercising similar functions, of the company; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

(9) "Customer" means a consumer who has a customer relationship with a licensee.

(10)(a) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the

consumer that are to be used primarily for personal, family or household purposes.

(b) Examples.

(i) A consumer has a continuing relationship with a licensee if:

(A) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(B) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee; or

(C) The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing an option involving an on going relationship with the licensee.

(ii) A consumer does not have a continuing relationship with a licensee if:

(A) The consumer applies for insurance but does not purchase the insurance;

(B) The licensee sells the consumer airline travel insurance in an isolated transaction;

(C) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(D) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(E) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than annual privacy notices, material required by law or rule, communication at the direction of a state or federal authority, or promotional materials;

(F) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(G) For the purposes of this rule, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(11)(a) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial institution does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.



(12)(a) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section (4)(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(13) "Health care" means:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(i) Relates to the physical, mental or behavioral condition of an individual; or

(ii) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

(b) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(14) "Health care provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

(15) "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(a) The past, present or future physical, mental or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

(c) Payment for the provision of health care to an individual.

(16)(a) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

(b) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for a insurance product or service.

(17)(a) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of this state.

(b) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 17 of this rule if the licensee is an employee, agent or other representative of another licensee, "the principal," and:

(i) The principal otherwise complies with, and provides the notices required by, the provisions of this rule; and

(ii) The licensee does not disclose any non-public personal financial information or a consumer or customer to any person other than the principal from or through which such consumer or customer seeks to obtain, or has obtained, a product or service or its affiliates in a manner permitted by this rule.

(c)(i) Subject to Subsection R590-206-4.(17)(b)(ii), "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only

in regard to the surplus lines placements placed pursuant to Section 31A-15-103 of this state's laws.

(ii) A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 17 of this rule provided:

(A) The broker or insurer does not disclose nonpublic personal financial information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 14 of this rule, except as permitted by Section 15 or 16 of this rule; and

(B) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

"NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL FINANCIAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

(18)(a) "Nonaffiliated third party" means any person except:

(i) A licensee's affiliate; or

(ii) A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(b) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Subsection R590-206-4.(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

(19) "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

(20)(a) "Nonpublic personal financial information" means:

(i) Personally identifiable financial information; and

(ii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personally identifiable financial information that is not publicly available.

(b) Nonpublic personal financial information does not include:

(i) Health information;

(ii) Publicly available information, except as included on a list described in Subsection R590-206-4.(20)(a)(ii); or

(iii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any personally identifiable financial information that is not publicly available.

(c) Examples of lists.

(i) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only

publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(21) "Nonpublic personal health information" means health information:

(a) That identifies an individual who is the subject of the information; or

(b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(22)(a) "Personally identifiable financial information" means any information:

(i) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

(ii) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(iii) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(b) Examples.

(i) Information included. Personally identifiable financial information includes:

(A) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(B) Account balance information and payment history;

(C) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(D) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(E) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(F) Any information the licensee collects through an Internet cookie, an information-collecting device from a web server; and

(G) Information from a consumer report.

(ii) Information not included. Personally identifiable financial information does not include:

(A) Health information;

(B) A list of names and addresses of customers of an entity that is not a financial institution; and

(C) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

(23)(a) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, state or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by federal, state or local law.

(b) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(c) Examples.

(i) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) Reasonable basis.

(A) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

#### **R590-206-5. Initial Privacy Notice to Consumers Required.**

(1) Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(a) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection R590-206-5.(5) of this section; and

(b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16.

(2) When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection R590-206-5.(1)(b) of this section if:

(a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 15 and 16, and the licensee does not have a customer relationship with the consumer; or

(b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3) When the licensee establishes a customer relationship.

(a) General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(b) Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

(i) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the

consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

(ii) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

(4) Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of Subsection R590-206-5.(1) of this section as follows:

(a) The licensee may provide a revised policy notice, under Section 9, that covers the customer's new insurance product or service; or

(b) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under Subsection R590-206-5.(1) of this section.

(5) Exceptions to allow subsequent delivery of notice.

(a) A licensee may provide the initial notice required by Subsection R590-206-5.(1)(a) of this section within a reasonable time after the licensee establishes a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(b) Examples of exceptions.

(i) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(ii) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(iii) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

(6) Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 10. If the licensee uses a short-form initial notice for non-customers according to Subsection R590-206-7.(4) the licensee may deliver its privacy notice according to Subsection R590-206-7.(4)(c).

#### **R590-206-6. Annual Privacy Notice to Customers Required.**

(1)(a) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of 12 consecutive months during which that relationship

exists. A licensee may define the 12 consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(b) Example. A licensee provides a notice annually if it defines the 12 consecutive month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year two.

(2)(a) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(b) Examples.

(i) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(ii) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve 12 consecutive months, other than to provide annual privacy notices, material required by law or rule, or promotional materials.

(iii) For the purposes of this rule, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(iv) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(3) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 10.

#### **R590-206-7. Information to be Included in Privacy Notices.**

(1) General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects;

(b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 15 and 16;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 15 and 16;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14, and no other exception in Sections 15 and 16 applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under Subsection R590-206-11.(1) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information; and

(i) Any disclosure that the licensee makes under Subsection R590-206-7.(2).

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 15 and 16, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable;

(i) Information from the consumer;

(ii) Information about the consumer's transactions with the licensee or its affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses.

(i) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Subsection R590-206-7.(3)(a), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

(A) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

(B) Transaction information, such as information about balances, payment history and parties to the transaction; and

(C) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(ii) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(iii) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal financial information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(i) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(ii) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(iii) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(d) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection R590-206-7.(1)(e) of this section if it:

(i) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection R590-206-7.(1)(b) of this section, as applicable; and

(ii) States whether the third party is:

(A) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(B) A financial institution with whom the licensee has a joint marketing agreement.

(e) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 15 and 16, the licensee may simply state that fact, in addition to the information it shall provide under Subsections R590-206-7.(1)(a), 7.(1)(h), 7.(1)(i), and 7.(2).

(f) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(i) Describes in general terms who is authorized to have access to the information; and

(ii) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information

in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

(4) Short-form initial notice with opt out notice for non-customers.

(a) A licensee may satisfy the initial notice requirements in Subsections R590-206-5.(1)(b) and Subsection R590-206-8.(3) for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in Section 8.

(b) A short-form initial notice shall:

(i) Be clear and conspicuous;

(ii) State that the licensee's privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short-form initial notice according to Section 10. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10.

(d) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

(i) Provides a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

(5) Future disclosures. The licensee's notice may include:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(6) Sample clauses. Sample clauses illustrating some of the notice content required by this section are found in Appendix A - Sample Clauses, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," adopted September 26, 2000, by the National Association of Insurance Commissioners. Appendix A is incorporated by reference and available for inspection at the Department of Insurance and the Department of Administrative Rules.

#### **R590-206-8. Form of Opt Out Notice to Consumers and Opt Out Methods.**

(1)(a) Form of opt out notice. If a licensee is required to provide an opt out notice under Subsection R590-206-11.(1), it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

(i) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(b) Examples.

(i) Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(A) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Subsections R590-206-7.(1)(b) and R590-206-7.(1)(c), and states that the consumer can opt out of the disclosure of that information; and

(B) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(ii) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

(A) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Includes a reply form together with the opt out notice;

(C) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

(D) Provides a toll-free telephone number that consumers may call to opt out.

(iii) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(iv) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(2) Same form as initial notice permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5.

(3) Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 5, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(4) Joint relationships.

(a) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer, as explained in Subsection R590-206-8.(4)(e).

(b) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(e) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(i) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If the licensee does so:

(A) It shall permit John and Mary to opt out for each other;

(B) If both opt out, the licensee shall permit both of them to notify it in a single response, such as on a form or through a telephone call; and

(C) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

(5) Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

(6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(7) Duration of consumer's opt out direction.

(a) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(8) Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 10.

#### **R590-206-9. Revised Privacy Notices.**

(1) General rule. Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2) Examples.

(a) Except as otherwise permitted by Sections 14, 15 and 16, a licensee shall provide a revised notice before it:

(i) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

(ii) Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

(iii) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

(3) Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 10.

#### **R590-206-10. Delivery.**

(1) How to provide notices. A licensee shall provide any notices that this rule requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(i) Hand-delivers a printed copy of the notice to the consumer;

(ii) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

(iii) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

(iv) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) Examples of unreasonable expectation of actual notice. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(i) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

(ii) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) Oral description of notice insufficient. A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

(5) Retention or accessibility of notices for customers.

(a) For customers only, a licensee shall provide the initial notice required by Subsection R590-206-5.(1)(a), the annual notice required by Subsection R590-206-6.(1), and the revised notice required by Section 9 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(i) Hand-delivers a printed copy of the notice to the customer;

(ii) Mails a printed copy of the notice to the last known address of the customer; or

(iii) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

(6) Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) Joint relationships. If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Subsections R590-206-5.(1), 6.(1) and 9.(1), respectively, by providing one notice to those consumers jointly.

#### **R590-206-11. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.**

(1)(a) Conditions for disclosure. Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(i) The licensee has provided to the consumer an initial notice as required under Section 5;

(ii) The licensee has provided to the consumer an opt out notice as required in Section 8;

(iii) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(b) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 14, 15 and 16.

(c) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

(i) By mail. The licensee mails the notices required in Subsection R590-206-11.(1)(a) to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone

number or any other reasonable means within 30 days from the date the licensee mailed the notices.

(ii) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Subsection R590-206-11.(1)(a) electronically, and the licensee allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Subsection R590-206-11.(1)(a) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(2) Application of opt out to all consumers and all nonpublic personal financial information.

(a) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(b) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

#### **R590-206-12. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information.**

(1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 15 or 16 of this rule, the licensee's disclosure and use of that information is limited as follows:

(i) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

(ii) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

(iii) The licensee may disclose and use the information pursuant to an exception in Sections 15 or 16 of this rule, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(2)(a) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 15 or 16 of this rule, the licensee may disclose the information only:

(i) To the affiliates of the financial institution from which the licensee received the information;

(ii) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(b) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 15 or 16:

(i) The licensee may use that list for its own purposes; and

(ii) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Sections 15 or 16, such as to the licensee's attorneys or accountants.

(3) Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 15 or 16 of this rule, the third party may disclose and use that information only as follows:

(a) The third party may disclose the information to the licensee's affiliates;

(b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) The third party may disclose and use the information pursuant to an exception in Sections 15 or 16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections 15 or 16 of this rule, the third party may disclose the information only:

(a) To the licensee's affiliates;

(b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

**R590-206-13. Limits on Sharing Account Number Information for Marketing Purposes.**

(1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(2) Exceptions. R590-206-13.(1) does not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3) Examples.

(a) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

**R590-206-14. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing.**

(1) General rule.

(a) The opt out requirements in Sections 8 and 11 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(i) Provides the initial notice in accordance with Section 5; and

(ii) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 15 or 16 in the ordinary course of business to carry out those purposes.

(b) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Sections 15 or 16 in the ordinary course of business to carry out that joint marketing.

(2) Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection R590-206-14.(1) of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

(3) Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.



**R590-206-15. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.**

(1) Exceptions for processing transactions at consumer's request. The requirements for initial notice in Subsection R590-206-5.(1)(b), the opt out in Sections 8 and 11, and service providers and joint marketing provisions in Section 14 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or to enforce a contractual obligation or other legal claim against a customer, or in connection with:

(a) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(b) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(c) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or

(d) Reinsurance or stop loss or excess loss insurance.

(2) "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

(a) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(b) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(v) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits, including utilization review activities, participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein;

(C) The audit of debit, credit or other payment information.

**R590-206-16. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.**

(1) Exceptions to opt out requirements. The requirements for initial notice to consumers in Subsection R590-206-5.(1)(b), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply when a licensee discloses nonpublic personal financial information:

(a) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(b)(i) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;

(ii) To protect against or prevent actual or potential fraud or unauthorized transactions;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(c) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

(d) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21, Financial Record keeping, a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;

(e)(i) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(ii) From a consumer report reported by a consumer reporting agency;

(f) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(g)(i) To comply with federal, state or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

(h) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation policy.

(2) A licensed or admitted insurer that is the subject of a formal delinquency proceeding under Sections 31A-27-303, 31A-27-307 and 31A-27-310, are not subject to the requirements of R590-206-5.(1)(b), the opt out in Sections (8) and (11), and other notice requirements of R590-206.

(3) Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal financial information as permitted under Subsection R590-206-8.(6).

**R590-206-17. When Authorization Required for Disclosure of Nonpublic Personal Health Information.**

(1) General Rule. A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

(2) Exceptions. Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee or an affiliate of the licensee: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement, issuance or renewal; loss control; ratemaking and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

**R590-206-18. Authorizations.**

(1) A valid authorization to disclose nonpublic personal health information pursuant to Sections 17 through 21 shall be in written or electronic form and shall contain all of the following:

(a) The identity of the consumer or customer who is the subject of the nonpublic personal health information;

(b) A general description of the types of nonpublic personal health information to be disclosed;

(c) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used;

(d) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and

(e) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

(2) An authorization for the purposes of Sections 17 through 21 shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than 24 months.

(3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to Sections 17 through 21 at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

(4) A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

**R590-206-19. Authorization Request Delivery.**

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to Section 10, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to Subsection R590-206-17.(1).

**R590-206-20. Relationship to Federal Rules.**

Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services, as published in the Federal Register November 3, 1999 (64 Fed. Reg. 59918-60065), the "federal rule", if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to Sections 17 through 21.

**R590-206-21. Relationship to State Laws.**

Nothing in Sections 17 through 21 shall preempt or supercede existing state law related to medical records, health or insurance information privacy.

**R590-206-22. Protection of Fair Credit Reporting Act.**

Nothing in this rule shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under Section 603 of that Act.

**R590-206-23. Nondiscrimination.**

(1) A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted

out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this rule.

(2) A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this rule.

**R590-206-24. Violation.**

Pursuant to Section 31A-23-302, the commissioner finds that the failure to observe the requirements of this rule is misleading to the public and individuals transacting business with licensees of the department or any person or individual who should be licensed by the department. The failure to observe the requirements of this rule is also an unreasonable restraint on competition.

Violation of any provisions of the rule will result in appropriate enforcement action by the department which may include forfeiture, penalties, and revocation of license.

**R590-206-25. Severability.**

If any section or portion of a section of this rule or its applicability to any person or circumstance is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected.

**R590-206-26. Effective Date.**

(1) Effective date. This rule is effective July 1, 2001.

(2)(a) Notice requirement for consumers who are the licensee's customers on the effective date. By July 1, 2001, a licensee shall provide an initial notice, as required by Section 5, to consumers who are the licensee's customers on July 1, 2001.

(b) Example. A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.

(3) Two-year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Subsection R590-206-14.(1)(a)(ii) of this rule, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal financial information, as long as the licensee entered into the agreement on or before July 1, 2000.

**KEY: insurance law  
2001**

**31A-2-201  
31A-2-202  
31A-25-317  
15 U.S.C. 6805**



# Natural Resources, Parks and Recreation

## R651-401

### Off-Highway Vehicle Assigned Numbers and Registration Stickers

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 23707

FILED: 04/30/2001, 16:12

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Passage of H.B. 63 in the 2001 legislature requires this change in order to comply with the new law.

)

SUMMARY OF THE RULE OR CHANGE: This change eliminates the need for a separate initial base decal for registration of off highway vehicles in compliance with H.B. 63 of the 2001 legislature.

**(DAR Note:** H.B. 63 is found at 2001 Utah Laws 23 and will be effective July 1, 2001.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: No savings to Division of Parks and Recreation. There will be some minor savings for Division of Motor Vehicles by eliminating the need to print separate decals.

❖LOCAL GOVERNMENTS: Since local government has no authority over State Parks, there is no aggregate anticipated cost or savings.

❖OTHER PERSONS: The only minor savings would be to the Division of Motor Vehicles by eliminating the need to print separate decals. Therefore, there is no aggregate anticipated cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs. Registration fees will remain the same.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule will have no fiscal impact on business.

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

Natural Resources  
Parks and Recreation  
Room 116  
1594 West North Temple

PO Box 146001  
Salt Lake City, UT 84114-6001, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Dee Guess at the above address, by phone at (801) 538-7320, by FAX at (801) 537-3144, or by Internet E-mail at nrdomain.dguess@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: David K. Morrow, Deputy Director

**R651. Natural Resources, Parks and Recreation.  
R651-401. Off-Highway Vehicle [~~Assigned Numbers~~] and  
Registration Stickers.**

~~[R651-401-1. Identification Numbers:  
—The assigned number shall be the manufacturer assigned vehicle identification number. If the off-highway vehicle does not have a vehicle identification number then the Division of Motor Vehicles may assign an identification number.  
]~~

~~R651-401-[2]1. [~~Decals~~]Stickers.  
Upon receipt of the application in the approved form, the [~~division~~]Division of Motor Vehicles shall issue annual registration [~~base decals~~]stickers which shall be displayed as follows: on snowmobiles, a [~~base decal~~]sticker shall be mounted on both sides of the hood or pan; on motorcycles or all-terrain type I vehicles, a [~~base decal~~]sticker shall be mounted on both sides of the fork; and on all-terrain type II vehicles, a base decal shall be mounted on the front and the rear of the vehicle. Vehicle types are defined in 41-22-2. In all instances, [~~base decals~~]sticker shall be mounted in a visible location. [~~Base decals shall remain on the off-highway vehicle until the vehicle is sold or transferred.~~~~

~~[  
R651-401-3. Registration Validation Stickers:  
—On the initial registration and each year thereafter, the division shall issue registration validation stickers which shall be attached to the base decals as instructed.]~~

**KEY: off-highway vehicles**  
~~[1987]June 15, 2001~~ 41-22-3(4)  
Notice of Continuation May 6, 1997

Natural Resources, Parks and  
Recreation  
**R651-403**  
Dealer Registration

**NOTICE OF PROPOSED RULE**

(Amendment)  
DAR FILE No.: 23708  
FILED: 04/30/2001, 16:12  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Simplify the registration of off highway vehicle dealers by transferring responsibility from Division of Motor Vehicles to Division of Parks and Recreation which is more qualified to regulate these dealers.

SUMMARY OF THE RULE OR CHANGE: The rule replaces reference to Division of Motor Vehicle with Division of Parks and Recreation regarding issuing of Off-Highway Vehicles (OHV) dealer and temporary OHV registrations.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:  
❖THE STATE BUDGET: No overall state savings. Transfer of responsibility will have no fiscal impact.  
❖LOCAL GOVERNMENTS: Since local government has no authority over State Parks, there is no aggregate anticipated cost or savings.  
❖OTHER PERSONS: As this is a shift in responsibility only, other persons will not be affected by cost or savings.  
COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals will not be affected by this change, either fiscally or otherwise.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule will have no fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
Natural Resources  
Parks and Recreation  
Room 116  
1594 West North Temple  
PO Box 146001  
Salt Lake City, UT 84114-6001, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Dee Guess at the above address, by phone at (801) 538-7320, by FAX at (801) 537-3144, or by Internet E-mail at nrdomain.dguess@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: David K. Morrow, Deputy Director

**R651. Natural Resources, Parks and Recreation.**

**R651-403. Dealer Registration.**

**R651-403-1. Dealer Registration.**

(1) Each person acting as a dealer who has an established place of business and is engaged in the business of selling off-highway vehicles may make application to the ~~[Division of Motor Vehicles]~~division, who is acting as agent for the division, in order to obtain dealer registration.

(2) The application shall contain the following information:

- (a) the name of the business;
- (b) the business address;
- (c) the business owner's name (if the business is a corporation, the names of the principal officers of the corporation);
- (d) the type of vehicles offered for sale; and
- (e) the manufacture line of vehicles for which the dealer holds franchise from the manufacturer to sell. Attached to the application shall be copies of the appropriate city, county, and state licenses required to do business in this state[-] and a copy of document(s) from the manufacturer authorizing the sale of new off-highway vehicles.

(3) Upon filing the application by the dealer the ~~[Division of Motor Vehicles]~~division may assign a dealer number and the number of registrations to be issued, after which the Division of Motor Vehicles may assign the number of approved dealer registrations to the dealer.

(4) Dealer registrations are valid only when demonstrating an off-highway vehicle to a prospective purchaser and shall not be permanently attached to a vehicle.

(5) Every off-highway vehicle dealer who obtains dealer registration is responsible to maintain the registration and control its use.

(6) Dealer registrations are not valid on any off-highway vehicle which is a rental or lease unit or on an off-highway vehicle which is not a part of the dealer inventory and available for immediate sale.

(7) If the ~~[Division of Motor Vehicles]~~division has reasonable grounds to believe that a dealer has failed to comply with any of the above provisions, after notice to the dealer and a hearing, dealer registrations may be suspended. Upon suspension, the dealer will surrender all of his dealer registrations to the Division of Motor Vehicles within 15 days.

**KEY: off-highway vehicles**  
**[1987]June 15, 2001**  
**Notice of Continuation May 6, 1997**

41-22-5(2)

◆ ————— ◆

**Natural Resources, Parks and  
Recreation**  
**R651-404**  
**Temporary Registration**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 23709

FILED: 04/30/2001, 16:12

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To change the authorized agents of the Division of Motor Vehicles to the agents of the division to be able to inspect and audit the temporary registration records kept by the dealer.

SUMMARY OF THE RULE OR CHANGE: The responsibility of the Division of Motor Vehicles regarding temporary registrations for off-highway vehicles is shifting to the Division of Parks and Recreation in some areas. This change shows the areas of change for Rule R651-404.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Since this is a responsibility change and not a cost or savings change, there are not anticipated costs or savings in the state budget.

❖LOCAL GOVERNMENTS: Since local government has no authority over State Parks, there is no aggregate anticipated cost or savings.

❖OTHER PERSONS: There are no anticipated costs or savings to other persons from this change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs will not be affected by this change to Rule R651-404.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule will have no fiscal impact on business.

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

Natural Resources  
Parks and Recreation  
Room 116  
1594 West North Temple  
PO Box 146001  
Salt Lake City, UT 84114-6001, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at (801) 538-7320, by FAX at (801) 537-3144, or by Internet E-mail at nrdomain.dguess@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: David K. Morrow, Deputy Director

**R651. Natural Resources, Parks and Recreation.**

**R651-404. Temporary Registration.**

**R651-404-1. Temporary Registration.**

(1) An off-highway vehicle dealer may apply for temporary registrations to be used on off-highway vehicles sold by his business. The application to obtain temporary registrations is the same as outlined in Rule R651-403(1).

(2) Each temporary registration will be valid for a period not to exceed 30 days from date of issue.

(3) A temporary registration will not be valid on any off-highway vehicle held in the dealer inventory for sale or any off-highway vehicle not sold by the same dealer who issued the registration.

(4) A dealer shall not issue more than one temporary registration for any off-highway vehicle.

(5) A dealer who obtains temporary registrations will be responsible for their issuance and is required to maintain records of each registration obtained and issued. Dealer records will contain a description of the off-highway vehicle sold, the name and address of the purchaser, and the date issued.

(6) Temporary registration records kept by the dealer shall be made available for inspection and audit by authorized agents of the ~~[Division of Motor Vehicles]~~division during regular business hours.

(7) If the ~~[Division of Motor Vehicles]~~division has reasonable grounds to believe that a dealer has failed to comply with any of the above provisions, after notice to the dealer and a hearing, temporary registrations may be suspended. Upon suspension, the dealer will surrender all of his unused temporary registrations to the Division of Motor Vehicles within 15 days.

**KEY: off-highway vehicles**

~~[1987]~~June 15, 2001

41-22-5(3)

Notice of Continuation May 6, 1997



Natural Resources, Parks and Recreation

**R651-601**

Definitions as Used in These Rules

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 23710

FILED: 04/30/2001, 16:12

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To add one area of "natural and cultural resources" not covered in this amendment in previous rule.

SUMMARY OF THE RULE OR CHANGE: By adding the word "minerals" to this amendment, the definition for Natural and Cultural Resources is more complete to cover all areas defined by this heading.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: This proposed rule amendment serves to add a resource that was previously not included in the definitions. Adding that resource "minerals" creates no impact to the state budget costs or savings.

❖LOCAL GOVERNMENTS: Since local government has no authority over State Parks, there is no aggregate anticipated cost or savings.

❖OTHER PERSONS: This proposed rule amendment is to add a resource that was not included in the previous rule. There are no anticipated costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Adding the resource "minerals" completes the definition of natural resources list and therefore this change creates no additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule will have no fiscal impact on business.

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

Natural Resources  
Parks and Recreation  
Room 116  
1594 West North Temple  
PO Box 146001  
Salt Lake City, UT 84114-6001, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at (801) 538-7320, by FAX at (801) 537-3144, or by Internet E-mail at nrdomain.dguess@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: David K. Morrow, Deputy Director

**R651. Natural Resources, Parks and Recreation.**

**R651-601. Definitions as Used in These Rules.**

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**R651-601-4. Natural and Cultural Resources.**

"Natural and Cultural Resources" means those features and values including all lands, minerals, soils and waters, natural systems and processes, and all plants, animals, topographic,

geologic and paleontological components of a park area as well as all historic and pre-historic, sites, trails, structures, inscriptions, rock art and artifacts representative of a given culture occurring on or within any park area.

.....

**KEY: parks**  
**[March 6, 2001] June 15, 2001** 63-11-3  
**Notice of Continuation June 29, 1999**



Natural Resources, Parks and Recreation  
**R651-603**  
Animals

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 23711  
FILED: 04/30/2001, 16:12  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To delete Section R651-603-6 which is covered more fully in a new section to be added in Rule R651-620, Trespass. This eliminates duplication and more clearly defines all areas covered under the new section. Paragraph numbers are adjusted to match this deletion.

SUMMARY OF THE RULE OR CHANGE: The Division of Parks and Recreation continues to improve their rules and combine like areas. Elimination of this paragraph simply removes a duplication which is now covered under Section R651-620-2.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:  
❖THE STATE BUDGET: This proposed rule amendment is made to eliminate duplication and define areas covered under trespass and adjusts paragraph numbers only. Therefore there are no anticipated costs or savings to the state budget.  
❖LOCAL GOVERNMENTS: Since local government has no authority over State Parks, there is no aggregate anticipated cost or savings.  
❖OTHER PERSONS: The rule is already in force, this proposed amendment defines and eliminates duplication and readjusts the numbering. There is no anticipated costs or savings to other persons.  
COMPLIANCE COSTS FOR AFFECTED PERSONS: This proposed rule amendment is made to eliminate duplication and define areas covered under trespass and adjusts paragraph numbers only. Therefore there are no anticipated costs or savings to the state budget.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule will have no fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
Natural Resources  
Parks and Recreation  
Room 116  
1594 West North Temple  
PO Box 146001  
Salt Lake City, UT 84114-6001, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Dee Guess at the above address, by phone at (801) 538-7320, by FAX at (801) 537-3144, or by Internet E-mail at nrdomain.dguess@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: David K. Morrow, Deputy Director

**R651. Natural Resources, Parks and Recreation.**  
**R651-603. Animals.**

.....

~~**[R651-603-6. Livestock.**~~  
~~—Allowing livestock to graze or be on any lands within the park system is prohibited except by permit.]~~

**R651-603-[7]6. Hitching or Tying Animals.**  
Hitching or tying an animal to any tree, shrub or structure in a manner that may cause damage or block or restrict foot or vehicular traffic is prohibited.

**R651-603-[8]7. Horse Use on Trails.**  
Horses and other saddle or pack animals are prohibited on developed trails and routes not posted open for their use.

**R651-603-[9]8. Horse Use within a Park.**  
Horse and other saddle or pack animals are prohibited from all campgrounds, picnic areas and other areas of public gatherings except where trails and facilities are specifically designed and posted for such use.

**KEY: parks**  
**[December 2, 1999] June 15, 2001** 63-11-17(2)(b)  
**Notice of Continuation June 29, 1999**



Natural Resources, Parks and Recreation
R651-620
Protection of Resources Park System Property

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23712
FILED: 04/30/2001, 16:12
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To combine Sections R651-603-6 and R651-620-2 with all forms of "trespassing" in the state parks areas.

SUMMARY OF THE RULE OR CHANGE: If a person trespasses under specific circumstances, they become guilty of a class B misdemeanor as stated in Section 63-11-17.3 of the Utah Code; and are subject to certain penalties as described in Utah Code Sections 76-3-204 and 76-3-301. This new section R651-620-2 has been added to Rule R651-620 to clearly define the circumstances when a person is considered trespassing and the fines they could face if found guilty.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: This rule change will create no anticipated costs or savings to the state budget as it is combining rule sections for better clarification.
LOCAL GOVERNMENTS: Since local government has no authority over State Parks, there is no aggregate anticipated cost or savings.
OTHER PERSONS: No anticipated costs or savings to other persons since the change is only combining rule sections for better clarification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons other than class B misdemeanor penalties for violations as specified in Sections 76-3-204 and 76-3-301.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule will have no fiscal impact on business.

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

Natural Resources
Parks and Recreation
Room 116
1594 West North Temple
PO Box 146001
Salt Lake City, UT 84114-6001, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dee Guess at the above address, by phone at (801) 538-7320, by FAX at (801) 537-3144, or by Internet E-mail at nrdomain.dguess@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: David K. Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-620. Protection of Resources Park System Property.
R651-620-1. Applicability of Criminal Code.

Offenses against capital improvements, natural and cultural resources will normally be handled through the Utah Criminal Code.

[R651-620-2. Plants, Soil, or Minerals.

The digging, removing, or possessing, or destruction of any plant, soil, or minerals is prohibited except when authorized by permit.]R651-620-2. Trespass.

- (1) A person is guilty of a class B misdemeanor, as stated in Utah Code Annotated, Section 63-11-17.3, if such person engages in activities within a park area without specific written authorization by the division. These activities include, but are not limited to (a) construction, or causing to construct, any structure, including buildings, fences water control devices, roads, utility lines or towers, or any other improvements; (b) removal, extraction, use, consumption, possession or destruction of any natural or cultural resource; (c) grazing of livestock, except as provided in Utah Code Annotated, Section 72-3-112; (d) use or occupation of park area property for more than 30 days after the cancellation or expiration of permit, lease, or concession agreement; or (e) any use or occupation in violation of division rules.
(2) The provisions of this section do not apply to division employees in the performance of their duties.
(3) Violations described in section (1) are subject to penalties as provided in Utah Code Annotated, Section 76-3-204 and Section 76-3-301.

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KEY: parks
[October 4, 1999] June 15, 2001 63-11-17(2)(b)
Notice of Continuation June 29, 1999

Public Service Commission,
Administration
R746-409
Pipeline Safety



**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 23705

FILED: 04/30/2001, 13:59

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Federal Department of Transportation requires that the state update the adoption of federal codes relating to pipeline safety every two years or less. This update reflects amendments added to CFR Title 49 Parts 190, 191, 192, 193 and 199 since the last date of adoption, March 11, 1999.

SUMMARY OF THE RULE OR CHANGE: In Subsection R746-409-1(B) we are updating the CFR incorporation by reference from March 11, 1999 to November 3, 2000. We are also making a few minor spelling and wording corrections in Sections R746-409-1 and R746-409-2.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-13-5

FEDERAL REQUIREMENT FOR THIS RULE: 49 CFR Parts 190, 191, 192, 193, and 199

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 49 CFR, Parts 190, 191, 192, 193, and 199

## ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--because this change does not require the state inspectors to do any more inspections than are being done at present.

❖LOCAL GOVERNMENTS: None--because the Commission does not regulate municipal systems therefore they are not required to follow Commission rules.

❖OTHER PERSONS: Cost or savings to other persons are explained under "Compliance Costs for Affected persons." COMPLIANCE COSTS FOR AFFECTED PERSONS: 49 CFR Part 192 Amendment 86 published 10/26/99 - SubPart N (added) 192.801-.809 - OPERATOR QUALIFICATION - Estimated costs of compliance with developing and implementing an operator qualification plan range from about \$100 in the case of very small gas operators to several thousand dollars in the case of large gas operators. These costs will not be recurring.

49 CFR Part 192 Amendment 87 published 11/22/99 - 12.459 - DETERMINING EXTENT OF CORROSION - This amendment requires operators to inspect corroded, exposed pipe circumferentially and longitudinally beyond the exposed portion to determine whether additional corrosion requiring remedial action exists in the vicinity of the exposed portion. Estimated costs of compliance should not be more than about one-to-two man-hours work in most instances.

49 CFR Part 192 Amendment 88 published 01/13/2000 192.309, .485, .487, .711, .713, .717 - GAS AND HAZARDOUS LIQUID PIPELINE REPAIR - This amendment gives operators more options for remedial action when required to repair damage to underground piping. Estimated costs of compliance will probably be lower than in the previous rules due to this additional flexibility.

49 CFR Part 192 Amendment 89 published 10/10/2000 - 192.3, .707 - UNDERWATER ABANDONED PIPELINE FACILITIES. This amendment applies only to underwater pipelines in offshore locations or under commercially navigable waterways, neither of which exist in Utah, so no costs of compliance should be associated with this amendment.

49 CFR Part 193 Amendment 17 published 3/31/2000 - Several paragraphs - INCORPORATION OF STANDARD NFPA 59A IN THE LIQUEFIED NATURAL GAS REGULATIONS This amendment applies only to liquefied natural gas (LNG) systems, none of which are currently being operated in Utah. Therefore costs of compliance with this amendment should be zero.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Commission has estimated the fiscal impacts, but the policy reasons behind the rule changes were made by the federal agency.

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

Public Service Commission  
Administration  
Fourth Floor, Heber M. Wells Building  
160 East 300 South  
PO Box 45585  
Salt Lake City, UT 84111, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Barbara Stroud at the above address, by phone at (801) 530-6716, by FAX at (801) 530-6796, or by Internet E-mail at pupsc.bstroud@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: Barbara Stroud, (Designee) Paralegal

**R746. Public Service Commission, Administration.****R746-409. Pipeline Safety.****R746-409-1. General Provisions.**

A. Scope and Applicability -- To enable the Commission to carry out its duties regarding pipeline safety under Chapter 13, Title 54, the following rules shall apply to persons owning or operating an intrastate pipeline facility as defined in that chapter, or a segment of that chapter including, but not limited to, master meter systems, as well as persons engaged in the transportation of gas.

B. Adoption of Parts 190, 191, 192, 193, and 199 -- The Commission hereby adopts, and incorporates[~~herein~~] by this reference, CFR Title 49, Parts 190, 191, 192, 193, and 199, as amended, November 3, 2000[~~March 11, 1999~~]. Persons owning or operating an intrastate pipeline facility in Utah, or a segment thereof, as well as persons engaged in the transportation of gas,

shall comply with the minimum safety standards specified in those Parts of CFR Title 49.

**R746-409-2. Definitions.**

For purposes of these rules, the following terms shall bear the following meanings:

- A. "CFR" means the Code of Federal Regulations;
- B. "Commission" means the Public Service Commission of Utah;
- C. "Division" means the Division of Public Utilities, Utah Department of Commerce;
- D. "Master Meter System" means a pipeline system that distributes natural gas or liquid propane gas within a public place, such as a mobile home park, housing project, apartment complex, school, university or hospital and which is owned, operated and maintained by an operator that purchases the gas from an outside source.
- E. "Part 190" means CFR Title 49, Part 190 entitled, Pipeline Safety Program Procedures.
- F. "Part 191" means CFR Title 49, Part 191, entitled, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports.
- G. "Part 192" means CFR Title 49, Part 192 entitled, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.
- H. "Part 193" means CFR Title 49, Part 193 entitled, Liquefied Natural Gas Facilities: Federal Safety Standards.
- I. "Part 199" means CFR Title 49, part 199 entitled, Drug Testing.
- J. "Public place" means a highway, street, alley or other parcel of land, essentially unobstructed, which[with] is subject to easement, deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, traverses or is likely to frequent.

**KEY: rules and procedure, safety, pipeline**

~~[November 25, 1999]~~**2001** 54-13-3  
 Notice of Continuation December 23, 1996 54-13-5  
 54-13-6



Tax Commission, Administration

**R861-1A-17**

Definition of Return Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-403

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE NO.: 23717  
 FILED: 05/01/2001, 09:58  
 RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: 2001 S.B. 202 codifies the provisions of this rule.

SUMMARY OF THE RULE OR CHANGE: Section R861-1A-17 is deleted. Provisions of this section were codified in 2001 S.B. 202. 2001 S.B. 202 allows the disclosure of certain motor fuel and aviation fuel information filed with the Tax Commission.

(**DAR Note:** S.B. 202 is found at 2001 Utah Laws 270 and was effective on April 30, 2001.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-1-210 and 59-1-403

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--The section is not necessary as its provisions have been codified by 2001 S.B. 202.

❖LOCAL GOVERNMENTS: None--The section is not necessary as its provisions have been codified by 2001 S.B. 202.

❖OTHER PERSONS: None--The section is not necessary as its provisions have been codified by 2001 S.B. 202.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The procedures for receiving motor fuel and aviation fuel information remain the same.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses as a result of this rule being deleted.

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

Tax Commission  
 Administration  
 Tax Commission Building  
 210 North 1950 West  
 Salt Lake City, UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R861. Tax Commission, Administration.**

**R861-1A. Administrative Procedures.**

~~[R861-1A-17. Definition of Return Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-403.~~

—"Return," for purposes of Section 59-1-403, does not include the reports and statements filed with the commission pursuant to Title 59, Chapter 13, Part 2, Motor Fuel.]

**KEY:** developmentally disabled, grievance procedures, taxation, disclosure requirements  
~~[December 19, 2000]~~2001  
Notice of Continuation May 20, 1997  
59-1-210  
59-1-403

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: Pam Hendrickson, Commissioner



**Tax Commission, Auditing**  
**R865-19S-4**  
**Collection of Tax Pursuant to Utah**  
**Code Ann. Section 59-12-107**

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE No.: 23714  
FILED: 05/01/2001, 09:47  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-107 requires vendors with nexus to collect Utah sales and use tax.

SUMMARY OF THE RULE OR CHANGE: Proposed amendment clarifies current Tax Commission practice that if an invoice does not show sales tax, sales tax will be assessed on the invoice amount. Amendment also deletes language that is found in statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-107

- ANTICIPATED COST OR SAVINGS TO:
- ❖THE STATE BUDGET: None--Proposed amendment clarifies current Tax Commission practice.
  - ❖LOCAL GOVERNMENTS: None--Proposed amendment clarifies current Tax Commission practice.
  - ❖OTHER PERSONS: None--Proposed amendment clarifies current Tax commission practice.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Amendment clarifies current Tax Commission practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This clarifying amendment will have no fiscal impact on businesses that are already in compliance.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
Tax Commission  
Auditing  
Tax Commission Building  
210 North 1950 West  
Salt Lake City, UT 84134, or  
at the Division of Administrative Rules.

**R865. Tax Commission, Auditing.**  
**R865-19S. Sales and Use Tax.**  
**R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.**

A. ~~[Vendors shall not in any way waive the collection or imposition of the tax. Invoices and receipts]~~An invoice or receipt issued by a vendor shall show the sales tax collected as a separate item on the invoice or receipt. ~~[Vendors are required to remit to the Tax Commission all tax funds in possession and are guarantors of all amounts required to be collected.]~~

B. If an invoice or receipt issued by a vendor does not show the sales tax collected as required in A., sales tax will be assessed on the vendor based on the amount of the invoice or receipt.

~~[B-]C. [If vendors collect]~~A vendor that collects an excess amount of sales or use tax[-they] must either refund [such]the excess to [their customers]the purchasers from whom the vendor collected the excess or remit [it]the excess to the[-Tax] Commission.

1. ~~[However, vendors]~~A vendor may[-first] offset [under collections]an undercollection of tax on sales against any excess tax collected in the same[-quarterly] reporting period.

2. ~~[Vendors]~~A vendor may not offset an underpayment of tax on the vendor's purchases[- whether the purchases are from in state or out of state sources]against an excess of tax collected.

**KEY:** charities, tax exemptions, religious activities, sales tax  
~~[December 19, 2000]~~2001  
Notice of Continuation May 22, 1997  
59-12-107



**Tax Commission, Auditing**  
**R865-19S-79**  
**Tourist Home, Hotel, Motel, or Trailer**  
**Court Accommodations and Services**  
**Defined Pursuant to Utah Code Ann.**  
**Sections 59-12-103, 59-12-301, 59-12-**  
**352, and 59-12-353**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 23715

FILED: 05/01/2001, 09:47

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Sections 59-12-103, 59-12-301, 59-12-353, and 59-12-353 impose sales and transient room taxes on charges paid for hotel, motel, and similar accommodations.

SUMMARY OF THE RULE OR CHANGE: Proposed amendment provides that, in order to be subject to sales and transient room taxes, a room or space must be rented on a regular basis.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-12-352 and 59-12-353

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--Proposed amendment indicates Tax Commission interpretation of Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353 on a case of first impression.

❖LOCAL GOVERNMENTS: None--Proposed amendment indicates Tax Commission interpretation of Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353 on a case of first impression.

❖OTHER PERSONS: None--Proposed amendment indicates Tax Commission interpretation of Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353 on a case of first impression.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment provides guidance on when a person renting a room must collect sales tax on that room rental.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment clarifies current practice and will have no fiscal impact on businesses.

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

Tax Commission  
Auditing  
Tax Commission Building  
210 North 1950 West  
Salt Lake City, UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.****R865-19S. Sales and Use Tax.**

**R865-19S-79. [~~Tourist Home, Hotel, Motel, or Trailer Court~~] Accommodations and Services Defined for Purposes of Sales and Transient Room Taxes Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.**

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

1. "Tourist home," "hotel," [~~or~~] "motel," "motor court," "inn," "bed and breakfast establishment," "condominium," or "resort home," means any place [~~having~~]that rents, on a regular basis, rooms, apartments, or units[~~to rent~~] by the day, week, or month.

2. "Trailer court" means [~~any place having~~]a campground, mobile home park, recreational vehicle park, or similar business that rents, on a regular basis, [~~trailers or~~]space[~~to park a trailer for rent~~] by the day, week, or month.

[~~3. "Trailer" means house trailer, travel trailer, and tent trailer.~~]  
[~~4. "Accommodations and services charges," or "rents" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.~~

**KEY: charities, tax exemptions, religious activities, sales tax**  
**[~~December 19, 2000~~]2001** 59-12

Notice of Continuation May 22, 1997

◆ \_\_\_\_\_ ◆

**Tax Commission, Auditing****R865-19S-85**

**Sales and Use Tax Exemptions for  
New or Expanding Operations and  
Normal Operating Replacements  
Pursuant to Utah Code Ann. Section  
59-12-104**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 23716

FILED: 05/01/2001, 09:47

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-106 requires an exemption certificate for all exempt purchases.

SUMMARY OF THE RULE OR CHANGE: Proposed amendment clarifies current Tax Commission practice on two issues. First, the amendment clarifies that all supply lines, not just gas, water, and electrical supply lines, may qualify for the exemption. Second, the amendment replaces the de minimis standard with a primary use standard to match current Tax Commission practice.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-104

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--The proposed amendment clarifies the rule language so that it matches current Tax Commission practice.

❖LOCAL GOVERNMENTS: None--The proposed amendment clarifies the rule language so that it matches current Tax Commission practice.

❖OTHER PERSONS: None--The proposed amendment clarifies the rule language so that it matches current Tax Commission practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment clarifies the rule language so that it matches current Tax Commission practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses because it simply clarifies current practice.

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

Tax Commission  
Auditing  
Tax Commission Building  
210 North 1950 West  
Salt Lake City, UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-85. Sales and Use Tax Exemptions for New or Expanding Operations and Normal Operating Replacements Pursuant to Utah Code Ann. Section 59-12-104.**

A. Definitions:

[1.] "~~De minimis~~" means that an item's use in nonqualifying activities is inconsequential in relation to the item's use for ~~qualifying activities.~~

~~2.]~~ 1. "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

[3.] 2. "Machinery and equipment" means:

a) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

b) any ~~peripheral device~~ accessory that is essential to a continuous manufacturing process. ~~[Qualifying peripheral devices]~~ Accessories essential to a continuous manufacturing process include:

(i) bits, jigs, molds, or devices that control the operation of machinery and equipment[;]; and

(ii) ~~[but do not include gas, water, or electricity systems that constitute real property improvements as provided in B]~~ gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

[4.] 3. "Manufacturer" means a person who functions within a manufacturing facility.

[5.] 4a) "New or expanding operations" means:

(i) the creation of a new manufacturing operation in this state; or

(ii) the expansion of an existing Utah manufacturing operation if the expanded operation increases production capacity or is substantially different in nature, character, or purpose from that manufacturer's existing Utah manufacturing operation.

b) The definition of new or expanding operations is subject to limitations on normal operating replacements.

c) A manufacturer who closes operations at one location in this state and reopens the same operation at a new location does not qualify for the new or expanding operations sales and use tax exemption without demonstrating that the move meets the conditions set forth in ~~[A.5.a)]~~ A.4.a). Acquisitions of machinery and equipment for the new location may qualify for the normal operating replacements sales and use tax exemption if they meet the definition of normal operating replacements in ~~[A.6.]~~ A.5.

[6.] 5. "Normal operating replacements" includes:

a) new machinery and equipment or parts, whether purchased or leased, that have the same or similar purpose as machinery or equipment retired from service due to wear, damage, destruction, or any other cause within 12 months before or after the purchase date, even if they improve efficiency or increase capacity.

b) if existing machinery and equipment or parts are kept for backup or infrequent use, any new, similar machinery and equipment or parts purchased and used for the same or similar function.

B. The sales and use tax exemptions for new or expanding operations and normal operating replacements apply only to purchases or leases of tangible personal property used in the actual manufacturing process.

1. The exemptions do not apply to purchases of real property or items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

2. ~~[If a separate gas, water, or electrical supply line is installed solely for the operation of the manufacturing equipment, the gas, water, or electrical supply line is an accessory to the manufacturing equipment rather than a part of the real property.]~~ Purchases of qualifying machinery and equipment or normal operating replacements are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

C. Machinery and equipment or normal operating replacements used for ~~[an] a nonmanufacturing activity [that is not part of the manufacturing process are not exempt unless the use]~~ qualify for the exemption if the machinery and equipment or normal operating replacements are primarily used in [the nonqualifying activity is de minimis] manufacturing activities. Examples of ~~[nonqualifying] nonmanufacturing~~ activities include:

1. research and development;
2. refrigerated or other storage of raw materials, component parts, or finished product; or
3. shipment of the finished product.

D. Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment or normal operating replacements purchased for use in the manufacturing operation are eligible for the sales and use tax exemption for new or expanding operations or for normal operating replacements if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

1. Each activity is treated as a separate and distinct establishment if:

- a) no single SIC code includes those activities combined; or
- b) each activity comprises a separate legal entity.

2. Machinery and equipment or normal operating replacements used in both manufacturing activities and nonmanufacturing activities qualify for the exemption for new or expanding operations or for normal operating replacements only if the ~~[use] machinery and equipment or normal operating replacements are primarily used in [nonmanufacturing] manufacturing activities [is de minimis].~~

E. ~~[Purchases of qualifying machinery and equipment or normal operating replacements are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.—]~~ Charges for labor to repair, renovate, or install tangible personal property shall be taxable or tax exempt as provided in R865-19S-78.

F. The manufacturer shall retain records to support the claim that the machinery and equipment or normal operating replacements are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

G. Vendors are required to obtain a tax exemption certificate upon which the purchaser certifies that the use of the machinery and equipment or normal operating replacements qualifies for exemption under Title 59, Chapter 12. Vendors must obtain a separate tax exemption certificate, or a purchase order that

incorporates the appropriate language, including authorized signature, date and title, of the tax exemption certificate, from the purchaser for each purchase of exempt machinery and equipment, at the time of purchase.

H. If a purchase consists of items that are exempt from sales and use tax under this rule and Section 59-12-104, and items that are subject to tax, the tax exempt items must be separately stated on the invoice or the entire purchase will be subject to tax.

**KEY: charities, tax exemptions, religious activities, sales tax**  
**[December 19, 2000]2001 59-12**  
**Notice of Continuation May 22, 1997**

## Tax Commission, Motor Vehicle

### R873-22M-35

#### Reissuance of Personalized License Plates Pursuant to Utah Code Ann. Sections 41-1a-413 and 41-1a-1211

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23718

FILED: 05/01/2001, 09:58

RECEIVED BY: NL

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule section currently states that if personalized plates are not renewed within one year of their expiration, the plates are deemed surrendered to the Motor Vehicle Division, and the division may issue those plates to a new requestor. This amendment changes the timeframe for renewal.

**SUMMARY OF THE RULE OR CHANGE:** Proposed amendment decreases the time period within which a person must renew personalized license plates from one year to six months. Plates not renewed within this time period may be reissued to a new requestor.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 41-1a-413 and 41-1a-1211

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** None--Proposed amendment may allow a requestor to obtain a personalized licensed plate that would not otherwise have been available.

❖ **LOCAL GOVERNMENTS:** None--Personalized plate fees are state fees only.

❖ **OTHER PERSONS:** None--Proposed amendment may allow a requestor to obtain a personalized plate that would not otherwise have been available.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--Amendment may allow a requestor to obtain a personalized plate that would not otherwise have been available.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment will have no fiscal impact on businesses that are current in renewing their motor vehicles.

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

Tax Commission  
Motor Vehicle  
Tax Commission Building  
210 North 1950 West  
Salt Lake City, UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/14/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2001

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R873. Tax Commission, Motor Vehicle.**  
**R873-22M. Motor Vehicle.**  
**R873-22M-35. Reissuance of Personalized License Plates Pursuant to Utah Code Ann. Sections 41-1a-413 and 41-1a-1211.**

A. If a person who has been issued personalized license plates fails to renew the personalized license plates within ~~[one year]~~six months of the plates' expiration, the license plates shall be deemed to be surrendered to the division and the division may reissue the personalized license plates to a new requestor.

**KEY: taxation, motor vehicles, aircraft, license plates**  
**[June 21, 2000]2001 41-1a-413**  
**Notice of Continuation May 8, 1997 41-1a-1211**



Workforce Services, Employment  
Development  
**R986-200**  
Family Employment Program

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR File No.: 23721  
FILED: 05/01/2001, 17:07  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is necessary to correct an omission in the original rules to reflect long-standing Department practice. This change also corrects the rule regarding eligibility when a child is not in school.

SUMMARY OF THE RULE OR CHANGE: The Department requires a trial participation period for clients who have had their financial assistance terminated in the past for non-compliance. The rule did not provide for this trial participation period. The amendment also clarifies what the Department's responsibilities are in the event a client fails to participate in a conciliation meeting. Finally, this change takes out the language that a family will be disqualified if the only minor child is not in school.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-301

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no costs to the State budget associated with this rule change as it is being made to comply with Department practice and is already a part of the existing budget.

❖LOCAL GOVERNMENTS: This rule does not apply to local government; therefore, there are no costs or savings.

❖OTHER PERSONS: There will be no costs to anyone as a result of this rule change as this change is only being made to correct an omission in the current rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs associated with this new change because all costs related to this rule are included within existing budgets.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on business as a result of these changes.

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

Workforce Services  
Employment Development  
Second Floor  
140 East 300 South  
PO Box 45244  
Salt Lake City, UT 84145-0244, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Suzan Pixton at the above address, by phone at (801) 526-9645, by FAX at (801) 526-9244, or by Internet E-mail at wsadmpo.spixton@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/04/2001, 5:00 p.m., 1385 South State, Room 157, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2001

AUTHORIZED BY: Robert Gross, Executive Director

**R986. Workforce Services, Employment Development.**

**R986-200. Family Employment Program.**

**R986-200-204. Eligibility Requirements.**

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child. ~~[- If the only minor child in the household assistance unit is at least six years old but under 16 years old and not attending school, the family is not eligible for FEP or FEPTP assistance.]~~

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements in R986-100 and of income, assets, and participation.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

**R986-200-212. Conciliation and Termination of Financial Assistance for Failure to Comply.**

If a client who is required to participate in an employment plan consistently fails to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts conciliation through the following three-step process:

(1) In step one, the employment counselor will attempt to discuss compliance with the client and explore solutions. If compliance is not resolved the counselor will move to the second step.

(2) In step two, the employment counselor will request a meeting with the client, the employment counselor, the counselor's supervisor and any other Department or allied entity representatives, if appropriate, who might assist in encouraging participation. If a resolution cannot be reached ~~[- or the client does not attend the meeting],~~ the household assistance unit's financial assistance payment will be reduced by \$100 per month. If the client does not attend the meeting, the meeting will be held in the client's absence. As soon as the client makes a good faith effort to comply, the \$100 reduction will cease.

(3) In step three, the employment counselor will continue to attempt a face to face meeting between the client and appropriate Department and allied entity representatives, if appropriate, to prevent the termination of financial assistance. If after two months the client continues to show a failure to make a good faith effort to participate, financial assistance will terminate.

(a) The two month reduction in assistance must be consecutive. If a client's assistance is reduced for one month and then the client agrees and demonstrates a willingness to participate to the maximum extent possible, assistance is restored at the full amount. If the client later stops participating to the maximum extent possible, the client's assistance must be reduced for two additional consecutive months before a termination can occur.

(b) The two month reduction must immediately precede the termination. If the client's assistance was reduced during months other than the two months immediately prior to the termination, those months do not satisfy the requirements of this rule.

(c) If a client's assistance has been reduced for failure to participate, and the client then agrees to participate within the same month, the Department may restore the \$100. Any month in which the \$100 was restored will not count toward the two month reduction period necessary to terminate assistance.

(d) If a client has demonstrated a pattern and practice of having assistance reduced, agreeing to participate and having the reduction restored, but failing to follow through so that another period of reduction results, the Department may continue the reduction even if the client agrees to participate until such time as the client demonstrates a genuine willingness to participate.

(4) Termination of assistance for non-participation is immediate without a two month reduction of assistance for:

(a) a dependent child age 16 or older if that child is not attending school; or

(b) a parent on FEPTP.

(5) If financial assistance has been terminated for failure to participate and the client reapplies for financial assistance, the client must successfully complete a trial participation period of no longer than two weeks before the client is eligible for financial assistance. The trial participation period may be waived only if the client has cured all previous participation issues prior to re-application.

**KEY: family employment program**  
~~[January 1,]2001~~

35A-3-301 et seq.



**Workforce Services, Employment  
 Development  
 R986-600  
 Workforce Investment Act**

**NOTICE OF PROPOSED RULE**  
 (New)

DAR FILE No.: 23722  
 FILED: 05/01/2001, 17:07  
 RECEIVED BY: NL



**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Workforce Services has written Rule R986-600 because the Job Training Partnership Act (JTPA) program was repealed by Congress and replaced by the Workforce Investment Act (WIA). The new rule reflects the new Congressional legislation.

SUMMARY OF THE RULE OR CHANGE: This rule is enacted to comply with federal legislation and reflect the new programs offered under WIA for workplace training.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 35A, Chapter 5

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no costs or savings associated with this new rule because the program is a federally-funded program.

❖LOCAL GOVERNMENTS: This rule does not apply to local government therefore, there are no costs or savings.

❖OTHER PERSONS: There are no costs or savings associated with this new rule because the program is a federally-funded program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs associated with this new rule because all of the costs related to this rule are included within existing budgets and this is an entirely federally-funded program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes will have no impact on business.

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

Workforce Services  
 Employment Development  
 Second Floor  
 140 East 300 South  
 PO Box 45244  
 Salt Lake City, UT 84145-0244, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at (801) 526-9645, by FAX at (801) 526-9244, or by Internet E-mail at wsadmpo.spixton@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/04/2001, 5:00 p.m., 1385 South State, Room 157, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2001

AUTHORIZED BY: Robert Gross, Executive Director

**R986. Workforce Services, Employment Development.**

**R986-600. Workforce Investment Act.**

**R986-600-601. Authority for Workforce Investment Act (WIA) and Other Applicable Rules.**

(1) The Department provides services to eligible clients under the authority granted in the Workforce Investment Act. (WIA) 29 USC 2801 et seq. Funding is provided by the federal government through the WIA. Utah is required to file a State Plan to obtain the funding. A copy of the State Plan is available at Department administrative offices and on the Internet. The regulations contained in 20 CFR 652, 20 CFR 660 through 20 CFR 671 and 29 CFR 37 (2000) are also applicable and incorporated herein by reference.

(2) The provisions of Rule R986-100 apply to WIA unless expressly noted otherwise in these rules even though R986-100 refers to public assistance and WIA funding does not meet the technical definition of public assistance. The residency requirements of R986-100-106 do not apply to WIA.

**R986-600-602. Workforce Investment Act (WIA).**

(1) The goal of WIA is to increase a customer's occupational skills, employment, retention and earnings; to decrease welfare dependency; and to improve the quality of the workforce and national productivity.

(2) WIA is for individuals who need assistance finding suitable employment.

(3) Services are available for the following groups: adult, dislocated workers, and youth services.

**R986-600-603. Youth Services.**

(1) The goals of WIA youth services are to provide options for improving educational and skill competencies; to provide effective connections to employers; to ensure access to mentoring, training opportunities and support services; to provide incentives for achievement; and to provide opportunities for leadership, citizenship and community service.

(2) WIA youth services are available to low-income youth who are between the ages of 14 and 21 years old and who have barriers which interfere with the ability to complete an educational program or to secure and hold employment.

(a) Services to youths include eligibility determination, assessment, employment planning and referral to community resources delivering youth services. The Department may provide some youth services.

(b) Youth may be referred to appropriate community resources based on need. Services include educational achievement services, employment services, summer employment opportunities, supportive services, leadership development, and follow-up services.

(c) A bonus/incentive may be paid to provide recognition of achievement to eligible youth.

**R986-606-604. Adults and Dislocated Workers.**

The Department offers three levels of service for adults and dislocated workers:

(1) core services,

(2) intensive services,

(3) training services

**R986-600-605. Core Services.**

(1) There are no eligibility requirements for core services offered by the Department.

(2) Core services include:

(a) providing the following informational resources:

(i) orientation to and information about available services;

(ii) local, regional and national labor market information including job vacancy listings and occupations in demand and the skills necessary to obtain those jobs and occupations.

(iii) the performance of and program costs for all eligible providers of training education and rehabilitation services.

(iv) performance measures with respect to the one-stop delivery system;

(b) initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(c) job search and placement assistance, and where appropriate, career counseling;

(d) followup services, including counseling regarding the workplace, for participants in workforce investment activities who are placed in unsubsidized employment, for a period of not less than 12 months after the first day of the employment and,

(e) determining if a client is eligible for and assistance in applying for: WIA funded programs, unemployment insurance benefits, welfare-to-work activities, financial aid assistance available for training and educational programs not funded under WIA, other supportive services such as child care and transportation.

**R986-600-606. Intensive Services.**

(1) Intensive services are available to adults and dislocated workers:

(a) who are unemployed and are unable to obtain 'suitable employment' through core services and who have been determined by a Department employment counselor to be in need of more intensive services in order to obtain employment; or

(b) who are employed, but who are determined by the Department to be in need of intensive services in order to obtain or retain suitable employment.

(2) The employment counselor determines what is suitable employment based on the customer's individual circumstances. Suitable employment is employment that allows for self-sufficiency. Self-sufficiency for WIA is generally determined to be 200% of the Office of Management and Budget poverty level.

(3) intensive services consist of:

(a) an assessment as provided in R986-600-620,

(b) development of an employment plan as provided in R986-600-621. If the client is not receiving other forms of public assistance some modifications to the plan may be made to reflect the client's circumstances.

(c) Short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training, and

(d) case management, counseling and career planning.

**R986-600-607. Training Services.**

(1) Training services are available to adults and dislocated workers:

(a) who are unemployed and are unable to obtain 'suitable employment' through intensive services and who have been determined by a Department employment counselor to be in need of training services in order to obtain suitable employment; or

(b) who are employed, but who are determined by the Department to be in need of training services in order to obtain or retain suitable employment as defined in R986-600-606(2).

(2) The employment counselor determines what is suitable employment based on the customer's individual circumstances.

(3) Training services include employment related education and work site learning.

**R986-600-608. Eligibility Requirements.**

(1) Core services are available to all customers.

(2) There are different eligibility criteria for low-income youth services (ages 14-21), and adult and dislocated workers (18 and over). Eligibility requirements for intensive and training services must be determined before an adult or dislocated worker can receive those services. If a client is eligible for services in more than one category, the Department will determine the most appropriate program placement for the client. The Department may choose to contract out these services for youth.

**R986-600-609. Citizenship, Alienage and Residency Requirements.**

An individual seeking intensive or training services must be a citizen of the United States or be employment eligible in the United States. Employment eligible is defined by the WIA Act, section 188 (a)(5) as citizens and nationals of the US, lawfully admitted permanent resident aliens, refugees, asylees and parolees and other immigrants authorized by the U.S. Attorney General to work in the US. Any youth seeking WIA services must also meet these requirements.

**R986-600-610. Selective Service Registration Requirements.**

Male applicants must be in compliance with Selective Service registration requirements to receive intensive or training services, or youth services.

**R986-600-611. Income Eligibility Requirements.**

(1) Applicants for all youth programs must meet the income eligibility requirements in this rule.

(2) Displaced workers do not need to meet income eligibility requirements in any tier, however in tier two and three appropriate training is only available if the displaced worker is unable to obtain employment at 80% or more of his or her lay off wage.

(3) Adult workers must meet the income eligibility requirements of this rule when the Department is operating in tiers two and three.

**R986-600-612. Tier System for Determining Eligibility for Adult and Dislocated Workers.**

(1) The Department will determine eligibility based on a three tier system. When a client is approved for training funds, the Department will estimate the anticipated cost to the Department associated with that training and "obligate" and reserve that amount for accounting purposes. The total amount of money obligated and reserved will determine which tier is operational at any given time.

(2) Tier One. The Department will operate in Tier One until 50% of the available WIA adult or dislocated worker training funds have been obligated statewide. Once 50% of those funds have been obligated the Department will move to Tier Two for that funding stream. In Tier One, adult applicants do not need to meet income eligibility requirements. Training funds will be provided on the basis of need and appropriateness in Tier One. Dislocated workers may be considered appropriate for training regardless of their ability to reattach to the labor force in Tier One. Given that the funding available for adults and dislocated workers is from different streams, those two groups will not necessarily change tiers at the same time.

(3) Tier Two. When WIA adult training funds are 50% obligated on a statewide basis for the year, adults will be required to meet the low-income guidelines as defined in these rules. When WIA dislocated worker funds are 50% obligated on a statewide basis for the year, a dislocated worker can only get funding if they cannot find a job paying 80% of the lay off wage.

(4) Tier Three. When the WIA adult training funds are 80% obligated on a statewide basis for the year, adults must meet the low-income guidelines and will be prioritized according to the Department's current prioritization factors. Current prioritization factors are available at the Department. When WIA dislocated worker funds are 80% obligated on a statewide basis for the year, a dislocated work can only get funding if he or she cannot find a job paying 80% of the lay off wage and they meet the Department's current prioritization factors.

(5) Because the funding is separate and distinct for each program, the three tiers operate independently for each of the two affected programs; adult and dislocated workers.

#### **R986-600-613. Income Eligibility.**

(1) A client is deemed to have met the income eligibility requirements for youth services, and adult services when operating in tier two and three, if the client is receiving or is a member of a household that has been determined to be eligible for food stamps within the last six months or is currently receiving financial assistance from the Department or is homeless.

(2) A client is deemed to have met the income eligibility requirements for youth services if the youth is a runaway or a foster child.

(3) If a client is not eligible under paragraphs (1) and (2) above, the client must meet the low income eligibility guidelines in this rule.

#### **R986-600-614. How to Determine Who Is Included in the Family.**

Family size must be determined to establish income eligibility for youth services and adults in tier two and three.

(1) A 'family' is two or more persons related by blood, marriage, or decree of court, living in a single residence, and included in one or more of the following categories:

- (a) A husband and wife and dependent children age 21 and under
- (b) A parent or legal guardian and dependent children age 21 and under
- (c) A husband and wife.

(2) A single person or an adult child (age 22 or older) applying on their own behalf and living with parent(s) is considered a family of one. Dependent adult children are not included in determining family size if another household member is applying for services.

(3) "Living in a single residence" includes family members residing elsewhere on a voluntary, temporary basis, such as attending school or visiting relatives. It does not include involuntary temporary residence elsewhere, such as incarceration, or court-ordered placement outside the home.

(4) Two people living in a single residence but who are not married are not members of the same 'family'. If they have children together, for WIA reporting purposes, each is considered a single parent and the children are considered part of each persons family.

(5) Family size will be determined by counting the maximum number of family members in the residence during the last 6 months.

(6) Family size must be verified only if using family income to determine low-income status for WIA adult or youth services.

(7) A family can only include two generations.

(8) A client with a disability that is a barrier to employment may be determined a family of one for determining family income.

#### **R986-600-615. Assets.**

Assets are not counted when determining income eligibility for WIA services.

#### **R986-600-616. Countable Income.**

(1) Countable income is total annual cash receipts before taxes are deducted, from all sources with the exceptions listed below under "Excludable Income". If income is not specifically excluded, it is counted. Countable income, for WIA purposes includes:

- (a) money, wages, and salaries before any deductions,
- (b) net receipts from self-employment, including farming,
- (c) Job Corps payments to participants,
- (d) railroad retirement,
- (e) strike benefits from union funds,
- (f) workers' compensation benefits,
- (g) veterans' payments, except disability payments,
- (h) training stipends,
- (i) alimony,
- (j) military family allotments or other regular support from an absent family member or someone not living in the household,
- (k) private pensions or government employee pensions, including military retirement pay, except Social Security payments are excluded,
- (l) regular insurance or annuity payments, including regular disability payments. Only veterans' disability payments are excluded. SSDI is included,
- (m) college or university scholarships, grants, fellowships, and assistantship (excluding Pell Grants),
- (n) dividends,
- (o) interest,
- (p) net rental income,
- (q) net royalties, including tribal payments from casino royalties,
- (r) periodic receipts from estates or trusts, and
- (s) net gambling or lottery winnings.

(2) Excludable Income, income that is not counted, is:

(a) cash welfare payments under a Federal, state or local welfare program, including public assistance under FEP, FEPTP, GA, WTE, SSI, Emergency Assistance,

(b) child support,

(c) unemployment compensation,

(d) capital gains and assets drawn down as withdrawals from a bank, the sale of property, a house or car,

(e) 100% of Social Security and Old Age Survivors' Insurance benefit payments under Title II of the Social Security Act,

(f) educational financial assistance received under title IV of the Higher Education Act as amended by section 479(B) 1992 and other needs-based scholarship assistance and Pell grants. This includes some Work-Study programs,

(g) foster child care payments,

(h) tax refunds,

(i) gifts,

(j) loans,

(k) lump-sum inheritances,

(l) one-time insurance payments or compensation for injury,

(m) Earned Income Credit from the IRS,

(n) income received by a veteran while on active military duty in the Armed Forces if the veteran applies for WIA services within six months of discharge,

(o) benefit payments to veterans under 38 U.S.C 4212, part 3,

(p) non-cash benefits such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the value of rent from owner-occupied non farm or farm housing, federal noncash benefits programs such as Medicare, Medicaid, food stamps, school lunches and housing assistance, and

(q) other amounts specifically excluded by Federal statute.

#### **R986-600-617. How to Calculate Income.**

(1) To determine if a client meets the income eligibility standards, all income from all sources of all family members during the previous six months is counted. That amount is multiplied by two to arrive at an annual income and compared to the income guidelines, which are updated annually.

(2) Income averaging can be used if complete income records are not available for the six month period.

(3) Allowable business expenses are deducted from self-employment but no other deductions from income are allowed.

(4) The client family is income eligible if the annual income meets the higher of:

(a) the poverty line as determined by the Department of Human Services, or

(b) 70% of the LLSIL (lower living standard income level) as determined by Department of Labor and available at the Department of Workforce Services.

#### **R986-600-618. Dislocated Worker.**

(1) A Dislocated Worker is an individual who meets one of the following criteria:

(a)(i) has been terminated or laid off, or has received a notice of termination or layoff from employment, and

(ii)(1) is eligible for or has exhausted unemployment compensation entitlement, or

(ii)(2) has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under unemployment compensation law, and

(iii) is unlikely to return to the individual's previous industry or occupation. 'Unlikely to return' means that labor market information shows a lack of jobs in either that industry OR occupation, or the customer declares that they will not return to that industry or occupation.

(b)(i) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise, or

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive rapid response services, is employed at a facility at which the employer has made a general announcement that such facility will close. Rapid response services are defined by WIA.

(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

(d) Is a displaced homemaker. A WIA displaced homemaker is an individual who has been providing unpaid services to family members in the home and who:

(i) has been dependent on the income of another family member but is no longer supported by that income; and

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(2) The dislocation must have occurred within the prior two years.

(3) There are no income or asset guidelines for Dislocated Worker eligibility and they are income eligible regardless of which tier the Department is currently serving. Training appropriateness must still be determined before training services can be provided.

(4) The following documentation is acceptable to confirm Dislocated Worker status:

a. Unemployment Insurance records;

b. An individual layoff letter;

c. Rapid Response Unit analysis or review;

d. Public announcements of layoff;

e. If no other means of verification are available, the employer can provide verification; or

f. Worker self certification, although this is a last resort and requires documentation that other attempts to verify were unsuccessful.

(5) If the Department is providing services under a National Reserve Discretionary Grant, additional documentation may be needed.

#### **R986-600-619. Participation Requirements.**

Payment of any and all financial assistance, intensive and/or training services is contingent upon the client participating, to the maximum extent possible, in assessment and evaluation, and the completion of a negotiated employment plan.

**R986-600-620. Participation in Obtaining an Assessment.**

(1) When the Department determines that a client has a need for intensive services an employment counselor will be assigned to assess the needs of the client.

(2) The assessment evaluation is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

**R986-600-621. Requirements of an Employment Plan.**

(1) A client is required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan. The client will be provided with a copy of the employment plan.

(2) The goal of the employment plan is obtaining marketable skills and suitable employment and the plan must contain the soonest possible target date for entry into employment consistent with the needs of the client.

(3) An employment plan consists of activities designed to help an individual become employed.

(4) Each activity must be directed toward the goal of suitable employment.

(5) The employment plan may require that the client:

(a) search for suitable, immediate employment.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(g) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for intensive or training services.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which may include providing ongoing information and or documentation relative to their progress and providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available and appropriate, supportive services may be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

**R986-600-622. Requirements of an Employment Plan for Youth.**

(1) The focus of services for youth are separated by age into two categories: Younger Youth, 14-18 years old; and 19-21 years old.

(2) Employment plans for all youth must reflect intentions to assist with preparing for post-secondary education and/or employment; finding effective connections to the job market and employers, and understanding the links between academic and occupational learning.

(3) The primary goal of the employment plan for Younger Youth is setting and achieving goals. Secondary goals may include graduating from high school, and/or being placed in post-secondary education, other advanced training, or employment.

(4) The goal of the employment plan for older youth is the same as in R986-600-621.

**R986-600-623. Education and Training and Support Services as Part of an Employment Plan.**

(1) A client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited per exposure to the lesser of:

(a) 24 months which need not be continuous and which can be waived by a Department supervisor based on individual circumstances, or

(b) the completion of the education and training goals of the employment plan.

(2) Education and training will only be supported where:

(a) the client is unable to find suitable employment due to a lack of marketable skills;

(b) the education or training will substantially increase the income level the client would be able to attain without the education or training;

(c) the plan must show that the client has the ability to be successful in the education or training and in the market thereafter;

(d) the education or training is required for the occupation;

(e) the client is willing to complete the education or training as quickly as is reasonable;

(f) the mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed; and

(g) the specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(3) The following additional payments and/or services are allowable under certain circumstances based on individual need:

(a) any costs or services associated with education or training provided they are necessary to enable the client to participate in activities authorized under this title (WIA).

**R986-600-624. The Right to Appeal a Denial of Services.**

If an applicant or a client who is currently receiving services is denied services the individual can request a hearing as provided in Rules R986-100-123 through R986-100-135. If the client is currently receiving services under WIA and requests a hearing within 10 days of the denial, services will continue pending the hearing as provided in Rule R986-100-134.

**R986-600-651. Definitions.**

(1) "State Council" means the State Council on Workforce Services.

(2) "Eligible Provider" means a occupational skills training provider eligible to receive funds for training adults and dislocated workers authorized under WIA and approved by the State Council.

(3) "Regional Council" means any of the Regional Councils on Workforce Services.

**R986-600-652. Determining Initial Eligibility for Training Providers.**

(1) Training providers are automatically eligible if they if they complete an application and are either:

(a) a postsecondary educational institution that:

(i) is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), and

(ii) provides a program that leads to an associate degree, baccalaureate degree, or certificate; or

(b) an entity that provides programs under the "National Apprenticeship Act", 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.

(2) All other training providers must submit the following information:

(a) the name, mailing address, physical address, telephone number, and email address (if available) of the training facility;

(b) documentation of financial stability of the applicant, which may include audits or financial statements or evidence of compliance with the Utah Board of Regents' bonding requirements;

(c) the name of each program for which approval is requested;

(d) the percentage of all participants who complete each program;

(e) the percentage of all participants in each program who obtained unsubsidized employment;

(f) average placement wage of all participants in each program;

(g) if applicable, the rate of Utah state-recognized or industry-recognized licensure, certification, degrees, or equivalent attained by all program graduates. For example, CDL, Certified Nurse Aid, Licensed Practical Nurse, Novell Network Engineer;

(h) program costs including tuition and fees;

(i) a description of the methodology used to collect and verify performance information;

(j) a copy of the provider's student grievance procedure;

(k) the self-administered Department training provider accessibility checklist; and

(l) the number of years in business using the current name, and a list of other names under which the provider operated.

(3) Applications from providers in paragraph 2 above will be sent to the Regional Council staff in the region in which the provider does business or wishes to apply. Regional Councils recommend approval or disapproval for each provider and these results are sent to the State Council for final action.

(4) Performance information must meet standards established by the Department or the state council may grant an exception.

(5) All schools must be in business for a minimum of one year before approval will be granted.

(6) The Department will notify a provider in writing when a decision has been made concerning the provider's eligibility.

(7) A list of Initially Eligible providers including program performance and cost information will be published on the Internet.

**R986-600-653. Distance Learning Providers.**

(1) Distance learning is training that is made possible due to advances in computer technology. Using an online computer connection, distance learning can establish a setting for students and instructors where lessons are assigned, completed, and returned, and discussions can be held online.

(2) Distance learning can only be approved when it is a part of a curriculum that:

(a) leads to the completion of a training program;

(b) requires students to interact with instructors;

(c) requires students to take periodic tests; and

(d) requires students to come onto campus or other approved facility, for tests and meetings with instructors.

**R986-600-654. Determining Subsequent Eligibility for Training Providers.**

(1) Eligible providers shall apply annually to continue to receive WIA funds.

(2) Eligible providers shall submit student and program information as required, and in a format determined by the Department.

(3) The Department shall establish annual minimum performance requirements for continuing eligibility, and will consider the following as it establishes those requirements:

(a) the economic, geographic, and demographic factors in the state; and

(b) the characteristics of the populations served by providers, including the difficulties in serving such populations, where applicable.

(4) The Department shall establish annual minimum requirements for the following performance measures:

(a) program completion rates for all participants;

(b) the percentage of all participants who obtain employment;

(c) the average quarterly earnings of participants;

(5) Providers shall give the Department an annual list of social security numbers of all participants, by program; each participant's exit date from the program and a list of the completion rate and cost for each program for which approval is sought. The time and format for submitting this information will be determined by the Department.

(6) The Department may require providers to submit additional information to the Department.

(7) Training provider program employment and earnings performance information will be computed by the Department using the Social Security numbers provided by the training providers.

(8) The Department will notify a provider in writing when a decision has been made concerning the provider's subsequent eligibility.

(9) Providers must retain participant program records for three years from the date the participant completes the program.

(10) The Department may remove a provider from the list if the provider does not meet the performance levels established by the Department.

(11) The Department will remove a provider from the list if the provider has committed fraud or violated applicable state or federal law.

(12) The Department will remove a provider from the list for at least two years if the provider intentionally supplies inaccurate student or program performance information.

(13) The Department shall publish the program, performance, and cost information of each subsequently eligible provider on the list.

(14) Only providers on the list are eligible to receive funding or reimbursements from WIA funding.

**R986-600-655. The Right to a Hearing and How to Request a Hearing.**

(1) A provider may request a hearing to appeal a decision to deny eligibility or to remove the provider from the eligible provider list.

(2) Hearing requests will be made in writing to the Council, which will conduct the hearing at the next regularly scheduled meeting. The Council's decision on the provider's eligibility will be final.

**R986-600-656. Monitoring for Compliance of Equal Opportunity and Nondiscrimination.**

(1) The Department monitors service providers for compliance with the equal opportunity and nondiscrimination requirements of WIA. This includes compliance with all applicable laws, regulations, contract provisions, corrective actions, and remedial actions.

(2) Each service provider's compliance will be reviewed annually. The review can be either an on-site review or a data review.

**R986-600-657. Noncompliance.**

(1) In the event the Department identifies specific instances of noncompliance with federal discrimination laws, the Department will:

(a) notify the service provider in writing of the finding(s) of noncompliance and the corrective action required to ensure compliance;

(b) establish a corrective action plan;

(c) notify the provider of the time lines for the completion of the plan; and

(d) ensure compliance with the corrective action plan.

(2) For training providers, the corrective action plan will provide that the training provider agree to stop all prohibited practices in order to remain eligible for WIA funding.

**R986-600-658. Sanctions for Noncompliance and Right to Appeal.**

(1) The Department may impose sanctions against a provider for failure to comply with federal nondiscrimination laws or required corrective actions.

(2) If the Department finds that a provider has not taken the required corrective action in the specified time limits the Department will issue a notice of final action informing the service provider of the Department's intent to:

(a) discontinue referral of participants to the provider,

(b) cancel the contract with the provider,

(c) make other changes deemed necessary to secure compliance, and/or

(d) refer the matter to another governmental entity.

(3) The service provider may appeal the decision of the Department by filing an appeal in writing within 30 days of the date of the notice of final action to: The Director, Civil Rights Center, US Department of Labor, 200 Constitution Ave NW, Room N4123, Washington DC, 20210.

**KEY: Workforce Investment Act  
July 1, 2001**

**35A-5**



**Workforce Services, Employment  
Development**

**R986-601**

**Authority and Definitions for Programs  
Authorized under JTPA**

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 23723

FILED: 05/01/2001, 17:07

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Workforce Services is repealing Rule R986-601 because the Job Training Partnership Act (JTPA) program is no longer a federally-funded program. It has been replaced by the Workforce Investment Act (WIA). The proposed new rule reflecting this new funding source is R986-600.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

**(DAR Note:** Repealed rules R986-601 (DAR No. 23723), R986-602 (DAR No. 23724), and R986-603 (DAR No. 23725) are being replaced by the proposed new rule, R986-600 (DAR No. 23722). All of these rules are found in this issue of the *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 35A, Chapter 5

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no costs or savings associated with this repealed rule because it is being replaced by a new rule which is being proposed in a separate rulemaking action.

❖LOCAL GOVERNMENTS: This rule does not apply to local government therefore, there are no costs or savings.

❖OTHER PERSONS: There are no costs or savings associated with this repealed rule because it is being replaced by a new rule which is being proposed in a separate rulemaking action.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs associated with this repealed rule because all of the costs related to this rule are included within existing budgets.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have no impact on business.

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

Workforce Services  
Employment Development  
Second Floor  
140 East 300 South  
PO Box 45244  
Salt Lake City, UT 84145-0244, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at (801) 526-9645, by FAX at (801) 526-9244, or by Internet E-mail at wsadmpo.spixton@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/04/2001, 5:00 p.m., 1385 South State Street, Room 157, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2001

AUTHORIZED BY: Robert Gross, Executive Director

**R986. Workforce Services, Employment Development.**

~~[R986-601. Authority and Definitions for Programs Authorized under JTPA.~~

**R986-601-101. Authority.**

— (1) This rule adopts and incorporates by reference:

— (a) Title 35A, Chapter 5; "Training and Workforce Improvement Act".

— (b) "Job Training Partnership Act" (JTPA). P.L. 97-300, October 13, 1982, as amended in 1992.

— (c) "Economic Dislocation and Worker Adjustment Assistance Act" (EDWAA). Enacted as Subtitle D of Title VI of the Omnibus Trade and Competitiveness Act of 1988. It amends portions of the

Job Training Partnership Act and substitutes a completely new Title III. It was also amended in 1992:

— (d) Public Law 100-379, August 4, 1988; "Worker Adjustment and Retraining Notification Act" (WARN).

— (e) Federal regulations 20 CFR parts 626, 627, 628, 631, and 632, 1994; which apply to programs under the Job Training Partnership Act and the Economic Dislocation and Worker Adjustment Assistance Act.

— (f) Federal regulation 20 CFR part 639, 1990; which applies to the Worker Adjustment and Retraining Notification Act.

— (g) Standardized Program Information Reporting instructions and definitions published on page XXX of the Federal Register November 12, 1992.

— (h) All Training and Employment Guidance Letters and Training and Employment Information Notices pertaining to JTPA disseminated by the U.S. Department of Labor since 1983.

— (2) These laws, rules, and federal regulations govern the JTPA activities of the Utah Department of Workforce Services (DWS):

**~~R986-601-102. General Definitions.~~**

— (1) This section provides Utah's Service Delivery Areas (SDAs), Substate Areas (SSAs), and subcontractors with a set of definitions for terms commonly used by DWS for recordkeeping and reporting.

— (2) "Accounts payable, liabilities" means the amounts due and owing to others for goods and services received and performance accepted. This includes amounts administratively approved for payments of grants, contracts, and agreements.

— (3) "Accrual basis" is the method of accounting where financial transactions are recorded in accounts as they take place. This means that as goods and services are purchased or used and as revenues are earned they are recorded even though the cash in such transactions is paid out or received at other dates.

— (4) "Accrued expenditures" means the charges incurred by the recipient or subrecipient during a given period requiring provision of funds for:

— (a) Goods and other tangible property received;

— (b) Services performed by employees, contractors, subrecipients, and other payees; and

— (c) Other amounts becoming owed under programs for which no current services or performance is required such as annuities, insurance claims, and other benefit payments.

— (d) For simplicity, accruals are generally classified as Class A or Class B:

— (i) Class A accruals are accrued expenditures which have been incurred during the accounting period for which some form of supporting documentation has been received, such as a paid payroll journal, invoice, or receiving report. They may have been recorded in the accounting system as an accounts payable, but have not been paid.

— (ii) Class B accruals are accrued expenditures which have been incurred during the accounting period, but no documentation currently exists to support their cost. These expenditures must be estimated and included in the reports. An example would be a bill for the month's telephone services which is not normally received until the 15th of the following month.

— (5) "Active status" is the status of a participant who has:

— (a) Been determined eligible for participation at intake and



— (b) Started receiving subsidized employment, training or services.

— (c) Except for a dislocated worker who is receiving only basic readjustment services, a person who receives only outreach or intake and assessment services is not considered a participant and is not enrolled in an activity.

— (6) "Administrative agency" refers to DWS.

— (7) "Administrative directive" is the DWS system of disseminating the instructions that will govern operations under JTPA to the grantees.

— (8) "Adult employability enhancement" is an outcome for adults, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for a long-term increase in earnings and employment. Outcomes which meet this requirement are restricted to:

— (a) Attained Adult Employability Skills (one or more), which requires the participant to demonstrate proficiency as defined by the local area in one or more of the following two skill areas: basic education skills and occupational skills in which the trainee was deficient at enrollment.

— (b) Completed a Major Level of Education:

— (c) Entered and was retained for at least 90 days in an occupational skills employment or training program, not funded under JTPA Title II, which builds upon and does not duplicate training received under Title II:

— (9) "Advanced career training programs" provide a formal combination of OJT, institutional training, and internship assignments for career employment. These programs should prepare individuals for jobs beyond entry-level positions.

— (10) "Advance payments" are advances of money made by DWS to an SDA under a statutory authorization and applicable regulations before there are disbursements required to carry out a project under the grant or agreement.

— (11) "Agreement" refers to the Grant Agreement between the Grantor, DWS, and the SDA, the local JTPA grant recipient.

— (12) "Allocation" is the distribution of funds among SDAs or eligible applicants according to formulas contained in JTPA or GCSFP.

— (13) "Allotment" is a formal authorization to incur obligations within a specified amount and time period for a specific purpose, in accordance with an allocation, appropriation or other statutory provision.

— (14) "Alternative school" is a specialized, structured curriculum offered inside or outside of the public school system which may provide work/study and/or GED preparation. This is allowed as a full-time school for youth who attain and are terminated with an employability enhancement that requires them to either return to school or remain in school.

— (15) "Assessment" means services designed to initially determine each participant's employability, aptitudes, abilities, and interests, through interviews, testing, and counseling to achieve the applicant's employment related goals.

— (16) "Audit" is the examination of financial and program transactions, documents, records and reports to determine the propriety of operations, adequacy of records and controls, validity of reports and compliance with applicable laws and regulations.

— (17) "Average Followup Weekly earnings" (Adult and Welfare) is the sum of weekly earnings of trainees who were

employed during the 13<sup>th</sup> week after termination divided by the number of trainees who completed a followup interview and were employed during the 13<sup>th</sup> week after termination. Earnings are pre-tax, and include bonuses, overtime and commissions.

— (18) "Average Wage at Placement" (Older Worker and Title III) is the sum of the hourly wages for trainees who entered employment at termination, divided by the number of trainees. Wages are pre-tax, and include bonuses, overtime and commissions. For Title III, exclude the trainees retained or recalled by their layoff employer from the calculation.

— (19) "Basic education skills, adult" includes remedial reading, writing, mathematics, or English for non-English speakers.

— (20) "Basic education skills, youth" includes the above plus reading comprehension, math computation, writing, speaking, listening, problem solving, reasoning, and the capacity to use these skills in the workplace.

— (21) "Basic Skills Deficient" means an individual who has English reading or computing skills at or below the 8<sup>th</sup> grade level on a generally accepted standardized test or a comparable score on a criterion-referenced test.

— (22) "Basis of Accounting" refers to methods of accounting. They are:

— (a) Under the "cash basis" of accounting, revenues and transfers in are not recorded in the accounts until cash is received, and expenditures and transfers out are recorded only when cash is disbursed.

— (b) Under the "accrual basis" of accounting, most transactions are recorded when they occur, regardless of when cash is received or disbursed.

— (23) "Bonding" is a protection or insurance which guarantees repayment for loss, damage, or failure to meet contractual obligations.

— (24) "Budget" is a statement in financial terms of projected or expected operations of a program or accounting entity for a given period.

— (25) "Called Back/Remained with Layoff Employer" means either the individual was called back to work by the same employer after having terminated employment, or the individual had been given a notice of layoff or termination which never occurred.

— (26) "Capital improvements" are any modification, addition, restoration, or other improvements which:

— (a) Are classified for accounting purposes as a fixed asset;

— (b) Increases the usefulness, productivity, or serviceable life of an existing building, structure, or major item of equipment;

— (c) The cost of which increases the recorded value of the existing building, structure, or major item of equipment.

— (27) "Career exploration" is a program that helps a person explore various vocational and career options by matching aptitudes, abilities, interests, values, needs and limitations with educational facts and labor market conditions. The process requires accurate and timely occupational information which relates to available training opportunities.

— (28) "Case Management" means the provision of a client-oriented approach in the delivery of services, designed to

— (a) prepare and coordinate comprehensive employment plans; such as service strategies, for participant to ensure access to the necessary training and supportive service, using, where feasible, computer-based technologies; and

— (b) provide job and career counseling during program participation and after job placement.

— (29) "Cash contributions" are cash provided by the SDA or by third parties to the SDA as a share of the total costs of a Grant or Agreement.

— (30) "Certifying officer" is a person authorized to assure the legality and correctness of specific documents.

— (31) "Citizenship" means designation of an applicant as a citizen or an "eligible noncitizen" whose status permits permanent employment in the United States. "Eligible noncitizen" includes nationals of the United States, lawfully admitted permanent resident aliens, lawfully admitted refugees and parolees, and other individuals authorized by the attorney general to work in the United States.

— (32) "Classroom Training, Educational" is academic training provided by PIC approved institutions, organizations, or individuals with the expectation of participants achieving pre-established levels of academic competency. This includes remedial education and basic academic skills training, literacy and bilingual training, and attainment of certificates of high school equivalency.

— (33) "Classroom Training, Occupational Skills" Training provided by State of Utah approved institutions or organizations with the expectation of participants obtaining specific occupational skills sufficient for entry level, semi-skilled, or skilled employment.

— (34) "Closeout" The process by which DWS determines that all required work of the Grant or Agreement has been completed or that the period of the Grant or Agreement has expired and that all applicable administrative actions have been completed by DWS.

— (35) "Competitive Negotiation" A competitive procurement method which is used when the nature of services or products needed precludes development of a description or specifications which are sufficiently precise to enable all prospective suppliers to have an identical understanding of the requirement. Proposals submitted are subject to negotiation and change. Either a fixed-price or cost-reimbursement contract may be awarded.

— (36) "Completed a Major Level of Education" The participant completed, during enrollment, a level of educational achievement which had not been reached at entry. Levels of educational achievement are secondary and postsecondary. Completion standards shall be governed by State standards and shall include a high school diploma, GED certificate or equivalent at the secondary level, and shall require a diploma or other written certification of completion at the postsecondary level. In order to take credit for this the completion must have resulted primarily from active JTPA program participation of at least 90 calendar days or 200 hours.

— (37) "Completion Date" The date when all work under the Grant or Agreement is completed (if the Grant or Agreement stipulates completion of such work); or the date in the award document or any supplement or amendment thereto, on which DWS assistance ends. After that date, expenditures may not be charged against DWS's share of a Grant or Agreement except to satisfy obligations incurred on or before that date.

— (38) "Concurrent Enrollment/Participant" A participant may be enrolled in more than one activity or title on the same record number, if the initially determined training objective will require concurrent participation. Concurrent enrollment may be in more than one activity in the same title, in more than one program/title (including non-JTPA funded programs), or a combination of multiple activities in the same title and multiple programs/titles. It

may be either at the same time or sequentially. A separate activity record should be entered for each activity/title.

— (39) "Contract" is a written agreement between two or more parties which is enforceable by law.

— (40) "Cooperative Education" is a program that coordinates educational programs with work in the private sector.

— (41) "Cost" is the financial measure of resources consumed in accomplishing a specified purpose such as performing a service, carrying out an activity, or completing a unit of work or a specific project.

— (42) "Cost analysis" is the review and analysis of a contractor's or prospective contractor's submitted cost data to form an opinion as to whether the contractor's proposed costs represent what the contract should cost to perform. It includes:

— (a) The verification of cost data;

— (b) The necessity for specific costs;

— (c) The allowability of contingencies;

— (d) The reasonableness of estimated amounts; and

— (e) The basis used for allocation of and appropriateness of particular items of overhead costs.

— (43) "Cost Reimbursement Contract" A contract which establishes an estimation of total costs for the purpose of obligating funds and a ceiling that the contractor may not exceed (except at contractor risk) unless the awarding party agrees to amend the contract to provide additional funds. The contract provides for payment of all allowable costs to the extent prescribed in the contract.

— (44) "Customized Training" Training designed for specific occupations in a new or expanded business or industry conducted with a commitment by an employer or group of employers to employ trainees upon successful completion of training. This training may be coupled with institutional or on-the-job training and is usually developed at the request of the employer.

— (45) "Date Leaving This Activity" is the date at which the individual is no longer receiving employment, training or services (except post termination services) funded under this title/program.

— (46) "Dependent" Any person for which, both currently and during the previous twelve months, the applicant has assumed at least 50% of his/her support and who can be claimed as a dependent on the applicant's tax return under Section 151(e) of the Internal Revenue Code of 1954.

— (47) "Direct Costs" The costs which can be specifically identified with particular projects, activities or objectives. Such costs are incurred by an SDA and subcontractors directly responsible for administering JTPA programs. For JTPA purposes, direct costs consist of assigned and unassigned costs.

— (a) Assigned Costs - Costs identified with a specific activity to be charged immediately to the known JTPA activity (examples: textbooks and instructor's salary cost incurred solely for one training activity).

— (b) Unassigned Costs - Costs incurred for more than one JTPA activity or all JTPA activities (example: a supervisor's time that benefits two or more activities but the SDA/subcontractor is unable to identify how much time was spent for each activity). The supervisor's salary cost is therefore temporarily classified as unassigned costs to be distributed on a pro-rata basis to the other program activities.

— (48) "Disallowed Cost" Charges to the Grant/contract which DWS determines to be unallowable for reimbursement.

— (49) "Disbursements" The amount of payments, net of refunds, by check or cash, including advances.

— (50) "Drawdown" The process to obtain cash (EFT or warrant request) by submitting a request for funds, URF-01, to DWS within the amount authorized by a NFA.

— (51) "Early Intervention" is programs conducted with employers or labor organizations to provide early intervention to a layoff or closing. It could include any of the Basic Readjustment services. In Utah this is a Rapid Response function.

— (52) "Early Readjustment Assistance" could include any of the Basic Readjustment Services that are appropriate for the still-employed worker. Many of the Basic Readjustment Services could, under the appropriate circumstances, be considered to be rapid response assistance.

— (53) "Education to Work Transition Activities" Activities that are designed to provide individuals with information on how to deal with change and to understand work values and interests; and to help people identify transferable skills and develop the motivation necessary to succeed in a job.

— Such a program may include job search assistance, job clubs, assessment, counseling, placement assistance, and follow-up.

— (54) "Eligible Population" The estimated number of economically disadvantaged persons in the state and each SDA, and the percentage of various significant sub-groups in the total economically disadvantaged population, as published by DWS.

— (55) "Employed" For Title II and Title III performance standards, employment must be 20 hours or more per week. Earnings and performance measures are computed only for persons working at least 20 hours per week.

— (b) Assessment - services designed to initially determine each participant's employability, aptitudes, abilities and interests, through interview, testing and counseling to achieve the applicant's employment related goals.

— (56) "Encumbrances" Obligations in the form of purchase orders, contracts, or salary commitments which are chargeable to an appropriation and for which a part of the appropriation is reserved. They cease to be encumbrances when paid or when the actual liability is set up.

— (57) "Entered Employment Rate" is the total number of individuals (in II-C, Older Worker and Title III) who entered employment at termination, divided by the total number of terminations. For Youth, exclude those who claimed a Returned to School or Remained in School employability enhancement. For Title III, exclude the terminees retained or recalled by their lay-off employer from the calculation.

— (58) "Entered Non-Title II Training" The participant entered prior to termination from JTPA an occupational skills employment/training program that is not funded by JTPA Title II and builds upon and does not duplicate training received under Title II. In order to take credit for this the participant must have been retained in that program for at least 90 calendar days or 200 hours or have received a certification of occupational skill attainment. During the period the participant is in non-Title II training, she/he may or may not have received JTPA services.

— (59) "Entered Unsubsidized Employment" The category for participants who were terminated from the program and entered (through the efforts of the SDA/subcontractor or through their own efforts) full or part-time unsubsidized employment.

— (For JTPA reporting purposes, this term includes entry into the Armed Forces, entry into employment in a registered apprenticeship program, and participants who became self-employed.)

— (60) "Entrepreneurial Training" is the provision of services intended to enable participants to start their own businesses including any necessary equipment, supplies, books or teaching aids, as well as tuition and entrance fees or similar subcontracted services.

— (61) "Expenditures" Amounts payable or accrued for goods received, work performed, or services rendered, regardless of when paid. An expenditure is recognized when the government has received and becomes liable for payment for goods and services. An expenditure should be recognized in the period in which the amount can be objectively measured, the goods or services have been delivered or received, and title has passed.

— (62) "Exposure" An exposure consists of the application, activity, and termination phases of a participant's contact with JTPA. A participant may be enrolled in more than one activity or title in the same exposure. Each exposure is designated by a different Record Number. The enrollments may be either at the same time or sequential. A participant can have more than one exposure if they are terminated and later are reenrolled for further services. For example, a youth who participates in the Summer Youth Program in more than one year. If a participant has more than one record/exposure they will be counted as a separate individual for each exposure just as if they were two different people.

— (63) "Family" is two or more persons related by blood, marriage, or decree of court, who are living in a single residence, and are included in one or more of the following categories:

— (a) A husband, wife and dependent children.

— (b) A parent or guardian and dependent children.

— (c) A husband and wife.

— (64) "Family Income" All income received from all sources by all members of the family for the six month period prior to application computed on an annual basis, except as specified in paragraphs (1) and (2) below. Family size shall be the maximum number of family members during the income determination period. When computing family income, income of a spouse and/or other family members shall be counted for the portion of the income determination period that the person was actually a part of the family unit of the applicant.

— (a) for the purpose of determining eligibility, family income includes:

— (i) Gross wages and salaries (before deductions);

— (ii) Net farm and non-farm self-employment income (gross receipts minus operating expenses. A net loss cannot be used to offset other earned income; it should be recorded as '0'); and

— (iii)

— (b) Family income does not include:

— (i)

— (iii) under a Federal, State or local welfare program.

— (iv) Public assistance TANF

— (viii) 25% of Social Security and Old Age Survivors' insurance benefit payments under Title II of the Social Security Act for the purpose of determining income eligibility for individuals 55 years of age or older for the 3% Older Worker program.

— (ix) Educational financial assistance received under Title IV of the Higher Education Act as amended by section 479(B) of the HEA amendments of 1992. This includes Pell grants.

— (x) Earned Income Credit (EIC) from the IRS.

— (xi) Foster child care payments

— (xii) Income received by a veteran while on active military duty in the Armed Forces (If the veteran applies for JTPA within six months of discharge)

— (xiii) Benefit payments to veterans under 38 USC 4213, items 1 and 3

— (65) "Family Status" describes the status of the applicant in his/her family, as defined by JTPA. These categories are:

— Parent in a one-parent family

— Parent in a two-parent family

— Other family member. An individual who is living with his/her family of two or more persons and not indicated above

— Not a family member. An individual who is not living with his/her family.

— (66) "Followup--13 Week" The data collected by the SDAs thirteen weeks after the participant was terminated from JTPA. This contact and the data collected are DOL mandated.

— (67) "Followup Response Rate" is the number of trainees with complete followup information divided by the total number of trainees included in the followup sample, expressed as a percentage.

— (68) "Foster Child" A child who is not living with his/her parent or guardian and on whose behalf State or local government payments are made.

— (69) "Grant" is an agreement which establishes a binding legal relationship between DWS and the SDA. It obligates DWS to an expenditure of funds by the SDA for the satisfactory performance of specified programs, services and activities.

— (70) "Grantee" is the Service Delivery Area receiving JTPA funding from DWS through a Grant Agreement.

— (71) "Grantor" is the Department of Workforce Services (DWS) which represents Utah.

— (72) "Grant year" is an accounting period of 12 successive months beginning on the date the grant is executed.

— (73) "Highest Grade Completed" is the highest school grade completed by an applicant

— 00 - no school grade completed

— 01-11 - number of elementary or secondary grades completed.

Use 11 if 12 years were completed but the applicant is not a high school graduate or equivalent.

— 12 - high school graduate or equivalent, even if a high school graduate from another country which may be less than 12 years.

— 13-15 - If a high school graduate or equivalent, the number of school years completed including college, or full-time technical or vocational school

— 16 - Bachelor's degree or equivalent

— 17 - Fifth year of college, Master's degree (1-year program) or equivalent

— 18 - Sixth year of college or more, Master's degree (2-year program), Ph.D. Or equivalent.

— (74) "Hold Status" is to be used when a. the participant is between training activities, and this period has been well documented in the ISS before the hold status begins. For instance, when the participant is going to be out of school for a semester but is planning on returning to school, hold status should be used.

Contact with the participant must be maintained and documented during this period. S/he is not an active participant during this period and should not be left in active training status if the interruption exceeds 45 days. Hold status is NOT an applicant pool. Hold may be used when the participant is not currently receiving training or services in one of the titles in which s/he is currently enrolled, or the participant has completed one concurrent activity and is still receiving training or services in another. The same termination is taken for all concurrent enrollments at the time of termination of the last activity. An exception is that Title II-B SYETP participants must be recorded as terminated with the leave reason appropriate at the end of SYETP completion, regardless of other training enrollments.

— (75) "Inactive Status" begins when planned JTPA or SHH training or services are completed. A participant is entitled to up to 90 days in inactive status, during which no training or services are received. Services may be provided for up to six months after planned training is completed, as long as a service is received at least every 89 days. A participant must be terminated from the program six months after training is completed.

— (76) "Incremental Funding" The funding of a Grant or Agreement in increments when an award is made prior to the necessary amount of funds becoming available to DWS. Awards are conditioned upon funds becoming available, and DWS assumes no legal liability beyond funds available at time of award until the grant officer gives the SDA written notice of availability of additional funds.

— (77) "Indirect Costs" The costs incurred for the mutual benefit of several fund sources, objectives, activities or projects, and not specifically identifiable with a singular end product or service.

— (78) "Individual with a Disability" is any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment.

— (a) The term "substantial handicap to employment" means a severe chronic disability which:

— (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

— (ii) Is likely to continue indefinitely;

— (iii) Results in substantial functional limitations in three or more of the following areas of major life activity:

— (A) Self care;

— (B) Receptive and expressive language;

— (C) Learning;

— (D) Mobility;

— (E) Self direction;

— (F) Capacity for independent living;

— (G) Economic self-sufficiency; and

— (iv) Reflects the need for a combination and sequence of special, interdisciplinary, or sequence of special, interdisciplinary, or generic care, treatment, or other services to be individually planned coordinated during the lifetime of such person or for an extended period of time.

— (b) This definition includes disabled veterans for reporting purposes, but is not required to be used for program eligibility determination under JTPA Subsection 4(8)(E).

— (79) "In-kind Contributions" Noncash contributions provided by the SDA or third parties as all or part of the SDAs matching share of a project when the SDA is required, by terms of the Grant or Agreement, to share in the costs of a project.

— (80) "Instrumentalities of a State" Agencies, commissions, departments, or other State-level bodies created by the State to perform State functions. The term does not include the governments of the political subdivisions of a State, e.g., a county, city, or town.

— (81) "Intake and Assessment" is the process of collecting personal data on individuals to determine program eligibility and preliminary suitability for services. The initial assessment process will identify and individual's skill levels. The objective assessment will further determine the skill levels and service needs of the participant, which shall include basic skills, occupational skills, prior work experience, employability, interest, aptitudes, and support services needs.

— (82) "Invitation for Bids" A set of documents which includes a description of the product or service desired and all other information needed to enable a prospective contractor to submit a bid. The invitation for bids is the specific term applied to the solicitation used in Government contracts when the formal advertising procurement method is used.

— (83) "Job Development" Development of jobs through individual employer contact for an individual or group of individuals. Under Basic Readjustment, Job Development is employer outreach and activities including, but not limited to contacts with potential employers for the purpose of job placement.

— (84) "Job Search Assistance" is planned activities and services which assist job seekers to seek, locate, apply for and obtain a job. It may include but is not limited to labor market information, telephone techniques, development of job seeking skills, job development, referral to job openings, and continual contact with the participant throughout the job seeking process.

— (85) "Job Specific Skills" An adult employability enhancement and a youth employment competency. This includes:

— (a) Primary Job Specific Skills that encompass the proficiency to perform actual tasks and technical functions required by certain occupational fields at entry, intermediate or advanced levels.

— (b) Secondary Job Specific Skills that entail familiarity with and use of set-up procedures, safety measures, work-related terminology, record keeping and paperwork formats, tools, equipment and materials, and breakdown and clean-up routines.

— (86) "Job Training Plan" (JTP) is the plan of an SDA for operating programs under JTPA.

— (87) "Labor Force Status"

— (a) "Employed" - An individual who, during the 7 consecutive days prior to application to a JTPA program, did any work at all:

— (i) as a paid employee;

— (ii) in his or her own business, profession or farm, or worked 15 hours or more as an unpaid worker in a enterprise operated by a member of the family; or

— (iii) An individual who was not working but has a job or business from which he or she was temporarily absent because of illness, bad weather, vacation, labor-management dispute, or personal reasons, whether or not paid by the employer for time off, and whether or not seeking another job. (This term includes members of the Armed Forces on active duty, who have not been discharged or separated; participants in registered apprenticeship programs; and self-employed individuals.)

— (b) "Unemployed" - An individual who did not work during the 7 consecutive days prior to application to a JTPA program, who has made specific efforts to find a job within the past 4 weeks prior

to application, and who was available for work during the 7 consecutive days prior to application, except for temporary illness. Also those who did not work and were waiting to be called back to a job from which they had been laid off, or were waiting to report to a new wage or salary job scheduled to start within thirty days.

— (c) "Not in Labor Force" - A civilian 14 years of age or over who did not work during the 7 consecutive days prior to application for a JTPA program and is not classified as employed or unemployed as defined above. This term includes persons who never worked at a full-time job lasting 2 weeks or longer and "discouraged workers" who have been unemployed for a substantial length of time and are no longer actively seeking employment.

— (88) "Lacks Significant Work History" An individual who has not worked for the same employer for longer than three consecutive months in the two years prior to JTPA eligibility determination.

— (89) "Limited English Language Proficiency" The inability of an applicant, whose native language is not English, to communicate in English, resulting in a job handicap or barrier to employment.

— (90) "Limited Work Experience" (Single Head of Household) The State-funded Single Head of Household program has as one of its activities an internship program. This program is a work assignment designed to enhance the employability of participants who have never worked or who have been out of the labor market for an extended period of time. The work assignment may be in a public agency, a private non-profit organization, or a private profit making company. Participation in this activity is limited to 6 months duration.

— (91) "Local Elected Official" The chief elected executive officer of a unit of general local government in a substate area.

— (92) "Local Government" A local unit of government including specifically: a county, municipality, city, town, township, local public authority, district, intrastate district, council of government, sponsor group representative organization and other regional or interstate government entities, or any agency or instrumentality of a local government, exclusive of institutions of higher education, hospitals, and school districts.

— (93) "Long-term Cash Assistance Recipient" An adult or youth listed on the welfare grant who had received cash payments under TANF (SSA Title IV) for any 36 or more of the 60 months prior to JTPA eligibility determination. The individual may or may not be receiving TANF payments at the time of eligibility determination.

— (94) "Long-term Unemployed" Any individual who is unemployed at the time of eligibility determination and has been unemployed for 15 or more of the 26 weeks immediately prior to such determination and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individual resides, including any older individual who may have substantial barriers to employment by reason of age.

— (95) "Migrant or Seasonal Worker" A member of a family which had one or more persons who, during the 24 months preceding application, worked at least 25 days in farm work or earned at least \$400 in farm work and has been previously employed in farm work on a seasonal basis. Both migratory and nonmigratory farm workers are included, but supervisory or nonmigratory individuals who are full-time students or farm workers who are not "seasonal" as defined in the preceding sentence are not included.

—(96) "Modification" Any written alteration of the Agreement to show changes in amount, terms or conditions, budget, or project period, scope of project, or other administrative, technical, or financial provisions. The changes may be accomplished by unilateral action of DWS in accordance with the Agreement or by mutual agreement of DWS and the SDA.

—(97) "Negotiated Procurement" A procurement method (normally competitive) which is used when the nature of a product or service precludes the development of specifications or a precise description so that all prospective suppliers have an identical understanding of the requirement. Responses to solicitations (proposals) are not opened publicly; contents are generally not revealed prior to award; and they may be changed following evaluation, discussion, and negotiation.

—(98) "Nepotism" occurs when a person holding a position, for which compensation is paid out of funds received under the agreement, employs or appoints their father, mother, spouse, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, in or to a position for which the salary, wages, or other form of compensation is paid out of funds under the agreement.

—(99) "NFA Balance" is the portion of the NFA, at a designated point in time, that has not been legally obligated for a specific purpose by the SDA.

—(100) "Noncompetitive Negotiation" is negotiated procurement in which a proposal is solicited from only one source.

—(101) "Nonexpendable Personal Property" Tangible personal property having a useful life of more than 1 year and an acquisition cost of \$300 or more per unit. An SDA may use its own definition provided that such definition includes all tangible nonexpendable personal property covered by the above definition.

—(102) "Notice of Fund Availability" (NFA), authorized in grant agreements, is the instrument used to issue obligational authority to grantees by sources of funding. Further detail is reflected to control subtitle funds. The NFA is issued on a weekly basis and show the amount of cash draw down weekly through the Electronic Funds Transfer (EFF) and NFA process, and the remaining cash available. The system insures that grantees will not overdraw their authority.

—(103) "Notice of obligation of funds (NOO)" system is a control that assures that DWS will not overdraw its authority by recording the historical data of all Electronic Funds Transfer (EFF) and NFA processes.

—(a) Obligations are amounts required to legally meet out resources. They include not only actual liabilities, but also unliquidated encumbrances:

—(b) Unliquidated Obligations are:

—(i) For reports prepared on a cash basis, they represent the amount of obligations incurred by the grantee that has not been paid:

—(ii) For reports prepared on an accrual expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay or expenditure has not been recorded.

—(c) The unobligated balance is the portion of the approved final annual plan that has not been obligated by the grantee.

—(104) "Other Training" Title II.

—(105) "Other Training Programs" for a Title III termination means the participant entered another occupational skills program

as a result of being transferred to a program operated by another SSA, a program funded under another JTPA Title, or a program not funded by JTPA.

—(106) "Outreach" An active effort on the part of SDA staff to encourage persons to avail themselves of JTPA program services. It includes the collection, publication, and dissemination of information about JTPA services such as counseling, employment, employment services, training, and other special program services. Outreach is directed toward the economically disadvantaged and other individuals eligible to receive JTPA training and support services.

—(107) "Out Of Area Job Search" (Title III) includes the work associated with securing job openings outside the commuting area, such as identifying out of the area job opportunities, making arrangements for participants' travel to the associated interviews, and the travel itself. The "commuting area" is defined by each SSA. IRPs must document to appropriateness of, and need for, job search out of the SSA.

—(108) "Participant" (Title II) is an individual who has been determined to be eligible to participate in and who is receiving services (except port-termination services authorized under sections 204(c)(4) and 264(d)(5) and followup services authorized under section 253(d)) under a program authorized by JTPA. Participation shall be deemed to commence on the first day, following eligibility determination, on which the participant began receiving subsidized employment, training, or other services provided under JTPA.

—Except for a dislocated worker receiving only Basic Readjustment Services, a person who receives only outreach and/or intake and initial assessment services or postprogram followup is NOT considered a participant. If an individual receives concurrent employment, training and/or services under more than one title, they are to be considered participants in both titles for purposes of recording actual number of weeks participated, dollars expended, and other pertinent data.

—(109) "Participant" (EDWAA) Any individual who has:

—(a) been determined eligible for participation in one of the dislocated worker titles upon intake; and

—(b) started receiving subsidized employment, training or services (except post-termination services) funded by the EDWAA.

—An individual who receives ONLY the following services is NOT an EDWAA participant:

—(a) outreach and/or intake and initial assessment services or postprogram followup; or

—(b) rapid response assistance and information;

—(110) "Personal Property" Property of any kind except real property. It may be tangible-having physical existence, or intangible-having no physical existence (e.g., patents and copyrights). Tangible property may be expendable or nonexpendable.

—(111) "Pre-Apprenticeship Programs" Classroom and/or on-the-job training designed to prepare participants for entry into apprenticeship programs.

—(112) "Pre-Employment Skills" Pre-employment skills include work of work awareness, labor market knowledge, occupational information, values clarification and personal understanding, career planning and decision making, and job search techniques (resumes, interviews, applications, and followup letters). They also encompass survival/daily living skills such as using the phone;

telling time, shopping, renting an apartment, opening a bank account, and using public transportation:

— (113) "Pre-Layoff Assistance" could include any of the Basic Readjustment services listed in this section that are appropriate for still-employed workers. Many of the Basic Readjustment Services could under the appropriate circumstances, be considered to be rapid response assistance and their associated costs charged to the rapid response category rather than BRS:

— (114) "Pregnant or Parenting Youth" is an individual under 22 years of age and who is pregnant, or a youth (male or female) who is providing custodial care for one or more dependents under age 18:

— (115) "Procurement" The acquisition of property or services, including construction (through purchase orders, contracts, leases, or other means) which are needed by the SDA or subcontractors in carrying out projects under the Agreement:

— (116) "Program" A planned activity for which a budget has been submitted and funds have been authorized for accomplishing specific objectives:

— (117) "Program Year, PY" The twelve month period that the funds received are intended to be expended in. It starts on July 1 and ends the following June 30. For example, PY 88 began July 1, 1988 and ended on June 30, 1989:

— (118) "Pro-rata" (Pro rate) A method used to distribute unassigned costs to the program activities by using percentages:

— (119) "Real Property" is land, land improvement, structures and appurtenances thereto, excluding movable machinery:

— (120) "Records" Documents of actions taken with respect to the Grant or Agreement including financial records, statistical records, and supporting documents:

— (121) "Referral" The act of bringing to the attention of an employer, a local office, a training sponsor, or a supportive service agency, an individual (or group of individuals) who need jobs, training, or related supportive services:

— (122) "Relocated Out of Area" (EDWAA) An outcome for an EDWAA participant who was provided with relocation assistance by JTPA, and placed in unsubsidized employment outside of the SDA where JTPA services were received

— (123) "Relocation Assistance" (EDWAA) The activities necessary to arrange for a family to move to a new abode for the purpose of accepting long-duration employment. Activities may include, but are not limited to: the cost of actual transfer of goods and property, including mileage for the family's travel, emergency assistance, rent subsidies, and other supportive services:

— (124) "Request for Proposal" (RFP) A set of documents which includes a description of the product or service desired to enable a prospective contractor to submit a proposal which includes information that procurement and technical personnel need to evaluate proposals submitted. The request for proposals is the specific term applied to the solicitation used in Government contracts when negotiated procedures are used:

— (125) "Residence" An individual's principal dwelling or home. A mailing address alone is insufficient to determine residency; however, P.O. Box and R.F.D. numbers are acceptable in rural areas:

— (126) "Reserve" An account which records a portion of the fund balance which must be segregated for some future use and which is, therefore, not available for further appropriation or expenditure:

— (127) "Responsible Contractor" (Responsible Bidder) A contractor or prospective contractor who appears to possess the ability to perform successfully under the terms and conditions of a proposed procurement based on a review of such factors as a satisfactory record of past performance, integrity, and business ethics; and financial and technical resources or access to such resources:

— (128) "Responsive" A bid or proposal complies, with respect to method and timeliness of submission and to substance of the bid or proposal, in all material respects, with the requirements of the invitation for bids or request for proposals. A minor irregularity in a bid or proposal which is deemed to be a matter of form rather than substance, the correction of which would not be prejudicial to other bidders, does not render a bid or proposal nonresponsive:

— (129) "Retraining" (EDWAA) Programs designed to provide training to individuals who have been laid off due to a plant closure or other reduction in employment. Participants must be those who have little or no opportunity to be reemployed in their current occupation and must be trained in skills distinct from those possessed upon entering the program. Training may only be offered in high demand occupations:

— (130) "Satisfactory Progress in School" One of the conditions that must be met by a participant who is terminated with credit for meeting the youth employability enhancement "Youth Remained in School" or "Youth Returned to School". Each SDA, in cooperation with the local school system, must develop a written policy which defines an individual standard of progress that each participant is required to meet. Such a standard should, at a minimum, include both a qualitative element of a participant's progress, (e.g., performance on a criterion referenced test or a grade point average) and a quantitative element (e.g., a time limit for completion of the program or course of study). This policy may provide for exceptional situations in which students who do not meet the standard of progress are nonetheless making satisfactory progress during a probationary period because of mitigating circumstances:

— (131) "School Dropout" is an adult or youth who is not attending school full-time and has not received a high school diploma or a GED certificate:

— (132) "Single Head of Household" A single, abandoned, separated, divorced or widowed individual who has responsibility for one or more dependent children under age 18:

— (133) "Single Head of Household Program" is a State funded program to train single heads of household who:

— (a) are receiving, or

— (b) are displaced homemakers (defined as an individual who has not recently been in the labor force, but has worked in the home providing unpaid services for family members and for that reason has diminished marketable skills); or

— (c) meet the local PIC defined criteria for this program (limited to 10% of available funds):

— Funds may be used for training, support services (defined as for JTPA), administration (up to 15%), or coordination (up to 10%):

— (134) "Subcontract" is a written contract between an SDA and a subcontractor:

— (135) "Subcontractor" is any person, organization, or other entity which receives DWS funds via a written contract with an SDA:

— (136) "Subsidized Employment" Employment created in the public sector and in private for profit or nonprofit organizations

which is financed by the SDAs program funds. Subsidized employment includes work experience. On-The-Job Training is a reportable training activity, rather than subsidized employment.

—(137) "Substance Abuse" an individual abuses alcohol and/or other drugs, and the abuse results in dependency that constitutes or results in a substantial handicap to employment.

—(138) "Support Services, Other" on the termination form, is any support service not previously defined provided to eligible individuals to enable them to participate in planned activities. Includes the provision of tools, equipment, and special work clothing. Include here individuals who had received a Pell or TRA grant within 12 months prior to initial participation in the JTPA program and for whom the grant coverage continues after participation in JTPA begins

—(139) "Suspension" An action which temporarily stops State assistance under a grant/contract usually pending some type of corrective action.

—(140) "Termination" The separation of a participant from JTPA who is no longer receiving employment, training, or services (except post-termination services) funded under that title.

—(141) "Termination" The cancellation of Federal assistance prior to the stated date of completion.

—(142) "Training Programs Operated by the Private Sector" Training programs that are operated by labor organizations or private sector employers using private sector facilities equipment, or personnel. Such training could be a combination of institutional skills training and on-the-job training.

—(143) "Training Related Job" is any job deemed training-related per the SDA definition.

—(144) "UI Claimant" Any individual who has filed a claim and has been determined monetarily eligible for benefit payments under one or more State or Federal unemployment insurance programs, and who has not exhausted benefit rights or whose benefit year has not ended and who has not exhausted his benefit rights.

—(145) "UC Exhaustee" Any individual who has exhausted his/her unemployment compensation benefits (not including Federal Supplemental, additional State, or extended benefits) for which the applicant has been determined monetarily eligible.

—(146) "Unsubsidized Employment" Employment not financed from funds provided under the Act.

—(147) "Upgrading Programs" Programs for JTPA-eligible persons already in the work force, who are in need of supplemental training to maintain and/or advance in their current employment.

—(148) "Veteran" is a person who

—(i) served on active duty in the military service of the U.S. for a period of more than 180 days and who was discharged or released with other than a dishonorable discharge, or

—(ii) was discharge or released from active duty because of a service-connected disability, or

—(iii) was discharged as a member of a reserve component under an order to active duty, who served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged from duty with other than a dishonorable discharge.

—(a) "Disabled Veteran" is entitled to compensation for a disability under the Dept. Of Veterans' Affairs, or who was discharged or released from active duty because of a service-connected disability.

—(b) "Vietnam Era Veteran" is a veteran, any part of whose active military, naval or air service was during the Vietnam Era (August 5, 1964 through May 7, 1975).

—(149) "Vocational Exploration" exposes individuals to the operation and types of jobs available in the private sector through observation of such jobs and instruction including, where appropriate, limited practical experience.

—(150) "Ward of the Court" A youth under age 18 who, after a hearing, has been taken out of the family unit and has been placed in the custody of the Department of Human Services. The youth is generally placed in another family situation. If the youth has lived with his own family 50% or more of the time in the last six months, his family income must be included for those months for eligibility determination. If the youth has lived with his own family less than 50% of the time in the last six months, only his income is used.

—(151) "Welfare Average Weekly Earnings at Followup" Total weekly earnings for all adult welfare respondents employed during the 13th full calendar week after termination, divided by the total number of adult welfare respondents employed at the time of followup. This has been a DOL performance standard since program year 1988.

—(152) "Welfare Followup Employment Rate" The total number of adult welfare respondents who were employed at least 20 hours per week during the 13th full calendar week after termination, divided by the total number of adult welfare respondents. This has been a DOL performance standard since program year 1988.

—(153) "Welfare Recipient" An individual who receives or whose family receives cash payments under TANF, General Assistance (State or local government), or the Refugee Assistance Act of 1980 (PL 96-212). For reporting and performance standards purposes, this term excludes recipients of SSI (SSA Title XVI) and Food Stamps.

—(154) "Work Maturity Skills" This includes positive work habits, attitudes, and behavior such as punctuality, regular attendance, presenting a neat appearance, getting along and working well with others, exhibiting good conduct, following instructions and completing tasks, accepting constructive criticism from supervisors and co-workers, showing initiative and reliability, and assuming the responsibility involved in maintaining a job. This category also entails developing motivation and adaptability; obtaining effective coping and problem-solving skills; and acquiring an improved self image.

—(155) "Youth at Risk of Dropping Out of School" Any individual between the ages of 14 and 21 who is enrolled in a secondary school, or an equivalent program (GED, for example); and who for any of the reasons listed below is in danger of dropping out of school. Documentation must be kept in the participant file for any condition causing a student to be considered at risk. An individual can be considered in danger of dropping out of school if he/she:

—(a) Has a poor attendance record, with at least 20 absences/tardies in a semester;

—(b) Functions two or more years behind grade level in math, reading, or writing;

—(c) Has been identified by the educational system as having a learning disability;

—(d) Is a parenting or pregnant teen;

—(e) Has school- or medically-documented emotional behavior problems which may result in suspension (this includes but is not



limited to substance abuse, immature behavior for grade level, or lack of social skills);

— (f) Has medically documented health problems which can interfere with school attendance;

— (g) Is enrolled in an alternative school or in an in-school program designed for the potential dropout;

— (h) Is involved with the court system;

— (i) Has a mental or physical disability;

— (j) Has limited English language proficiency;

— (k) Has significant family conditions (includes but not limited to divorce, single parent family, care of siblings, substance abuse, family illiteracy, abuse, neglect);

— (l) Is homeless;

— (m) Has a sibling who dropped out; or

— (n) Has documentation from the school that the student is at risk of dropping out.

— (156) "Youth Competencies" Two youth competencies count as a youth employability enhancement. They are youth skills in the following areas:

— (a) Pre-employment/work maturity

— (b) Basic education (youth)

— (c) Job-specific skills

The necessary level of demonstrated proficiency in each area is defined by the PIC. Competency gains must have been achieved through program participation and be tracked through sufficiently developed systems that must include quantifiable learning objectives, related curricula/training modules, pre- and post-assessment, employability planning, documentation, and certification. The participant may attain these competencies regardless of the reason for termination.

— (157) "Youth Employability Enhancement" An outcome for a youth, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for long-term increase in earnings and employment. Outcomes which meet this requirement are restricted to:

— (a) Attained PIC-Recognized Youth Employment Competencies (two or more)

— (b) Returned to Full-Time School

— (c) Remained in School

— (d) Completed Major Level of Education

— (e) Entered Non-Title II Training

— (158) "Youth Employability Enhancement Rate" Total number of youth who attained one of the employability enhancements at termination, whether or not they also obtained a job, divided by the total number of youth who terminated. This is a DOL performance standard for program years 90-present.

— (159) "Youth Entered Employment Rate" The total number of youth who entered employment at termination divided by the total number of youth who terminated, excluding those who remained in school or returned to school. This is a DOL performance standard for the program years 90-present.

— (160) "Youth Remained in School" One of the Youth Employability Enhancement Terminations. In order to take credit for this the youth must:

— (a) have been, at enrollment, attending school and was considered "at risk of dropping out of school", as defined by the Governor in consultation with the State Education Agency;

— (b) have not received, at enrollment, a high school diploma or equivalent;

— (c) have been retained in a full-time secondary school (e.g. junior high school, middle school, high school, or alternative school) for at least 120 days or one semester;

— (d) for a youth age 16 to 21, have attained a PIC-approved Youth Employment Competency in Basic Skills or Job Specific Skills, or for a youth age 14 to 15, attained a PIC-approved Youth Employment Competency in Pre-Employment/Work Maturity or Basic Skills;

— (e) be making satisfactory progress in school; and

— (f) be remaining in school as a result of continuing, active participation in JTPA activities.

— (161) "Youth Returned to School" One of the Youth Employability Enhancement Terminations. In order to take credit for this the youth must:

— (a) have been, at enrollment, a dropout that had not obtained a high school diploma or equivalent;

— (b) have returned to and was retained in a full-time secondary school (e.g. junior high school, middle school, high school, or alternative school) for at least 120 days or one semester;

— (c) for a youth age 16 to 21, have attained a PIC-approved Youth Employment Competency in Basic Skills or Job Specific Skills, or for a youth age 14 to 15 attained a PIC-approved Youth Employment Competency in Pre-Employment/Work Maturity or Basic Skills;

— (d) be making satisfactory progress in school, and have returned to school and is remaining in school as a result of continuing, active participation in JTPA activities.

**KEY: economic development, training programs, employment, unemployed workers, unemployment**  
**August 18, 1997** **35A-5**  
**Notice of Continuation June 29, 1998]**



Workforce Services, Employment  
 Development  
**R986-602**  
 General Administrative Provisions

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 23724

FILED: 05/01/2001, 17:07

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Workforce Services is repealing Rule R986-602 because the Job Training Partnership Act (JTPA) program is no longer a federally-funded program. It has been replaced by the Workforce Investment Act (WIA). The proposed new rule reflecting this new funding source is R986-600.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

**(DAR Note:** Repealed rules R986-601 (DAR No. 23723), R986-602 (DAR No. 23724), and R986-603 (DAR No. 23725) are being replaced by the proposed new rule, R986-600 (DAR No. 23722). All of these rules are found in this issue of the *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 35A, Chapter 5

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no costs or savings associated with this repealed rule because it is being replaced by a new rule which is being proposed in a separate rulemaking action.

❖LOCAL GOVERNMENTS: This rule does not apply to local government therefore, there are no costs or savings.

❖OTHER PERSONS: There are no costs or savings associated with this repealed rule because it is being replaced by a new rule which is being proposed in a separate rulemaking action.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs associated with this repealed rule because all of the costs related to this rule are included within existing budgets.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have no impact on business.

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

Workforce Services  
Employment Development  
Second Floor  
140 East 300 South  
PO Box 45244  
Salt Lake City, UT 84145-0244, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at (801) 526-9645, by FAX at (801) 526-9244, or by Internet E-mail at wsadmpo.spixton@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/04/2001, 5:00 p.m., 1385 South State Street, Room 157, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2001

AUTHORIZED BY: Robert Gross, Executive Director

**R986. Workforce Services, Employment Development.**

**[R986-602. General Administrative Provisions:**

**R986-602-101. Authority:**

— (1) This rule adopts and incorporates by reference:

— (a) Title 55, Chapter 17, "Job Training Coordination Act";  
— (b) "Job Training Partnership Act" (JTPA);  
— (c) "Economic Dislocation and Worker Adjustment Assistance Act" (EDWAA);

— (d) Public Law 100-379, August 4, 1988, "Worker Adjustment and Retraining Notification Act" (WARN);

— (e) Federal regulations 20 CFR parts 626, 627, 628, 629, 630, and 631, 1990, which apply to programs under the Job Training Partnership Act and the Economic Dislocation and Worker Adjustment Assistance Act;

— (f) Federal regulation 20 CFR part 639, 1990, which applies to the Worker Adjustment and Retraining Notification Act.

**R986-602-102. Definitions:**

— (1) Terms used in this rule are defined in:

— (a) The acts and CFR sections cited in R986-602-101.

— (b) R986-601. Definitions.

— (2) As used in this rule:

— (a) "Agreement" means the grant agreement between the Department of Workforce Services (DWS) and:

— (i) the local Job Training Partnership Act grant recipient;

— (ii) the local Economic Dislocation And Worker Adjustment Assistance Act, or

— (iii) either a public or private agency contracted to provide services to participants under either act.

**R986-602-103. Administrative Sanctions:**

— (1) Administrative Sanctions apply when a JTPA administrative entity funded by DWS fails to comply with Federal and/or State laws, regulations, administrative rules, grants or contracts. Sanctions may apply to one, several, or all DWS JTPA programs.

— (2) Four types of sanctions exist. Any of the following letters may be used depending on the severity of the condition:

— (a) Letter of Administrative Concern is a warning detailing concern about the performance of the administrative entity.

— (b) Letter of Cash Restriction is an action that restricts cash drawdowns immediately on a temporary basis.

— (c) Letter of Funding Restriction is an action that restricts additional funding issued in the Notice of Fund Availability (NFA).

— (d) Letter of Funding Suspension is an NFA action deobligating any or all funding from the NFA.

— (3) After determining which sanction is necessary, the Director of the Employment Development Division (EDD) will:

— (a) Notify the SDA Director by phone of the intent to send a sanction letter, and discuss the problem(s). The SDA may respond within five days, or immediately at the discretion of the director.

— (b) If the terms of the phone call are not met, the sanction letter will be faxed to the administrative entity and the original sent by certified, return receipt mail.

— (c) If the terms of the first letter are not met the director will fax a second sanction letter to the administrative entity and mail another certified, return requested original. Copies will be sent to the Private Industry Council and the chief elected official.

— (d) The sanction letter(s) will describe the problematic condition(s), prescribe corrective action and a deadline, provide terms for lifting of sanctions and reinstatement, and identify technical assistance available from the state.

**R986-602-104. Audit Conduct and Reporting:**

— This section sets forth guidelines, based on the Office of Management and Budget (OMB) Circular Nos. A-128 and A-133, to be followed in the conduct and reporting of audits of DWS JTPA funds:

— (1) ~~Audit Standards - Audits shall be performed in accordance with generally accepted auditing standards and Governmental Auditing Standards ("Yellow Book") which are published by the Comptroller General of the United States. Among other requirements the "Yellow Book" requires:~~

— (a) ~~Auditors responsible for planning, directing, conducting, or reporting on government audits should complete, every 2 years, at least 80 hours of continuing education and training which contributes to the auditor's professional proficiency.~~

— (b) ~~Individuals responsible for planning, directing, conducting substantial portions of the field work, or reporting on the government audit should complete at least 24 of the 80 hours of continuing education and training in subjects directly related to the government environment and to government auditing.~~

— (c) ~~If the audited entity operates in a specific or unique environment (such as JTPA), auditors should receive training that is related to that environment.~~

— ~~Audit organizations conducting government audits should have an appropriate internal quality control system in place and participate in an external quality review program.~~

— (2) ~~Audit Requirements~~

— (a) ~~"State or local governments that receive federal financial assistance and provide \$25,000 or more of it in a fiscal year to a subrecipient shall determine whether the subrecipient spent federal assistance funds provided in accordance with applicable laws and regulations" (OMB Circular A-128);~~

— (b) ~~Each Grantee/Subrecipient shall have an annual independent audit conducted in accordance with OMB Circular A-128 (governmental entities) or OMB Circular A-133 (nonprofit organizations);~~

— (c) ~~It is DWS's responsibility to ensure that all SDA audits are in compliance with DWS policies and the applicable OMB Circular. In turn, each SDA is to ensure that their subrecipients are audited in accordance with DWS policies and the applicable OMB Circular.~~

— (d) ~~Costs associated with audits not performed in accordance with OMB Circulars A-128 or A-133 are unallowable charges to DWS funded programs.~~

— (3) ~~Audit Notification - Each SDA shall upon contract approval provide written notification of the firm name, address, phone number and contact person selected to perform the SDA's annual audit. The SDA must notify DWS at least 15 days prior to the audit entrance conference, so that DWS officials, at their option, may elect to attend. A representative of DWS will contact the selected audit firm to discuss results of monitoring reports, incident reports and other areas of concern to DWS. The auditor should consider these issues in planning and performing the audit.~~

— (4) ~~Illegal Acts or Irregularities~~

— (a) ~~If, through monitoring or incident reports received from the SDA, DWS suspects or becomes aware of illegal acts or irregularities DWS shall notify the U.S. DOL Office of Inspector General (OIG) in accordance with established policies and procedures. Should OIG choose not to investigate the matter, DWS may elect to expand monitoring procedures and/or notify the SDA's auditor. The SDA's auditor is required to consider the issue in~~

planning and performing the annual audit. However, the auditor shall use his/her professional judgment in determining whether any additional audit procedures are necessary. DWS may contact the auditor regarding the auditors conclusions, if any.

— (b) ~~If, during the course of the audit, the auditor suspects or becomes aware of illegal acts or other irregularities, prompt notice should be given to management officials above the level of involvement. The management officials should promptly notify DWS.~~

— (5) ~~Subrecipient Audit Plan - Each SDA shall submit as part of their Title II-A Annual Plan a Subrecipient Audit Plan to DWS. If the SDA has no subrecipients, so state. DWS shall review the Audit Plan and approve it with the Annual Plan. The Annual Plan will be conditionally approved until all deficiencies in the Audit Plan are corrected. The SDA shall identify:~~

— (a) ~~All subrecipients in the current program year;~~

— (b) ~~Each subrecipient's fiscal year end; and~~

— (c) ~~Cognizant agency, as defined in OMB Circular A-128, paragraph 11, Cognizant Agency Responsibilities.~~

— (6) ~~Audit Report Submission~~

— (a) ~~SDA annual audit reports including management letters must be submitted to DWS within 180 days of the SDA's fiscal year end, except for Utah State Agencies, who have one year to complete audit, plus one month for submission of their report.~~

— (b) ~~SDA's shall establish policies and procedures which ensure that subrecipient audit reports are submitted to the SDA within 180 days of the subrecipient's fiscal year end, except for Utah State Agencies, who have one year to complete audit, plus one month for submission of their report.~~

— (7) ~~Audit Report Acceptance - Governmental Entities and Nonprofit Organizations. The audit resolution period shall begin upon receipt of the audit report. DWS will rely on the audit report review performed by the Utah State Auditor's Office for format and completeness. The audit report will not be considered complete without the Utah State Auditor's acceptance letter.~~

**R986-602-105. Audit Resolution:**

— This section deals with DWS's procedures for resolution of audit findings. Each SDA shall adopt policies and procedures for resolution of subrecipient audits which, at a minimum, meet the requirements of this section. The audit resolution process must be completed within 180 days of receipt of the audit report.

— (1) ~~Initial Determination~~

— ~~Within thirty (30) days of receipt of an audit report, DWS will complete the following:~~

— (a) ~~Review all findings and questioned costs related to DWS funded programs (internal control weaknesses and findings of noncompliance);~~

— (b) ~~Determine whether the corrective action plan submitted with the audit report adequately addresses issues related to DWS funded programs.~~

— (c) ~~Make an initial determination regarding any questioned costs and the proposed corrective action plan.~~

— (d) ~~Notify the SDA by issuing an Initial Determination Letter.~~

— (2) ~~Informal Resolution - The SDA shall have a maximum of 120 days of the Initial Determination letter to informally resolve issues identified in the audit report. During this period the SDA may submit documents, provide additional pertinent information, or request technical assistance to resolve audit findings. Depending on~~

the findings involved, DWS may elect to shorten the time for informal resolution:

—(3) ~~Corrective Action Verification~~

—(a) ~~Within 150 days of receipt of an audit report, DWS will verify that the SDA's corrective action plan has been implemented. Such verification may include an on-site review by DWS's audit resolution team; supplemental procedures performed by the SDA's auditors; or other actions deemed necessary by DWS officials. DWS may elect to have auditor verification in the next audit cycle.~~

—(b) ~~SDA's shall be notified in writing of the results of DWS's corrective action verification. Any deficiencies not corrected must be resolved within 180 days of receipt of the audit report or, when necessary, the SDA must obtain written approval from DWS for delayed implementation of the corrective action plan.~~

—(4) ~~Final Determination - DWS shall issue a Final Determination letter within 180 days of receipt of an approved audit report. The Final Determination will respond to issues raised in the initial determination, conclude on the SDA's implementation of the corrective action plan, and notify the SDA of debt related to questioned costs. The Final Determination letter shall also indicate repayment methods and appeal rights (see Section 3 for additional information).~~

—(5) ~~USDOL Resolution of Audit Findings~~

—(a) ~~USDOL has the right to reject DWS's resolution of SDA audit issues. USDOL may issue an initial determination letter to the SDA disallowing costs previously allowed by DWS (20 CFR 629.54(c)). The SDA should notify DWS upon receipt of a USDOL initial determination letter. DWS will, if requested, assist the SDA in informal resolution with USDOL.~~

—(b) ~~USDOL has 180 days from issuance of the initial determination for informal resolution before issuing a final determination. Any debt established by USDOL must be paid directly to USDOL. The SDA has the right to appeal a determination by USDOL, which imposes a sanction or corrective action to the Office of the Administrative Judge.~~

—(6) ~~DWS Resolution of Subrecipient Audit Findings~~

—(a) ~~Each SDA must submit with the annual fiscal settlement package, the "Subrecipient Audit Coverage Summary". The form includes an annual summary of SDA action on all subrecipient findings and questioned costs related to DWS funded programs.~~

—(b) ~~DWS has the authority to reject the SDA's resolution of subrecipient audit findings. DWS may issue an initial determination letter directly to the subrecipient. In such cases the subrecipient shall be subject to DWS's audit resolution policies and procedures included herein.~~

**R986-602-106. Audits: Debt Collection, Corrective Action, and Sanctions:**

—(1) ~~Establishment of Debt~~

—When DWS issues a Final Determination and disallows costs, a debt is established and payable within 25 days or on a date set by agreement. The Final Determination/Debt Collection Notification will establish the severity and classification of the misexpenditure, the method of repayment, and what actions/options must be followed by the recipient.

—JTPA fund recipients must satisfy all disallowed costs to the Department of Labor (DOL). In debt collection situations involving Grantees or their Subrecipients the State JTPA Administrative Agency, DWS will first pursue disallowed costs through the

Grantee. In accordance with the Act, all JTPA funded recipients will insure prompt, appropriate, and aggressive debt collection action by adhering to the following outlined items:

—(a) ~~When the unallowable expenditure of JTPA funds was due to any of the following, repayment must be made from nonfederal funds within 25 days and these amounts will not be available for reprogramming; such funds will revert to the U.S. Treasury:~~

—(i) ~~Willful disregard of JTPA requirements, gross negligence, or failure to observe accepted standards of administration (Section 164(e)1);~~

—(ii) ~~Incidents of fraud, malfeasance, misapplication of funds or other serious violations as defined in TEGL No. 6-84; or~~

—(iii) ~~Illegal acts or irregularities which are required to be reported in accordance with Paragraphs 11.b.(4) and 12. of OMB Circular A-128.~~

—(b) ~~Upon final Determination/Debt Collection Notification of a Grantee or Subrecipient may:~~

—(i) ~~Request a contested case hearing within 10 days as in accordance with 20 CFR 629.52(b) and Utah Administrative Rules. (Subrecipients would first request a hearing through the Grantee's hearing/grievance system.)~~

—(ii) ~~Request a waiver of liability from DWS in accordance with Section 164(e)(2), JTPA. It is the Governor's decision to decline the waiver request or endorse it and request approval from DOL (20 CFR 629.44(d)(2)). The mandated conditions of Section 164(e)(2) must be functioning at the level responsible for overseeing accountability. Therefore, the entity that directly incurred the misexpenditure is always liable for the disallowance and it is the State and Grantee oversight level that substantial compliance with the requirements of Section 164 must be met if a waiver is to be granted. DWS or the Grantee must adequately demonstrate that it has:~~

—(c) ~~Established and adhered to an appropriate system for the award and monitoring of contracts with subgrantees which contains acceptable standards for ensuring accountability;~~

—(d) ~~Entered into a written contract with such subgrantee (Grantee/Subrecipient) which established clear goals and obligations in unambiguous terms;~~

—(e) ~~Acted with due diligence to monitor the implementation of the subgrantee contract, including the carrying out of the appropriate monitoring activities (including audits) at reasonable intervals; and~~

—(f) ~~Taken prompt and appropriate corrective action upon becoming aware of any evidence of a violation of the JTPA or the federal regulations by such subgrantee.~~

—(g) ~~When JTPA misexpended funds are not due to items listed in item number one above, such funds may be deemed as reprogrammable. According to Training and Employment Guidance Letter No. 2-87, the following conditions must be met:~~

—(i) ~~Repayment of non-Federal funds to the recipient must first occur;~~

—(ii) ~~The funds shall be reprogrammed in the same JTPA program and title; and~~

—(iii) ~~This reprogramming must take place during the program year such funds were obligated by DOL or the two succeeding program years.~~

—Funds meeting the above criteria will be equitably reprogrammed on a case by case basis, at the discretion of DWS:

All documentation relating to the repayment of the liability and the reprogramming of the funds will be maintained at DWS:

— (2) ~~Debt Collection~~

— Under the Job Training Partnership Act debt collection follows the fundamental principle that the responsibility for the proper use of resources flows with the funds. Utah's JTPA system imposes this responsibility on both the Grantee and Subrecipient level.

— DWS shall determine which sanctions or corrective actions to impose and what actions are needed to collect the debt. The Final Determination letter will outline the collection action, expected method of repayment, interest requirements, and the proper notice of appeal rights. A description of the debt settlement methods follows:

— All debts of \$1,000 or less:

— (a) Must be paid in cash, or

— (b) May be reprogrammed according to item 3 above.

— All debts of \$1,000 or more, other than those listed in item 1 above will be settled by:

— (a) "Cash" Cash repayment in a lump sum is the preferred debt settlement method and will require payment within 25 days of the date of the Final Determination or the date set by agreement between DWS and the debtor.

— (b) "Cash Installment Payments" The Federal Claims Collection Standards limit cash installment repayment to 36 months and suggest repayments of shorter duration (from three to twelve months). Repayment duration may be negotiated based on the amount of the debt and the debtor's ability to pay the full amount in a lump sum payment. All repayments will be subject to current interest charges set at the current Federal Treasury interest rates.

— (c) "Reprogramming" The repayment of a misexpenditure may be reprogrammed according to item 3 above.

— (d) "Withholding" This repayment method involves withholding amounts owed the debtor for past services or other considerations already provided, in satisfaction of the debt owed. A reduction in services must not occur as a result of this method. Withholding requires negotiation and written contract agreement with the debtor and such costs are subject to audit.

— (e) "Stand-in Costs" This method is not actually a debt repayment but is an acceptable method of "erasing" the debt by charging allowable costs which were not originally charged to the grant. The debtor must identify allowable costs associated with the grant but not charged to the grant and substitute those identified/verifiable costs for the disallowed costs. This method requires negotiation and a written agreement with the debtor and such costs are subject to audits.

— (f) "Future Services" This repayment method involves providing additional expenditures and/or services beyond the plan in the years subsequent to the grant year in which the debt was incurred. The debtor must identify the additional allowable expenditures/services. The method required negotiation and a written agreement with the debtor. DWS may require an audit of level of services provided.

— (g) "Offset" This method of repayment will generally be used when demands/agreements for repayment have been made and not honored. This is not a negotiated repayment method. The Act allows DWS to use this option when DOL offsets a debt against the State and the debt resulted from a disallowed cost by the

Grantee/Subrecipient. Payments to the recipients will be withheld and unexpended funds drawn back to collect the debt. Program expenditures and/or services cannot be reduced from their plan even though the grant amount has been reduced. DWS may require an audit of the level of services provided.

— (3) ~~Delinquent Debt~~

— (a) DWS will issue up to three progressively stronger written demands for payment by the debtor at intervals of approximately 30 days (certified mail, return receipt requested). If payment is not received on or before the date set by the final demand letter, the debt shall be delinquent. DWS will then take appropriate action to satisfy the debt.

— (b) DWS will suspend debt collection against the Grantee/Subrecipient while proceedings for either waiver request or contested case hearing are in effect. DWS will reinstate debt collection proceedings, as appropriate, upon outcome of the waiver request or contested case hearing.

— (c) All debt payments are due on the date set and determined by the method of repayment. Interest is applicable to installment payments as well as any delinquent debts. In the event that the payment is not received when due, interest accrues at the current Federal Treasury rates from the date on which notice of the debt and interest requirement is first mailed or hand delivered to the debtor.

— (d) A delinquent debt, in addition to the assessment of interest, will be assessed for additional administrative costs incurred in processing and handling of the debt. Also, a six (6) percent per annum penalty will be assess after the debt has been delinquent 90 days. Such penalty will accrue from the day the debt became delinquent. For debts under Administrative Review will accrue from the day the debt became delinquent. For debts under Administrative Review (hearing or waiver request) interest accrued shall not begin until the date when notice of the debt and interest requirements are provided in the first demand letter following the hearing or request.

— (4) ~~Corrective Action and Sanctions~~ Corrective action and/or sanctions may be imposed related to internal control structure and regulatory non-compliance findings included in audit or monitoring reports. Sanctions shall be imposed by the Governor. Relevant timeliness shall be set forth in the modification of the imposition of sanctions. Corrective actions shall have specific timeliness for implementation and include monitoring procedures to be used in ensuring compliance.

**~~R986-602-107. Bonding:~~**

— Every individual authorized by the SDA, through designation or subcontract, to receive or deposit funds into proper accounts or to issue financial documents, checks or other instruments of payment for program costs shall be bonded to provide protection against loss. The fidelity bond shall be in an amount equal to the highest fund request received through the Utah Weekly Request for Funds, form URF-05, which is described in Subsection R982-401-104(5).

**~~R986-602-108. Bonuses for Participants:~~**

**~~R986-602-109. Disclaimer:~~**

— The United States Department of Labor shall in no event be construed to be a party to the Agreement.

**R986-602-110. Drug Free Workplace.**

SDAs shall certify to DWS that they comply with drug free workplace regulations. Subcontractors shall certify to the SDAs that they comply with drug free workplace regulations. This applies to government agencies, private subcontractors, and schools; but does not apply to OJT employers.

**R986-602-111. Financial Requirements.**

(1) Each SDA is required to establish and maintain, on a current basis, adequate accounting systems in accordance with generally accepted principles and safeguards under:

- (a) The JTPA;
- (b) The EDWAA;
- (c) Sections 20 CFR 626 through 631;
- (d) Rule R982-401, Fiscal Procedures; and
- (e) Utah Administrative Rules.

(2) Adequate staff must be provided:

- (a) To maintain the financial system;
- (b) To prepare the required reports; and
- (c) To ensure compliance with applicable laws, regulations, administrative rules and guidelines.

(3) Minimum staff qualifications include a basic knowledge of accounting theory and procedures and the educational ability and experience to apply such knowledge.

**R986-602-112. Fraud and Abuse.**

(1) JTPA regulation 20 CFR 629.55, states, "All information and complaints involving fraud, abuse or other criminal activity shall be reported directly and immediately to the Secretary of Labor." Two mechanisms exist for reporting to the DOL known or suspected incidents of fraud, malfeasance, misapplication of funds, gross mismanagement, or other possible criminal activities in JTPA funded programs:

(a) The Incident Report, DOL Form DL 1-156, is used to notify the DOL Regional Administrator of all known or suspected cases of fraud and abuse.

(i) Incident Reports should provide information on fraudulent activities which may or may not be prosecuted. This reporting procedure is intended to supplement, but not supplant, other systems of oversight. All such incidents must be reported immediately even though the case may be subsequently handled by the governor, Grantees, or local law enforcement agencies. The original and one copy should be mailed within one working day of the discovery of the occurrence. Mail Incident Reports to:

- Regional Administrator
- U.S. Department of Labor
- Employment and Training Administration
- 1999 Broadway, Suite 1780
- Denver, Colorado 80202-5716

(ii) Each Grantee must establish procedures at the Grantee, subrecipient, and contractor levels to ensure that each fulfills their responsibility to forward Incident Reports within one working day of the discovery of the occurrence. Mail a courtesy copy of the report to DWS:

(b) The second mechanism is a toll-free hotline to the Office of the Inspector General for DOL. The hotline allows for anonymous reporting, if desired, to avoid reprisal. The hotline should not be used for resolving employee grievances, equal

employment opportunity complaints, labor disputes, or other personal concerns. The hotline number is (800) 347-3756.

**R986-602-113. Hold Harmless.**

The Grantee shall hold and save DWS, representatives, associates and employees harmless from liability of any nature or kind, including costs and expenses, for or on account of any suit or damages sustained by any persons or property resulting in whole or part from the negligent performance or omission of any representative, associate or employee of the Grantee.

**R986-602-114. I-9 Forms for Employment Eligibility.**

If the Grantee pays a wage directly to a participant, the Grantee must have an I-9 form on file for that participant. Only one form need be on file if the participant receives training more than one time. If the Grantee reimburses wages or partial wages to an employer, the Grantee need not require the I-9 form for that participant.

**R986-602-115. Nepotism.**

Grantees are prohibited from allowing nepotism, as defined in Rule Subsection R986-601-102(98), to occur. However, JTPA service delivery area administrative staff cannot deny services to relatives. Denial of services to a relative who meets all JTPA eligibility requirements is unreasonable and discriminatory. Eligible relatives must have an equal opportunity to receive benefits and services to the same extent that other eligible recipients are receiving them.

**R986-602-116. Obligation to Third Parties.**

DWS will not be obligated to any party other than the Grantee which is signatory to the agreement.

**R986-602-117. Performance.**

(1) The Grantee shall maintain levels of performance consistent with the scope of the agreement.

(2) Performance below the relevant standards may constitute noncompliance with the agreement. DWS will provide the Grantee written notification of areas of noncompliance and require the Grantee to:

- (a) Submit a written plan of corrective action, including the date on which corrective action will be completed; or
- (b) Present justification for modification of the standard that noncompliance is based on.

**R986-602-118. Political and Lobbying Activities.**

(1) Funds, materials, property or services provided, directly or indirectly, under the agreement shall not be used for the conduct of any partisan political activity, or to further the election or defeat of any candidate for public office. The Grantee agrees to comply with the provisions of the Hatch Act, which limits the political activity of certain state and local government employees.

(2) The Grantee certifies that federally appropriated funds shall not be paid to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, or an employee of a member of congress in connection with:

- (a) The awarding of any federal contract or grant;

- (b) The making of any federal loan;
- (c) The entering into of any cooperative agreement, and
- (d) The extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (3) Certification language regarding lobbying activities is required in the award documents for all:
  - (a) Subcontracts;
  - (b) Subgrants; and
  - (c) Contracts under grants, loans, and cooperative agreements.

**R986-602-119. Private Industry Council Appointments:**

— As the Chief Elected Official(s) appoint people to fill vacant or newly created positions on a PIC, appointments must meet the requirements of JTPA and must consider recommendations made by the Governor and the Job Training Coordinating Council. JTPA Section 102 outlines how Private Industry Councils must be established. The same procedures must be followed for new appointments to a PIC. The Act states that PIC members must be selected from people nominated by appropriate organizations. Once a nomination list has been developed for a PIC membership category (e.g., the private sector), the SDA may use the same list for subsequent appointments to that category during the same program year. General purpose business organizations (GPBOs), as defined by JTPA, will coordinate the development of a nominations list for private sector PIC members. If the GPBOs refuse to accept nominations from other business organizations, an SDA may request nominations directly from all business organizations.

- (1) The Governor and the Job Training Coordinating Council recommend the following:
  - (a) Both a secondary and post-secondary vocational education representative should be appointed to each PIC to represent education agencies. A person from the area vocational center can be considered either a secondary or post-secondary representative.
  - (b) The community-based organizations appointed to a PIC should have a recognized record of advocacy for the population to be served.
  - (c) The "rehabilitation agency" position should be filled by a representative of the Division of Vocational Rehabilitation.
  - (d) A representative of the Department of Human Services should be include on each PIC.
  - (e) The Act requires the private sector representation constitute a majority of the membership of the PIC and must also be owners of business concerns, chief executive officers or chief operating officers, or other private sector representatives who have substantial management or policy responsibility. It is recommended that non-private sector appointees have comparable management or policy responsibilities.
  - (f) PIC appointments should be made with full dialogue among all elected officials, educational agencies and other interested entities. This can be accomplished by providing an open selection procedure through which all interested parties can nominate individuals for PIC membership.
  - (g) Special efforts should be made to actively seek nominations and appointments of women and minorities on each PIC.
- (2) The Governor must certify that PIC appointments meet the outlined requirements. Service Delivery Areas must submit the following:

- (a) Name of the SDA submitting the information.
- (b) Name, official title, and signature(s) of the Chief Elected Official(s) making the PIC appointment(s).
- (c) Explain how nominations for the position(s) were requested. List all groups contacted. List nominations by nominating group.
- (d) Explain how private sector appointments reasonably represent the industrial and demographic composition of the business community, including small and minority business. Also explain how the appointments, other than the private sector representatives, reflect the demographic composition of the SDA, including minority and female appointees as appropriate.
- (e) For each appointment list:
  - (i) Name of appointee (note if female or minority);
  - (ii) Business address and phone;
  - (iii) Organizational affiliation. Identify those which meet the small business definition;
  - (iv) Position within the organization;
  - (v) Nominating organization;
  - (vi) Term of appointment.
- (f) Submit a current PIC membership list with certification request for a review of overall PIC membership compliance.

**R986-602-120. Rights and Remedies Not Waived:**

— In no event shall any payment by DWS constitute or be construed by the SDA to be a waiver, breach of agreement, or default which may then exist on the part of the SDA. The making of any such payment, when any such breach or default exists, shall in no way impair or prejudice any right or remedy available to DWS with respect to such breach or default.

**R986-602-121. Severability of Provisions:**

— In the event that any provision of the agreement is held invalid, the remainder of the agreement shall not be effected, if it continues to conform to the terms and requirements of applicable law, federal regulations, and state rules.

**R986-602-122. Selective Service Registration:**

- The following steps should be followed when determining Selective Service status:
  - (1)A. For males born after December 31, 1959, who are at least 18 but less than 26, verify Selective Service Registration with:
    - (a) A registration card;
    - (b) A "Letter of Acknowledgment" (SSS Form No. 3-A)
    - (c) A "Change of Information Letter" (SSS Form No. 3-B)
    - (d) A "Verification Letter" (SSS Form No. 3-V)
  - SSS mails these forms only to people who are registered with the SSS:
  - (e) If a person has registered with SSS but cannot produce proof of registration the intake worker can get immediate verification by calling the SSS (708-688-6888). Provide the individual's full name, Social Security number and date of birth. Documentation of the call and registration number should be noted in the participant file.
  - (f) If a person has not registered or cannot produce proof of registration, the applicant should complete a registration form (SSS Form No. 1). The SSS will handle duplicate submissions for those persons already registered.

— (2) For males 26 years of age and older, and born on or after January 1, 1960:

— (a) Verify SSS Registration:

— (b) If the applicant has not complied with SSS registration requirements, determine if:

— (i) He has received an honorable discharge from the military (keep a copy in the participant file); or

— (ii) He has an obvious disability that would permanently disqualify him from military service. (Be sure that the disability would disqualify him and note in the participant file.)

— (c) If the applicant has not complied, has not received an honorable discharge from the military or does not have an obvious disability that would disqualify him from the military, the following procedure must be followed:

— (d) The applicant should request a "Determination of Whether an Applicant Knowingly and Willfully Failed to Register" from the SSS. The applicant should send the following information:

— (i) Applicant's Name

— (ii) Current Address

— (iii) Date of Birth

— (iv) Social Security Number (optional, for like names)

— (v) State the applicant is requesting an advisory opinion under the Military Selective Service Act, Section 3; and

— (vi) Documentation for the reasons he did not register, to: The Office of General Counsel, Selective Service System, National Headquarters, Washington, DC 20435

— (3) JTPA staff are not responsible for offering advice to individuals when obtaining a statement of the reasons for not registering for the draft. SSS will respond with an advisory opinion within 30 days. If the SSS determines the applicant did knowingly and willfully fail to comply with the Military Selective Service Act, he will be ineligible for JTPA services. If the SSS does not make a determination of willfully failing to comply, the SDA may be able to make the decision to serve or not.

**R986-602-123. Ten Percent Window Eligibility For Title H-A and H-C, and Twenty-Five Percent Window Eligibility, Eight Percent Education Set-aside Program.**

— After reasonable attempts to document barriers to employment have been made, a self-certification of the employment barrier may be accepted. The self-certification must be signed by the participant and placed in their participant file. Self-certification applies to employment barriers only. Documentation is required for all other applicable eligibility criteria:

— participants served under the 25% window eligibility of the 8% education set-aside shall be a member of one of the following groups:

— (a) Non-economically disadvantaged people with barriers whose income has been verified and documented. The barriers can be one or more of those listed in Section 203 or 263 of the Act, or those defined in the SDA's approved plan of service, or

— (b) Dislocated workers, who have been verified and documented;

— After making all reasonable attempts to document barriers to employment, a self-certification of barriers, signed by the participant and placed in the participant record will be acceptable. Self-certification applies to barriers only, documentation will be required on all other eligibility criteria.

— (3) Priority for the 8% program should be given to those participants residing within the SDA boundaries. However, SDAs may certify eligible participants who reside in an adjacent SDA for the 8% Set-aside program:

**R986-602-124. Verbal Agreements or Interpretations.**

— (1) Verbal agreements or interpretations from any employee of DWS shall not affect or modify any of the terms or obligations contained in the agreement, the JTPA, the EDWAA, federal regulations, or Utah rules. They are not binding upon DWS.

— (2) If an SDA is in doubt about the meaning of any part of the agreement, the JTPA, the EDWAA, federal regulations, or Utah rules, a written request for interpretation shall be submitted to the EDD Director. A written response will be sent to the SDA within ten working days of receipt of the request. The written interpretation is considered a clarification of the agreement, the JTPA, the EDWAA, federal regulation, or Utah rule. It is binding upon the agencies involved:

— On the Job Training

— (1) OJT contracts may not be written for trainees who are recruited during new employee orientations if they have already been hired:

— (2) An OJT contract may not be written with the participant's current or previous employer in the same, a similar, or an upgraded job in the same career path. If conditions for eligibility and participation are met, there must be a demonstrable difference between the job and skill requirements of the upgraded job and those of the current or prior job. JTPA may not unnecessarily subsidize an employer's normal workforce training expenses:

— (3) Participants may not be trained or employed in any religious or political activities:

— (4) Persons with immediate family members employed in an administrative capacity with the employer may be referred for OJT with that employer IF: (a) The currently employed family member will not supervise the trainee or sign timesheets or paychecks for the trainee, (b) The currently employed family member does not own the company or an interest in it, and (c), the currently employed family member does not in any way benefit from the participant's training:

— (5) No more than 25 % of the employer's workforce may be on OJT at one time. Employers with four or less employees may have one OJT contract at a time. Exceptions may be made by the SDA director if supporting documentation is retained, including assurance of adequate training and supervision:

— (6) For the purpose of enforcing Section 141 (g) (4) of the Act, long-term employment means a minimum of six months. The long-term retention rate must be at least 80%. If the employer has had only two or three trainees, these trainees must have been retained for additional OJTs to be written. The SDA director may approve OJTs for an employer with a lower retention rate, with justification kept in the contract file:

— (7) If participants are terminated by the employer without cause for other than business reasons, they may not be replaced with other OJT participants. Employers should not be penalized for a trainee's personal decisions or irresponsible behavior, or for unforeseeable changes in business conditions. Employers should not be penalized for unforeseeable changes in business conditions. Multi-site employers will be considered on a site-by-site basis. OJT trainees may not be paid a higher wage than regular trainees to meet



SDA standards, nor have their wages reduced at the completion of training.

(8) The employer must provide information such as the IRS Employer Identification Number, evidence of Workers' Compensation or similar insurance, and a state tax employer number to demonstrate that they are a legitimate employer, and that appropriate taxes will be paid. A new employer must supply these numbers as soon as they are obtained.

(9) In general, OJT contracts may not be written for jobs that are intermittent, temporary, or seasonal, or jobs that pay only commissions or tips, or by piece rate. Limited exceptions may be made with a written justification approved by the SDA director. Predictable, short term layoffs are included in this prohibition for the term of the layoff.

(10) If a DOT code or other job title-related code is used to help determine training length, the skills listed in the training plan must accurately reflect that occupational title. For example, a salad prep trainee may not be coded as a Chef with a longer training time indicated.

(11) A trial period is not allowable under any circumstances without a signed contract in place. The SDA may specify that the employer will not receive reimbursement if the trainee leaves before a specified period, but the trainee must be enrolled in JTPA from the first day on the job.

(12) Training outlines must be acknowledged by the trainees to assure their awareness of program enrollment.

(13) The contract will be reviewed by the contract officer or a fourth party before it is signed. The review will include the participant's eligibility, the need for training, the training outline, and correct dates and math computations. Contract monitoring will take place at least once during the life of the contract and once before the final invoice is submitted.

(14) An unpaid intern can be hired on an OJT in the same job. This includes a trainee who has been paid JTPA work experience or youth internship wages at the employer.

(15) Tools must be included in the SDA OJT policy: who retains ownership during the contract period, when ownership goes to the trainee, what happens to the tools if the contract is not completed, and what attempt will be made to retrieve tools that disappear.

**KEY: training programs, employment, unemployed workers, unemployment**  
**July 1, 1997** **35A-5**  
**Notice of Continuation June 29, 1998]**



Workforce Services, Employment  
Development  
**R986-603**  
Participant Data System Procedures

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE No.: 23725

FILED: 05/01/2001, 17:07

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Workforce Services is repealing Rule R986-603 because the Job Training Partnership Act (JTPA) program is no longer a federally-funded program. It has been replaced by the Workforce Investment Act (WIA). The proposed new rule reflecting this new funding source is R986-600.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

**(DAR Note:** Repealed rules R986-601 (DAR No. 23723), R986-602 (DAR No. 23724), and R986-603 (DAR No. 23725) are being replaced by the proposed new rule, R986-600 (DAR No. 23722). All of these rules are found in this issue of the *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 35A, Chapter 5

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no costs or savings associated with this repealed rule because it is being replaced by a new rule which is being proposed in a separate rulemaking action.

❖LOCAL GOVERNMENTS: This rule does not apply to local government therefore, there are no costs or savings.

❖OTHER PERSONS: There are no costs or savings associated with this repealed rule because it is being replaced by a new rule which is being proposed in a separate rulemaking action.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs associated with this repealed rule because all of the costs related to this rule are included within existing budgets.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have no impact on business.

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

Workforce Services  
Employment Development  
Second Floor  
140 East 300 South  
PO Box 45244  
Salt Lake City, UT 84145-0244, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Suzan Pixton at the above address, by phone at (801) 526-9645, by FAX at (801) 526-9244, or by Internet E-mail at [wsdamp@state.ut.us](mailto:wsdamp@state.ut.us).

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/04/2001, 5:00 p.m., 1385 South State Street, Room 157, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2001

AUTHORIZED BY: Robert Gross, Executive Director

**R986. Workforce Services, Employment Development.**

**[R986-603. Participant Data System Procedures:**

**R986-603-101. Authority:**

- (1) This rule adopts and incorporates by reference:
- (a) Title 55, Chapter 17, "Job Training Coordination Act";
- (b) "Job Training Partnership Act" (JTPA);
- (c) "Economic Dislocation and Worker Adjustment Assistance Act" (EDWAA);
- (d) Public Law 100-379, August 4, 1988, "Worker Adjustment and Retraining Notification Act" (WARN);
- (e) Federal regulations 20 CFR parts 626, 627, 628, 629, 630, and 631, 1990, which apply to programs under the Job Training Partnership Act and the Economic Dislocation and Worker Adjustment Assistance Act;
- (f) Federal regulation 20 CFR part 639, 1990, which applies to the Worker Adjustment and Retraining Notification Act.

**R986-603-102. Eligibility Verification:**

- (1) A determination shall be made of the applicant's eligibility for each program based on the information in the completed and signed application form.
- (2) The certifying officer shall allow the participant ten working days from the time of enrollment to provide supporting documentation of the required eligibility factors. The documentation provided shall be placed in the participant's permanent file.
- (3) If an applicant appears to be eligible for services under more than one program, the SDA is encouraged, but not required, to document the information for the additional programs. This allows the SDA to:
  - (a) Certify a participant under different program if the participant is subsequently determined to be ineligible for the initial program.
  - (b) Provide a participant with services from more than one program.
- (4)
- (5) All Title II applicants are required to provide documentation for:
  - (a) income;
  - (b) employment barriers;
  - (c) residence;
  - (d) employment eligibility;
  - (e) age, if applying for an age-specific program;
  - (f) family size; and
  - (g) disability if applicable

**R986-603-103. Reporting Requirements:**

— Quarterly MIS data will be due to DWS the last working day of October, January, April and July.

**R986-603-104. Active Participant Enrollment:**

- (1) All Title II A and C participants must be enrolled into Objective Assessment (OA) as their first activity, and enrollment must be effective on the date that the objective assessment begins. When the OA is complete and the participant begins an actual training activity, then the participant must be transferred into that training activity. The transfer date is the date that the direct JTPA-funded training actually begins.
- (2) Title III participants who are assessed must be enrolled into Basic Readjustment Services (BRS) Assessment as their first activity. Include any other BRS provided.
- (3) Participants may not be enrolled into OA for more than 90 days, except for extreme cases which are well documented. Tuition may be paid while the participant is active in OA, before school starts.
- (4) If the service strategy determines that JTPA Title II need only coordinate services for the participant, and JTPA will not pay any training costs, the activity "Other Employment Skills Training" may be used. In this case there must be documented services provided no more than 30 days apart. Actual services such as support service or case management must be provided, a file notation that "everything is fine" will not count as a service provided.
- (5) Hold status may be used when the participant is between planned training activities, and this period is well documented in the ISS before the hold status begins. Documentation includes the beginning and ending date, as well as the reason for the Hold. Contact with the participant must be maintained and documented during this period. Hold status is not an applicant pool and is not to be used often.
  - Youth Employability Enhancements
    - (1) For the enhancement, "Completed a Major Level of Education", the phrase, "... must result primarily from active JTPA program participation . . .", means that the SDA must be prepared to document how school completion depended on active JTPA participation. If the SDA pays for tuition and books at the post-secondary level, active participation is taking place. Incidental program participation doesn't count. The phrase, "at least 90 days or 200 hours", means that the active program participation must be for this period of time, at a minimum. This does not mean the period of active status, this means actual participation in an activity. If the participant is receiving counseling only, then the SDA must be able to document that at least 200 hours of counseling was received.
    - (2) For the enhancements, "Returned to Full-time School" and "Remained in School", the phrase "... the SDA must be prepared to demonstrate that retention results from continuing, active participation in JTPA activities . . ." means exactly that—incidental participation does not contribute to this enhancement. The SDA must be able to document the active participation in JTPA activities that results in the school retention. For both enhancements, the JTPA-funded training activities will be reviewed.

~~KEY: training programs, employment, unemployed workers, unemployment~~  
~~July 1, 1997~~ ~~35A-5~~  
~~Notice of Continuation June 29, 1998]~~

140 East 300 South  
PO Box 45244  
Salt Lake City, UT 84145-0244, or  
at the Division of Administrative Rules.



Workforce Services, Employment  
Development  
**R986-700**  
Child Care Assistance

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 23726  
FILED: 05/01/2001, 17:07  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To make the child care program more receptive to the needs of clients and providers, especially in rural areas.

SUMMARY OF THE RULE OR CHANGE: Technical amendments and to define when a child care client can choose a provider who is not licensed or certified; to provide a procedure when a child care check has been reported as lost or stolen; and to require notification from Office of Recovery Services (ORS) before a case can be reopened once it was closed for failure to cooperate.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-310

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There may be a reallocation of monies in the Department's existing budget associated with the way the new rule calculates reimbursement for infant care, but all funding exists within present budget levels. There are no costs associated with these changes.

❖LOCAL GOVERNMENTS: This rule does not apply to local government and therefore, there are no costs or savings to local governments.

❖OTHER PERSONS: This rule will hopefully make it easier for parents to obtain child care, particularly in rural areas.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs associated with this rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have no effect on businesses.

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

Workforce Services  
Employment Development  
Second Floor

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Suzan Pixton at the above address, by phone at (801) 526-9645, by FAX at (801) 526-9244, or by Internet E-mail at wsadmpo.spixton@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/04/2001, 5:00 p.m., 1385 South State Street, Room 157, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2001

AUTHORIZED BY: Robert Gross, Executive Director

**R986. Workforce Services, Employment Development.  
R986-700. Child Care Assistance.  
R986-700-703. Client Rights and Responsibilities.**

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) In addition to the requirements for reporting other material changes that might affect eligibility, outlined in R986-100-113, a client is responsible for reporting a change in the client's need for child care, a change in the client's child care provider, and a change in the amount a provider charges for child care, to the Department within 10 days of the change.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days the decrease will be made effective beginning the next month and sums received in the month in which the change was reported will not be treated as an overpayment. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) Any client receiving any type of CC who is not receiving full court ordered child support must cooperate with ORS in obtaining child support from the absent parent. Child support payments received by the client count as unearned income. If a client's case was closed for failure to cooperate with ORS it cannot be reopened until ORS notifies the Department that the client is cooperating.

(9) All clients receiving CC must cooperate in good faith with the Department in establishing paternity unless there is good cause for not cooperating.

**R986-700-705. Eligible Providers and Provider Settings.**

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

- (a) licensed and accredited providers:
  - (i) licensed homes;
  - (ii) licensed family group homes; and
  - (iii) licensed child care centers.
- (b) license exempt providers who are not required by law to be licensed and are either:
  - (i) license exempt centers; or
  - (ii) related to the client and/or the child. Related in this paragraph is as defined in R986-700-706(3).
- (c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) All clients who were receiving child care prior to January 1, 2001, will be granted a grace period in which to find an eligible provider. The length of the grace period will be determined by the Department but in no event will it extend later than June 30, 2001.

(3) If a new client has a provider who is providing child care at the time the client applies for child care assistance or has provided child care in the past and has an established relationship with the child(ren), but the provider is not currently eligible, the client may receive child care assistance for a period not to exceed three months if the provider is willing to become an eligible provider and actively pursues eligibility.

~~(3)4~~ The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

- (a) within a ~~[two hour round trip drive]~~reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides; or
- (b) because a child in the home has special needs which cannot be otherwise accommodated; or
- (c) which will accommodate the hours when the client needs child care~~[-];~~ or
- (d) if the provider lives in an area where the Department of Health lacks jurisdiction, which includes tribal lands, to provide licensing or certification; or
- (e) in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(5) If an exception is granted under paragraph (3) above, the exception will be reviewed at the client's next review date to determine if an exception is still appropriate.

~~(4)6~~ License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

- (a) the provider be at least 18 years of age and physically and mentally capable of providing care to children;
- (b) the provider's home is equipped with hot and cold running water, toilet facilities, and is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors and fire extinguishers on all floors of the house where children are provided care;

(d) there are no individuals residing in the home who have felony criminal convictions, or misdemeanor convictions which are offenses against a person, or have been subject to a substantiated finding of child abuse or neglect by the Utah Department of Human Services, Division of Child and Family Services or a court;

(e) there is a telephone in operating condition with a list of emergency numbers located next to the phone which includes the phone numbers for poison control and for the parents of each child in care;

(f) food will be provided to the child in care of sufficient amount and nutritional value to provide the average daily nutrient intake required. Food supplies will be maintained to prevent spoilage or contamination. Any allergies will be noted and care given to ensure that the child in care is protected from exposure to those items; and

(g) the child in care will be immunized as required by the Utah Immunization Act and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

~~(5)7~~ The following providers are not eligible for receipt of a CC payment:

- (a) a member of household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;
- (b) a sibling of the child living in the home;
- (c) household members whose income must be counted in determining eligibility for CC;
- (d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;
- (e) illegal aliens;
- (f) persons under age 18;
- (g) a provider providing care for the child in another state; and
- (h) a provider who has committed fraud as a provider, as determined by ORS or by a court.

**R986-700-706. Provider Rights and Responsibilities.**

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the State of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) The Department will pay related providers at the exempt rate regardless of whether or not the provider has a certificate or license. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, uncles, or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand, great, great-great, or great-great-great.

(4) The provider is entitled to know the date on which payment for CC was made to the parent and the amount of the payment.

(5) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received. Provider case records will be maintained according to Office of Licensing standards.

**R986-700-713. Amount of CC Payment.**

(1) CC will be paid at the lower of the following levels:

(a) the maximum monthly local market rate [established by] as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(b) the rate established by the provider for services; or

(c) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum [statewide limit] monthly local market rate by [the number of hours a client needing full-time child care would need per month] 172 hours. For infants, the unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

(2) An enhanced CC payment is available to clients who are participating more than 172 hours per month. The enhanced subsidy cannot exceed \$100 more than the maximum monthly local market rate [or a total of \$528 per month, whichever is less.] for the type of provider used by the client and in no event can an enhanced subsidy payment exceed the accredited center rate for infant care. A two-parent family receiving CC for education or training activities is not eligible for the enhanced CC subsidy.

**R986-700-714. CC Payment Method.**

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name. The check is mailed to the client. In the event of an emergency, a payment up to a maximum of \$125 can be made on the Horizon card. Emergency payments can only be made where a parent is in danger of not being able to obtain necessary child care if the parent is required to wait until the two party check can be issued.

(2) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

**R986-700-716. CC in Unusual Circumstances.**

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it

might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled. For example: A client enrolled for 10 hours of classes each week may not receive more than 10 hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

(6) On a case-by-case basis, the Department may fund child care for children with disabilities at a higher rate if the needs of the child and provider necessitate.

**KEY: child care**  
**[January 1, 2001]**

**35A-3-310**

◆ ————— ◆  
**Workforce Services, Employment  
Development**

**R986-900-902**

**Options and Waivers**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 23727

FILED: 05/01/2001, 17:07

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To make the utility deduction reflective of rising energy costs and to allow a higher deduction for an automobile to reflect needs and inflation.

SUMMARY OF THE RULE OR CHANGE: The Department has determined to allow clients to choose between the standard utility allowance and the client's actual utility costs in determining benefit level. The Department has also taken the option to use the Temporary Assistance for Needy Families (TANF) deduction for an automobile.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-103

## ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Food stamps is a federally-funded program. There are no costs or savings associated with this new change because all costs related to this rule are included within existing budgets.

❖LOCAL GOVERNMENTS: This rule does not apply to local government therefore, there are no costs or savings.

❖OTHER PERSONS: There are no costs or savings associated with this new change because all costs related to this rule are included within existing budgets.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this new rule because all costs related to this rule are included within existing budgets.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on business as a result of these changes.

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

Workforce Services  
Employment Development  
Second Floor  
140 East 300 South  
PO Box 45244  
Salt Lake City, UT 84145-0244, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at (801) 526-9645, by FAX at (801) 526-9244, or by Internet E-mail at wsadmpo.spixton@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/04/2001, 5:00 p.m., 1385 South State Street, Room 157, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2001

AUTHORIZED BY: Robert Gross, Executive Director

**R986. Workforce Services, Employment Development.****R986-900. Food Stamps.****R986-900-902. Options and Waivers.**

The Department administers the food stamp program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply at the local office which serves the area in which they reside.

(d) The Department has opted to adopt a standard utility allowance (SUA) for utilities [~~rather than allow the actual utility expense as a deduction from income when determining eligibility for food stamps~~]. The standard utility allowance is updated annually and is available upon request from the Department. The Department allows clients to choose between using the SUA or actual utility expenses as a deduction from income when determining the food stamp benefit amount. The household must choose between using the SUA or actual expense at the time of application. The household may change from one to the other only at the time of recertification or if the household moves to a different place of residence.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system known as the Horizon Card.

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to exempt individuals from mandatory participation in Food Stamp Employment and Training activities in counties that have been [~~designed~~designated] as Labor Surplus Areas by the Department of Labor. These counties change each year based on Department of Labor statistics and a list of counties is available from the Department. They are the same counties as referenced in subsection (2)(a) below.

(i) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.

(b) If a client fails to appear for the scheduled face-to-face interview required by 7 CFR 273.2 (e)(3), the Department is not required to attempt to schedule another interview unless the client contacts the Department and requests another interview. If the client misses two scheduled interviews and does not express an interest in pursuing the application, the application can be denied without waiting until the 30th day as required by 7 CFR 273(g)(3).

(c) If a client does not provide initial verification as requested within ten days of the interview, the Department can deny the household's application at the expiration of the ten days and is not required to wait until the 30th day following the date of application.

(d) The Department is not required to conduct a face-to-face interview for each recertification period as required by 7 CFR 273.14(b)(3)(i), provided that at least one face-to-face interview, in conjunction with recertification, is conducted each year.

(e) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status.

A client is required to report any change in unearned income over \$25 or a change in the source of unearned income.

(f) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(g) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(h) FEP and FEPTP clients may opt to have their food stamp benefits paid as cash. This waiver will expire on December 31, 2000.

(i) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(j) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

**KEY: food stamps, public assistance**

~~[March 20, ]~~2001

35A-3-103



**End of 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 the 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 (*Utah Code* Subsection 63-46a-7(1) (1996)).

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. A row of dots in the text (•••••) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, 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 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (1996); and *Utah Administrative Code* Section R15-4-8.

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### Health, Health Care Financing, Coverage and Reimbursement Policy **R414-309** Utah Medical Assistance Program (UMAP)

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 23700  
FILED: 04/30/2001, 12:58  
RECEIVED BY: NL

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Utah State Legislature has appropriated \$1,400,000 in non-lapsing funds to restore previous cuts in services previously paid for by UMAP to eligible individuals.

**SUMMARY OF THE RULE OR CHANGE:** In order to restore services from previous cuts, there will be increases in amounts paid to providers, a reduction in pharmacy co-pay from \$2 per prescription to \$1 (\$5 maximum per month per client), and restoring coverage of certain drugs. The changes are effective by May 1, 2001.

**(DAR Note:** A corresponding proposed amendment is under DAR No. 23702 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-10

#### ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** The Department would incur an annual cost of \$1,400,000, but the Legislature has appropriated this amount in non-lapsing funds.

❖**LOCAL GOVERNMENTS:** The rule does not apply to local government, so there is no budget impact.

❖**OTHER PERSONS:** Eligibles and providers will gain an increase in benefits. The co-pay for prescription drugs will go from \$2 to \$1, with a \$5 maximum co-pay per client per month.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Eligibles and providers will gain an increase in benefits. The co-pay for prescription drugs will go from \$2 to \$1, with a \$5 maximum co-pay per client per month.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These rule changes will have a positive fiscal impact on regulated businesses, made possible by a new ongoing appropriation from the Legislature. Rod L. Betit

**EMERGENCY RULE REASON AND JUSTIFICATION:** REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

Since the Legislature has appropriated \$1,400,000 of non-lapsing funds for use in restoring coverage for previous cuts in covered services, it has mandated that this rule change be effective by May 1, 2001.

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

Health  
Health Care Financing,  
Coverage and Reimbursement Policy



Cannon Health Building  
288 North 1460 West  
PO Box 143102  
Salt Lake City, UT 84114-3102, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Connie Christensen at the above address, by phone at (801)  
538-9349, by FAX at (801) 538-6952, or by Internet E-mail at  
cchriste@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE  
BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 05/01/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

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

**R414-309. Utah Medical Assistance Program (UMAP).**

**R414-309-1. UMAP General Eligibility Requirements.**

(1) The Department complies with Section 26-18-10. The Department adopts Pub. L. No. 105-33(5302)(c)(2) and (3), (5306)(d), (5307)(a), (5563), (5566), and (5571), which is incorporated by reference.

(2) The definitions in R414-1 and R414-301 apply to this rule. In addition, the following definitions apply to this section:

(a) "Unearned income" means cash received by an individual for which the individual performs no service.

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

(c) A "bona fide" loan means a loan that has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.

(d) "Disregard" means a portion of income that is not counted.

(e) "Full-time student" means a person who is enrolled in any educational program, other than high school, and is attending full time as defined by that educational program.

(3) Conditions of eligibility for UMAP:

(a) Medical need is not a requirement for UMAP eligibility.

(b) An individual ineligible for Medicaid because of resources is not eligible for UMAP assistance.

(c) Individuals ineligible for Medicaid because they will not spenddown or because their medical expense is less than the spenddown, are not eligible for UMAP assistance.

(d) ~~An individual who is a full-time student [is] are not eligible for UMAP assistance if the school in which they are enrolled offers any kind of health insurance to the student. [The spouse of a full-time student is not eligible for UMAP assistance if the full-time student and his or her spouse are living together or are not legally separated and have been separated for less than six months.]~~

(4) Citizenship requirements for UMAP:

Temporary entrants into the U.S. and those who have no registration card are not eligible for UMAP assistance. To be eligible for UMAP, the individual must be one of the following:

(a) U.S. born or a naturalized citizen;

(b) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply, or who is a member of an Indian tribe as defined in section 4(e) of the Indian Self-determination and Education Assistance Act;

(c) Residents from Freely Associated States;

(d) A qualified alien, as defined in Pub. L. No. 104-193 (431), as amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571) who was admitted into the United States prior to August 22, 1996.

(e) A qualified alien, newly admitted into the United States on or after August 22, 1996, is not eligible for UMAP services for five years from the person's date of entry into the United States, unless the person is:

(i) A refugee admitted under section 207 of the Immigration and Nationality Act;

(ii) An individual granted asylum under section 208 of the Immigration and Nationality Act;

(iii) An individual whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act, (as in effect immediately before the effective date of section 307 of division C of Pub. L. No. 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Pub. L. No. 104-208);

(iv) A Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980;

(v) An Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 100-202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Pub. L. No. 100-461, as amended);

(vi) An honorably discharged veteran from the Armed Forces of the United States, the spouse of a United States veteran, or the unremarried spouse of a deceased United States veteran;

(vii) An individual on active duty in the Armed Forces of the United States or the spouse of such an individual;

(viii) A Hmong or Highland Lao veteran who fought on behalf of the Armed Forces of the United States during the Vietnam conflict who has been lawfully admitted to the United States for permanent residence is considered a veteran for the purpose of determining eligibility.

(5) Residence requirements for UMAP:

To be eligible for UMAP assistance, an individual must be a Utah resident. To be considered a Utah resident, a person must meet one of the following guidelines:

(a) The client must live in Utah for 30 days prior to the need for medical services.

(b) The client must show intent to reside in the state permanently. If a client shows intent to reside in the State permanently, eligibility can begin no earlier than the date the client entered the state.

(c) Any person who is a resident of a prison, jail or halfway house is not eligible for UMAP assistance. A person may qualify in the month in which he enters or leaves a prison, jail or halfway house. The program will not pay for services while the person is in custody. It does not matter if the condition was pre-existing. No payment will be made for any medical problems which arise during the commission of a crime or during an arrest.

(6) All recipients of General Financial Assistance (GA) are eligible for UMAP assistance.

(7) The Department shall determine income eligibility for UMAP as follows:

(a) ~~[At application, the Department shall total the actual countable income received in the 12 months prior to the application month, divide the total by 12 to arrive at a monthly average and compare the monthly average to the UMAP BMS for the household size.]~~ The Department shall budget income and determine the best estimate for the retroactive month, the application month, and any ongoing month in the same manner as described in R414-304-8.

~~(b) Persons whose averaged monthly countable income as determined in R414-309-1(7)(a) exceeds the UMAP BMS are not eligible for UMAP assistance.~~

~~(c) If the averaged monthly countable income as determined in R414-309-1(7)(a) does not exceed the UMAP BMS, the Department shall budget income and determine the best estimate for the application month and any ongoing month in the same manner as described in R414-304-7.]~~

~~(d)~~ (b) The Department shall compare the countable income [as determined by R414-309-1(7)(c)] to the UMAP BMS for the household size. Persons with countable income in the retroactive month, the application month, or any ongoing month that exceeds the UMAP BMS [are not eligible for UMAP assistance for that month.] may spenddown to the BMS level if the spenddown amount is \$50 or less. The Department will not collect a spenddown for amounts of less than \$1.00.

~~(e)~~ (c) In determining the countable income for the [12 months prior to the application month,] the retroactive month, the application month, and ongoing months, the Department shall count all income received except:

- (i) a bona fide loan of money which must be repaid;
- (ii) rental subsidies;
- (iii) trust funds that are not available on demand;
- (iv) GA, AFDC, or Refugee Cash Assistance (RCA) grants;
- (v) HEAT assistance;
- (vi) attendant care received by a handicapped person from the Division of Services to the Handicapped if the money is used to pay for attendant care, and the person providing the care is not included in the household's basic maintenance standard (BMS);
- (vii) insurance settlements for destroyed property, if the income is actually used to replace the property. If the insurance settlement is more than the replacement cost of the new property, the difference is counted as income.

(viii) unearned income in-kind.

(ix) special payments to American Indians.

~~(e)~~ (d) The following deductions are allowed:

- (i) payments for a health or accident insurance policy;
- (ii) federal taxes are determined by multiplying the number of exemptions by \$162.50, subtracting that amount from the wages, and comparing the remainder to the appropriate tax tables for a single or married person. Tax computation is as follows:

TABLE

Single Person Including Head of Household.		Income Tax	
Wages			
<\$ 89	\$	0	
89 - 1,575		0 plus 15% of Excess Over	\$ 89
1,576 - 3,683		223.13 plus 28% of Excess Over	1,576
3,684 - 8,461		831.46 plus 33% of Excess Over	3,684
8,462 + 2,390.03		plus 28% of Excess Over	8,462

Married Person Including Head of Household.

Wages		Income Tax	
<\$ 255	\$	0	
255 - 2,733		0 plus 15% of Excess Over	\$ 255
2,734 - 6,246		371.88 plus 28% of Excess Over	2,734
6,247 - 15,422		1,355.38 plus 33% of Excess Over	6,247
15,423 + 4,383.40		plus 28% of Excess Over	15,423

(iii) state taxes, as determined by multiplying the federal tax by .45;

FICA. If the client is self-employed, this is determined by multiplying monthly earnings by .1503. If the client is not self-employed, this is determined by multiplying monthly earnings by .0765.

(c) The UMAP income standard is as follows:

TABLE

Household Size	UMAP Income Standard (BMS)
1	337
2	413
3	516
4	602
5	686
6	756
7	792
8	829
9	868
10	904
11	941
12	978
13	1016
14	1053
15	1090
16	1128

(8) When an individual's check amount differs from the entitlement amount, the check amount is used to determine income eligibility only if the reduction is involuntary.

(9) Self-employment income:

Income from self-employment is counted. Deductions are allowed for the cost of doing business. Allowable deductions include:

- (a) labor;
- (b) stock;
- (c) raw materials;
- (d) seed and fertilizer;
- (e) taxes and interest paid for income-producing property;
- (f) insurance premiums;
- (g) transportation costs only if the person must move from place to place in the course of business.

(10) Deductions for income-producing property include:

- (a) property taxes;
- (b) insurance;
- (c) incidental repairs;
- (d) advertising;
- (e) landscaping;
- (f) utilities.

(11) The cost of an addition or increase in value of the rental property is not allowed as a deduction.

(12) UMAP budgeting methods:

(a) Income shall be budgeted prospectively. Information provided by the client is used to determine the amount of income the client expects to receive during the eligibility period.

(b) Farm and self-employment income is prorated over the number of months in which the money was earned if the income is received less often than monthly. The prorated amount is counted for the same number of months in which the money was earned. The month in which the money was received is counted as the first month, even if the money is not actually earned in that month.

(c) Student grants and scholarships are prorated over the number of months the grants or scholarships are intended to cover. The first month it is intended to cover is the first budget month. If it is received after the first month it is intended to cover, the client is not liable for an understated liability based on receipt of this income.

(d) Deferred income counts when it is available if it is not deferred by choice. If it is deferred by choice, it is counted for the months it could have been received.

(e) Only student income and farm or self-employment income are prorated.

(f) Lump sum payments can be earned or unearned income. Lump sums are income in the month received. An overpayment may exist for the month of receipt. Any amount remaining will count as a resource for the month following the month of receipt.

(13) UMAP coverage begins ~~[the date]~~ no earlier than four days before a completed, signed application is received by the Department. ~~[There is no provision for retroactive UMAP coverage.]~~

(14) The income of all individuals included in the BMS is used to determine eligibility.

(15) Individuals included in the UMAP BMS:

(a) A legally married spouse is included in the BMS if the couple lives together or they have not been separated more than six months. The spouse is not included if the couple is legally separated.

(b) An unmarried person of the opposite sex who lives with the client is included in the BMS if the client is emancipated and the couple present themselves to the community as husband and wife.

(c) Unemancipated children living with the client are included in the BMS if the client is emancipated. This includes natural, adopted, or stepchildren. Unborn children are not included in the BMS.

(d) Parents living with the client are included in the BMS if the client is unemancipated. This includes natural, adopted or stepparents.

(e) Unemancipated children of the client's parents are included in the BMS if they live with the parents and the client is unemancipated.

(16) The client must report any change which may affect eligibility within ten days of the day the client learns of the change. Clients must report income from a new source within ten calendar days of the date the client receives money from that new source.

(17) UMAP resource requirements:

(a) The resource limit is \$500 for a BMS of one and \$750 for a BMS of two or more.

(b) Countable resources include anything of value that is available to the person. When a person is part owner of property,

the property is a resource only if the person has a legal right to sell the property. Only the equity value of the resource is counted.

(c) If the resource limit is met at any time in the month, it is met for the entire month.

(d) The following resources are exempt and are not counted to determine eligibility:

(i) one home, including a mobile home;

(ii) the lot upon which the home stands if the home is occupied by the client. If the lot on which the home stands exceeds the average size of residential lots in the community where it is, the equity value of the property that is larger than an average size lot is a resource;

(iii) water rights attached to the home or lot occupied by the client;

(iv) Contents of the home worth less than \$1000 that are essential to daily living;

(v) one vehicle;

(vi) an irrevocable burial trust;

(vii) one burial plot or space for any member of the client's immediate family;

(viii) funds from a student loan, grant, or scholarship are exempt until the month following the end of the period the loan, grant, or scholarship is intended to cover;

(ix) a life estate which serves as the primary residence of the client;

(x) Lump sum insurance payments for destroyed property if the available money is used within ninety days to replace the destroyed property. All other lump sums are a resource in the month following the month of receipt.

(e) The resources of everyone in the BMS are counted to determine eligibility.

(f) Individuals are not sanctioned for transferring resources unless the transfer was made to become eligible for UMAP. If property is transferred in order to meet resource limitations, the person is ineligible for the month the transfer is made, and for the next five months. If the client regains the transferred resource and uses the resource to meet normal expenses, the sanction will be removed.

(18) The UMAP clinic in Utah, Weber, Morgan, and Salt Lake Counties shall determine what services they will cover. The worker in all other counties shall determine what services they will cover.

(19) Cooperation in collecting third party liability information is an eligibility requirement for UMAP assistance.

**KEY: UMAP**

**May 1, 2001**

**26-18**

**Notice of Continuation February 6, 1998**



Health, Health Care Financing, Medical  
Assistance Program

**R420-1**

Utah Medical Assistance Program

**NOTICE OF 120-DAY (EMERGENCY) RULE**

DAR FILE No.: 23701  
FILED: 04/30/2001, 12:58  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Legislature has appropriated \$1,400,000 in non-lapsing funds to restore previous cuts in services previously paid for by UMAP to eligible individuals.

SUMMARY OF THE RULE OR CHANGE: In order to restore services from previous cuts, there will be increases in amounts paid to providers, a reduction in pharmacy co-pay from \$2 prescription to \$1 (\$5 maximum per month per client), and a restoring-coverage of certain drugs. The changes are effective by May 1, 2001.

(DAR Note: A corresponding proposed amendment is under DAR No. 23703 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-10

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Department would incur an annual cost of \$1,400,000, but the Legislature has appropriated this amount in non-lapsing funds.

❖LOCAL GOVERNMENTS: The rule does not apply to local government, so there is no budget impact.

❖OTHER PERSONS: Eligibles and providers will gain an increase in benefits. The co-pay for prescription drugs will go from \$2 to \$1, with a \$5 maximum co-pay per client per month.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Eligibles and providers will gain an increase in benefits. The co-pay for prescription drugs will go from \$2 to \$1, with a \$5 maximum co-pay per client per month.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These rule changes will have a positive fiscal impact on regulated businesses, made possible by an ongoing appropriation from the Legislature. Rod L. Betit

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

Since the Legislature has appropriated \$1,400,000 of non-lapsing funds for use in restoring coverage for previous cuts in covered services, it has mandated that this rule change be effective by May 1, 2001.

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

Health  
Health Care Financing,  
Medical Assistance Program  
Cannon Health Building  
288 North 1460 West  
PO Box 143102  
Salt Lake City, UT 84114-3102, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Hank Welch at the above address, by phone at (801) 538-7087, by FAX at (801) 538-6412, or by Internet E-mail at hwelch@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 05/01/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

**R420. Health, Health Care Financing, Medical Assistance Program.**

**R420-1. Utah Medical Assistance Program.**

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**R420-1-5. Service Coverage.**

(1) The scope of services covered by UMAP is limited to treatment of conditions that meet one or more of the following criteria, unless elsewhere excluded:

(a) an acute condition characterized by a rapid onset requiring prompt medical attention. UMAP shall not consider a condition to be acute once it is medically established to have been in existence for four months or more, regardless of when the client began experiencing symptoms. Recurring conditions are not acute;

(b) a life-threatening condition that is not psychiatric;

(c) a communicable disease that poses a health risk to the general public;

(d) a condition that will result in irreversible blindness if left untreated, blindness meaning no better than 20/200 visual acuity in the better eye after correction[-];

(e) cataracts, if the correction is no better than 20/60 visual acuity in the better eye[-];

(f) eyeglasses for a client in a work or training program if the client cannot participate in the work or training without the eyeglasses, or for a diabetic client who cannot see well enough to administer his own medication.

(2) UMAP may cover the following medical services:

(a) outpatient hospital services;

(b) physician services;

(c) midwife and birthing center services;

(d) radiology and lab services;

(e) emergency transportation services for both air and ground;

(f) dental services;

(g) pharmacy services;

(h) rural health services;

(i) home health services for I.V. antibiotics.

(3) For all UMAP covered services, the principal diagnosis at discharge from the hospital is the reason for the care. UMAP may not consider the other diagnoses when determining whether the service is covered by UMAP.

(a) UMAP shall pay a fixed triage fee for emergency transportation, emergency room physicians, and emergency room facility charges for services that do not result in an inpatient

admission, if the admission diagnosis is a UMAP covered medical condition, but the principal diagnosis at discharge is psychiatric.

(b) The fixed triage fee shall constitute payment for the entire service. A notation on the form MI-706 advises the provider that he received authorization for only the minimal set triage fee.

(4) A provider or a client may resolve questions about coverage of a specific condition or service by contacting the appropriate UMAP clinic in Salt Lake, Morgan, Weber, or Utah counties, or the Office of Workforce Services for all other counties, depending upon where the client lives.

**R420-1-6. Limitations and Excluded Services.**

(1) Conditions that are not covered by UMAP include:

(a) chronic pain, back pain, knee pain, joint pain, from recurring or chronic conditions;

(b) hernias that are not strangulated or incarcerated, carpal tunnel syndrome, bunions, nasal polyps;

(c) mental illness or disorder, drug addiction, alcohol addiction;

(d) obesity, hormonal imbalance, bulimia, anorexia nervosa;

(e) long-standing arthritis, except treatment of acute flare-ups is a covered service;

(f) allergies, cataracts, temporomandibular joint dysfunction, premenstrual syndrome, aseptic (avascular) necrosis;

(g) rhinitis, 24-hour gastritis, common cold, any condition for which there is no accepted medical therapy;

(h) a condition that is disabling, but does not meet the criteria listed in R420-1-5(1);

(i) a condition that is not covered by the Utah Medicaid program;

(j) a condition caused because of a snow skiing or snowboarding accident;

(k) a condition caused when the client was committing a crime. UMAP shall allow the client to present information to prove that involvement in the alleged crime did not cause or contribute to his medical condition. The client must submit this information within 60 days of the date of the denial;

(l) a condition caused when the client was being arrested;

(m) a condition caused when the client was injured by a law enforcement officer;

(n) a condition caused when the client was in custody;

(o) a condition that results from experimental or recreational use of drugs or chemicals, (with the exception of drinking distilled spirits, wine, or malt beverages, and smoking or chewing tobacco). UMAP considers use to be experimental or recreational if, on his own initiative, an individual uses:

(i) prescription drugs in a manner that is contrary to the physician's instructions for their use;

(ii) non-prescription drugs or chemicals in a manner that is contrary to package instructions, e.g., sniffing glue or other substances, drinking rubbing alcohol, laxative abuse;

(iii) illegal drugs, e.g., a drug or controlled substance, the use of which is a violation of state or federal law.

(p) UMAP determines use by an evaluation of the best available medical evidence regarding the condition.

(q) UMAP allows clients to present information to prove that experimental or recreational use of drugs or chemicals did not cause or contribute to the medical condition. Clients must submit this information within 60 days of the date of denial.

(2) Services that are not covered by UMAP include:

(a) cosmetic surgery;

(b) tympanoplasties;

(c) hysterectomies and pelvic surgery, except when there is a reasonable suspicion of a life threatening condition;

(d) back surgeries, knee surgeries, joint surgeries, for recurring or chronic conditions;

(e) psychiatry, or any service provided to a client while he is in a psychiatric facility, wing, ward, or bed;

(f) diagnostic work, unless a covered condition is suspected;

(g) speech pathology, audiology (except to rule out a brain tumor), audiometry (except to rule out a brain stem lesion);

(h) medical supplies, except syringes, lancets, test strips for diabetics, and ostomy supplies;

(i) medical equipment, except an oxygen concentrator if required 24 hours a day;

(j) prosthetic devices, except once when the need for the device arises from any authorized surgery;

(k) care in a long-term care facility, physical therapy, rehabilitative services, chiropractic services;

(l) dental work (except for exam, x-ray, and extraction of infected teeth), dentures;

(m) sterilization (tubal ligation, vasectomy, etc.), abortion (unless the life of the mother would be endangered if an abortion were not performed), birth control;

(n) elective surgery, organ transplants;

(o) liver biopsy or use of Interferon when being prescribed for treatment of Hepatitis C;

(p) treatment in a pain clinic;

(q) non-emergency use of an emergency room or emergency transportation;

(r) a service that is not covered by the Utah Medicaid program;

(s) a service if the department determines that there is or was an effective less-costly alternative;

(t) a service provided to treat a medical condition, if the need for treatment arose while the client was in custody;

(u) a service for a condition that is a complication of, or a follow-up service for, a non-covered UMAP service. The only exception would be if the service was not covered as a result of lack of client eligibility.];

~~(v) medication that is prescribed for the treatment of hypercholesterolemia;~~

~~(w) D4K anti-ulcer PPIs;~~

~~(x) hormones that are prescribed for the treatment of female hypogonadism.]~~

.....

**R420-1-9. Reimbursement.**

UMAP shall only reimburse Utah Medicaid providers who accept payment from UMAP as payment in full for the service provided. UMAP adopts the Utah Medicaid reimbursement policies and payment rates for services covered by UMAP, with the following exception[s\*].

~~[(1) outpatient services, and ambulatory surgical center services shall be reimbursed at the Medicaid rate, minus 10%;~~

~~—(2) physician services, osteopathic services, and services provided by Federally Qualified Health Centers shall be reimbursed at the Medicaid rate, minus 10%;~~

~~—(3) a]A client is required to pay a \$[2]1 co-pay for each UMAP covered pharmacy item (those billed using a NDC code) each time the item is dispensed or purchased, not to exceed in aggregate \$5 per client per month.~~

~~—]\_ Because inpatient hospital services are not a benefit of UMAP, UMAP shall not reimburse for these services.~~

.....

**KEY: indigent, medicaid, UMAP**

**May 1, 2001**

**26-1-5**

**Notice of Continuation July 21, 1997**

**26-18-10**



**End of the Notices of 120-Day (Emergency) Rules**

# 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 responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1996).

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## Commerce, Occupational and Professional Licensing **R156-17a** Pharmacy Practice Act Rules

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23695  
FILED: 04/26/2001, 15:06  
RECEIVED BY: NL

### 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 17a, provides for the licensure of pharmacists, pharmacies, pharmacy technicians, and pharmacy interns. Subsection 58-1-106(1) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-17a-201(3) provides that the State Board of Pharmacy's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1) 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 17a, with respect to above license classifications.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the rule was originally enacted in 1996, several amendments have been made to the rule. In February 1998, numerous comments, both verbal and written, were received regarding deleting the requirement that the dispensing area in drug outlets have a restroom facility if licensed or remodeled after October 1, 1996. The written comments both opposed the

deletion and supported the deletion. After considering comments received, the Division made the proposed rule effective with no additional changes. In December 1998, changes were again made to the rule to update the jurisprudence examination due to a new national examination. No written comments were received with respect to this rule filing. In late 1999 and early 2000, numerous changes were again made to the rule as a result of 1999 legislation. Three written comments were received during the rule hearing as to the proposed rule amendments. As a result of numerous comments offered during a September 28, 1999, rule hearing, the Division filed additional amendments to the proposed rules on December 16, 1999. The prior proposed rule and the Change in Proposed Rule (CPR) amendments were made effective on February 15, 2000. On December 18, 2000, additional amendments were made to update pharmacy technician operating standards. No written comments were received with respect to this rule filing.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 17a, with respect to pharmacists, pharmacies, pharmacy technicians, and pharmacy interns.

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

Commerce  
Occupational and Professional Licensing  
Fourth Floor, Heber M. Wells Building  
160 East 300 South  
PO Box 146741  
Salt Lake City, UT 84114-6741, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Daniel T. Jones at the above address, by phone at (801) 530-6767, by FAX at (801) 530-6511, or Internet E-mail at [brdopl.dtjones@email.state.ut.us](mailto:brdopl.dtjones@email.state.ut.us).

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 04/26/2001

Commerce, Occupational and  
Professional Licensing

**R156-50**

Private Probation Provider Licensing  
Act Rules

**FIVE-YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 23696  
FILED: 04/26/2001, 15:06  
RECEIVED BY: NL

**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 50, provides for the licensure of private probation providers. Subsection 58-1-106(1) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-50-3(3) provides that the Private Probation Provider Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1) 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 50, with respect to private probation providers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the rule was last reviewed in September 1996, only one rule filing of proposed changes was filed in 1999. Those proposed changes were made to update the rule to conform with the Division's standard rule format. However, no written comments were received by the Division with respect to the proposed rule. No other written comments have been received with respect to this rule since the proposed changes were made effective on March 18, 1999.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 50, with respect to private probation providers.

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

Commerce  
Occupational and Professional Licensing  
Fourth Floor, Heber M. Wells Building

160 East 300 South  
PO Box 146741  
Salt Lake City, UT 84114-6741, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Clyde Ormond at the above address, by phone at (801) 530-6254, by FAX at (801) 530-6511, or Internet E-mail at brdopl.cormond@email.state.ut.us.

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 04/26/2001

Human Services, Substance Abuse

**R544-2**

Division Rules

**FIVE-YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 23706  
FILED: 04/30/2001, 15:48  
RECEIVED BY: NL

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Utah Code Chapter 62A, Title 8, establishes the Division of Substance Abuse and the Substance Abuse Board. The Board has the authority to establish necessary rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to allow Methadone Treatment Programs to continue to operate.

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

Human Services  
Substance Abuse  
Room 201, Human Services Building  
120 North 200 West  
Salt Lake City, UT 84101, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Douglas M. Cox at the above address, by phone at (801) 538-3939, by FAX at (801) 538-4696, or Internet E-mail at dcox@hs.state.ut.us.



AUTHORIZED BY: Mark Payne, Acting Director

EFFECTIVE: 04/30/2001

EFFECTIVE: 04/30/2001



Insurance, Administration  
**R590-177**  
Life Insurance Illustrations Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 23713  
FILED: 04/30/2001, 16:28  
RECEIVED BY: NL

**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 31A-23-302(8) allows the commissioner to make a rule based on a finding that there are misleading, deceptive, etc., acts taking place in the marketplace. This rule was created to provide rules for the use of life insurance illustrations to protect consumers and foster consumer education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments for or against this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was created to provide rules for the use of life insurance illustrations to protect consumers and foster consumer education. This is still a need in the marketplace.

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

Insurance  
Administration  
3110 State Office Building  
Salt Lake City, UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or Internet E-mail at idmain.jwhitby@state.ut.us.

AUTHORIZED BY: Jilene Whitby, Information Specialist



Transportation, Motor Carrier, Ports of  
Entry  
**R912-8**

Minimum Tire, Axle and Suspension  
Ratings for Heavy Vehicles and the  
Use of Retractable or Variable Load  
Suspension Axles in Utah

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 23698  
FILED: 04/27/2001, 11:19  
RECEIVED BY: NL

**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 72-1-201 states that the Department shall be responsible for the maintenance, security, and safety of state transportation systems and establish standards and procedures regarding the technical details of administration of the state transportation systems.

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 CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to reduce pavement damage resulting from vehicles operating with underrated tires, suspensions and/or retractable or variable load suspension (VLS) axles. Fixed axles scrub sideways to some degree when a vehicle is operated through a turning movement. This scrubbing damages the pavement surface. The degree of scrubbing is related to the distance between the extreme fixed axles in an axle group. These axles increase the weight that the vehicle can legally carry, while providing needed maneuverability at loading and unloading sites. These axles can then be retracted or "unloaded" to allow a driver to more easily back up or steer. Since they are still being used and their use can be abused, it is in the best interest to enforce specific operating requirements of vehicles so equipped.

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

Transportation  
Motor Carrier, Ports of Entry  
Calvin Rampton  
4501 South 2700 West  
PO Box 148240  
Salt Lake City, UT 84114-8240, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Tamy L. Scott at the above address, by phone at (801) 965-  
4752, by FAX at (801) 965-4847, or Internet E-mail at  
tscott@dot.state.ut.us.

AUTHORIZED BY: Tamy L. Scott, Transportation Safety  
Investigator

EFFECTIVE: 04/27/2001



**End of the Five-Year Notices of Review and Statements of Continuation Section**

## 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 (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by *Utah Code* Subsection 63-46a-9(4) and (5) (1996).

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### Health

Center for Health Data, Vital Records and Statistics

No. 23704 (filed 04/30/2001 at 1:54 p.m.): R436-5. New Birth Certificates After Legitimation, Court Determination of Paternity, or Adoption.

Enacted: 05/01/96 (No. 17538, NEW, filed 01/16/96 at 12:15 p.m., published 02/01/96)

Extended Due Date: August 29, 2001

**End of the Notices of Five-Year Review Extensions Section**

## NOTICES OF RULE EFFECTIVE DATES

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These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal and Reenact  
REP = Repeal

### Transportation

Preconstruction, Right-of-Way Acquisition  
No. 23536 (AMD): R933-4. Bus Shelters.  
Published: March 15, 2001  
Effective: April 18, 2001

### Agriculture and Food

Animal Industry  
No. 23534 (AMD): R58-17. Aquaculture and Aquatic  
Animal Health.  
Published: March 15, 2001  
Effective: April 17, 2001

### Commerce

Occupational and Professional Licensing  
No. 23374 (AMD): R156-55b. Electricians Licensing  
Rules.  
Published: January 1, 2001  
Effective: April 30, 2001  
  
No. 23375 (AMD): R156-55c-102. Definitions.  
Published: January 1, 2001  
Effective: April 30, 2001

### Health

Health Systems Improvement, Child Care Licensing  
No. 23450 (R&R): R430-6. Background Screening.  
Published: February 15, 2001  
Effective: April 17, 2001  
  
No. 23451 (AMD): R430-100. Child Care Center.  
Published: February 15, 2001  
Effective: April 17, 2001

### **End of the Notices of Rule Effective Dates Section**

### Human Services

Aging and Adult Services  
No. 23538 (AMD): R510-1. Authority and Purpose.  
Published: March 15, 2001  
Effective: April 17, 2001

### Insurance

Administration  
No. 22923 (Third CPR): R590-200. Diabetes  
Treatment and Management.  
Published: February 1, 2001  
Effective: April 30, 2001

# RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2001, including notices of effective date received through May 1, 2001, the effective dates of which are no later than May 15, 2001. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.state.ut.us/>).

## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	* = Text too long to print in <i>Bulletin</i> , or repealed text not printed in <i>Bulletin</i>
5YR = Five-Year Review	
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Finance</u>					
R25-14	Payment of Attorneys Fees in Death Penalty Cases	23366	AMD	01/22/2001	2000-24/5
<u>Fleet Operations</u>					
R27-2	Fleet Operations Adjudicative Proceedings	23522	5YR	02/08/2001	2001-5/39
R27-7	Safety and Loss Prevention of State Vehicles	23345	NEW	01/31/2001	2000-24/6
<u>Fleet Operations, Surplus Property</u>					
R28-2	Surplus Firearms	23523	5YR	02/08/2001	2001-5/39
<b>AGRICULTURE AND FOOD</b>					
<u>Administration</u>					
R51-1	Public Petitions for Declaratory Rulings	23584	5YR	03/30/2001	2001-8/83
<u>Animal Industry</u>					
R58-2	Diseases, Inspections and Quarantines	23557	NSC	04/01/2001	Not Printed
R58-10	Meat and Poultry Inspection	23306	AMD	01/03/2001	2000-23/9

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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R58-11	Slaughter of Livestock	23585	5YR	03/30/2001	2001-8/83
R58-12	Record Keeping and Carcass Identification at Meat Exempt (Custom Cut) Establishments	23586	5YR	03/30/2001	2001-8/84
R58-13	Custom Exempt Slaughter	23587	5YR	03/30/2001	2001-8/84
R58-15	Collection of Annual Fees for the Wildlife Damage Prevention Act	23588	5YR	03/30/2001	2001-8/85
R58-16	Swine Garbage Feeding	23589	5YR	03/30/2001	2001-8/85
R58-17	Aquaculture and Aquatic Animal Health	23534	AMD	04/17/2001	2001-6/34
<u>Chemistry Laboratory</u>					
R63-1	Fee Schedule	23404	5YR	01/10/2001	2001-3/94
<u>Marketing and Conservation</u>					
R65-1	Utah Apple Marketing Order	23543	5YR	03/06/2001	2001-7/45
R65-3	Utah Turkey Marketing Order	23544	5YR	03/06/2001	2001-7/45
R65-4	Utah Egg Marketing Order	23545	5YR	03/06/2001	2001-7/46
<u>Plant Industry</u>					
R68-1	Utah Bee Inspection Act Governing Inspection of Bees	23434	5YR	01/16/2001	2001-3/94
R68-2	Utah Commercial Feed Act Governing Feed	23435	5YR	01/16/2001	2001-3/95
R68-6	Utah Nursery Act	23436	5YR	01/16/2001	2001-3/95
R68-10	Quarantine Pertaining to the European Corn Borer	23437	5YR	01/16/2001	2001-3/96
R68-12	Quarantine Pertaining to Mint Wilt	23438	5YR	01/16/2001	2001-3/96
<u>Regulatory Services</u>					
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	23541	5YR	03/06/2001	2001-7/46
R70-420	Chickens	23428	REP	03/06/2001	2001-3/5
R70-430	Turkeys	23429	REP	03/06/2001	2001-3/6
R70-610	Uniform Retail Wheat Standards of Identity	23430	5YR	01/16/2001	2001-3/96
R70-610	Uniform Retail Wheat Standards and Identity	23431	NSC	02/01/2001	Not Printed
R70-620	Enrichment of Flour and Cereal Products	23432	5YR	01/16/2001	2001-3/97
R70-620	Enrichment of Flour and Cereal Products	23433	AMD	03/06/2001	2001-3/7
<b><u>ALCOHOLIC BEVERAGE CONTROL</u></b>					
<u>Administration</u>					
R81-4B	Airport Lounges	23591	5YR	04/02/2001	2001-8/85
R81-10	On Premise Beer Retailer	23592	5YR	04/02/2001	2001-8/86
<b>COMMERCE</b>					
<u>Administration</u>					
R151-46b	Department of Commerce Administrative Procedures Act Rules	23537	5YR	02/28/2001	2001-6/49

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Consumer Protection</u>					
R152-1	Utah Division of Consumer Protection: "Buyer Beware List"	23457	5YR	01/29/2001	2001-4/61
<u>Occupational and Professional Licensing</u>					
R156-1-308d	Denial of Renewal of Licensure-Classification of proceedings-Conditional Renewal During Pendency of Adjudicative Proceedings, Audit or Investigation	23295	AMD	01/04/2001	2000-23/9
R156-11a	Cosmetologist/Barber Licensing Act Rules	23260	AMD	see CPR	2000-22/5
R156-11a	Cosmetologist/Barber Licensing Act Rules	23260	CPR	03/06/2001	2001-3/79
R156-17a	Pharmacy Practice Act Rules	23695	5YR	04/26/2001	2001-10/89
R156-26a	Certified Public Accountant Licensing Act Rules	23296	AMD	01/04/2001	2000-23/11
R156-28	Veterinary Practice Act Rules	23309	AMD	see CPR	2000-23/15
R156-28	Veterinary Practice Act Rules	23309	CPR	03/08/2001	2001-3/80
R156-37-502	Unprofessional Conduct	23401	NSC	02/01/2001	Not Printed
R156-47b	Massage Therapy Practice Act Rules	23535	5YR	02/26/2001	2001-6/49
R156-50	Private Probation Provider Licensing Act Rules	23696	5YR	04/26/2001	2001-10/90
R156-54-302b	Examination Requirements - Radiology Practical Technician	23518	AMD	04/03/2001	2001-5/7
R156-55b	Electricians Licensing Rules	23374	AMD	04/30/2001	2001-1/4
R156-55c-102	Definitions	23375	AMD	04/30/2001	2001-1/5
R156-55d-603	Operating Standards - Alarm Installer	23524	AMD	04/03/2001	2001-5/8
R156-69	Dentist and Dental Hygienist Practice Act Rules	23141	AMD	see CPR	2000-19/10
R156-69	Dentist and Dental Hygienist Practice Act Rules	23141	CPR	02/15/2001	2001-2/17
R156-73	Chiropractic Physician Practice Act Rules	23390	AMD	02/15/2001	2001-2/2
<u>Real Estate</u>					
R162-102	Application Procedures	23321	AMD	02/07/2001	2000-23/17
R162-209	Administrative Proceedings	23526	NEW	04/13/2001	2001-5/9
<b>COMMUNITY AND ECONOMIC DEVELOPMENT</b>					
<u>Community Development</u>					
R199-8	Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance	23321	AMD	01/23/2001	2000-21/3
R199-9	Policy Concerning Enforceability and Taxability of Bonds Purchased	23575	NSC	04/01/2001	Not Printed
R199-10	Procedures in Case of Inability to Formulate Contract for Alleviation of Impact	23576	NSC	04/01/2001	Not Printed
<u>Community Development, Library</u>					
R223-2	Public Library online Access for Eligibility to receive Public Funds	23352	NEW	02/15/2001	2000-24/11
R223-2	Public Library Online Access for Eligibility to Receive Public Funds	23519	NSC	02/23/2001	Not Printed

## RULES INDEX

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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Indian Affairs</u>					
R230-1	Native American Grave Protection and Repatriation	23476	5YR	02/01/2001	2001-4/61
<b>CORRECTIONS</b>					
<u>Administration</u>					
R251-102	Release of Communicable Disease Information	23313	AMD	01/04/2001	2000-23/18
R251-102	Release of Communicable Disease Information	23511	5YR	02/05/2001	2001-5/40
R251-109	Sex Offender Treatment Providers	23568	5YR	03/27/2001	2001-8/86
R251-110	Sex Offender Notification	23571	5YR	03/27/2001	2001-8/87
R251-301	Employment, Education or Vocational Training for Community Correctional Center Residents	23512	5YR	02/05/2001	2001-5/40
R251-301	Employment, Educational or Vocational Training for Community Center residents	23400	AMD	03/13/2001	2001-3/8
R251-709	Transportation of Inmates	23570	5YR	03/27/2001	2001-8/87
<b>CRIME VICTIM REPARATIONS</b>					
<u>Administration</u>					
R270-1	Award and Reparations Standards	23527	AMD	04/03/2001	2001-5/11
<b>EDUCATION</b>					
<u>Administration</u>					
R277-469	Textbook Commission Operating Procedures	23426	AMD	03/06/2001	2001-3/9
R277-514	Board Procedures: Sanctions for Educator Misconduct	23546	NSC	04/01/2001	Not Printed
<b>ENVIRONMENTAL QUALITY</b>					
<u>Air Quality</u>					
R307-103-1	Scope of Rule	23442	NSC	02/01/2001	Not Printed
R307-103-2	Initial Proceedings	23407	AMD	04/12/2001	2001-3/13
R307-204	Emissions Standards: Smoke Management	23139	NEW	see CPR	2000-19/14
R307-204	Emissions Standards: Smoke Management	23139	CPR	03/06/2001	2001-3/81
<u>Drinking Water</u>					
R309-101	General Administration of Drinking Water Program	23662	5YR	04/16/2001	2001-9/140
R309-102	Responsibilities of Public Water System Owners and Operators	23663	5YR	04/16/2001	2001-9/140
R309-103	Water Quality Maximum Contaminant Levels (MCLs)	23664	5YR	04/16/2001	2001-9/141
R309-104	Monitoring, Reporting and Public Notification	23665	5YR	04/16/2001	2001-9/141
R309-150	Water System Rating Criteria	23252	AMD	01/04/2001	2000-22/33
R309-208 (Changed to R309-535)	Facility Design and Operation: Miscellaneous Treatment Methods	23394	AMD	05/01/2001	2001-2/3



CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Radiation Control</u>					
R313-19	Requirements of General Applicability to Licensing of Radioactive Material	23312	AMD	01/26/2001	2000-23/19
<u>Solid and Hazardous Waste</u>					
R315-1	Utah Hazardous Waste Definitions and References	23409	AMD	04/20/2001	2001-3/14
R315-2	General Requirements - Identification and Listing of Hazardous Waste	23410	AMD	04/20/2001	2001-3/16
R315-5-3	Pre-Transport Requirements	23412	AMD	04/20/2001	2001-3/30
R315-13-1	Land Disposal Restrictions	23415	AMD	04/20/2001	2001-3/40
R315-14-7	Hazardous Waste Burned in Boilers and Industrial Furnaces	23416	AMD	04/20/2001	2001-3/41
R315-16	Standards for Universal Waste Management	23417	AMD	04/20/2001	2001-3/42
R513-50	Appendices	23418	AMD	04/20/2001	2001-3/50
R315-315-8	Petroleum Contaminated Soils	22858	AMD	see CPR (First)	2000-11/18
R315-315-8	Petroleum Contaminated Soils	22858	CPR (First)	see CPR (Second)	2000-17/67
R315-315-8	Petroleum Contaminated Soils	22858	CPR (Second)	01/05/2001	2000-23/58
<u>Water Quality</u>					
R317-1-3	Requirements for Waste Discharges	23164	AMD	see CPR	2000-19/25
R317-1-3	Requirements for Waste Discharges	23164	CPR	01/23/2001	2000-24/74
R317-7	Underground Injection Control (UIC) Program	23162	AMD	see CPR	2000-19/34
R317-7	Underground Injection Control (UIC) Program	23162	CPR	01/23/2001	2000-24/75
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### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	* = Text too long to print in <i>Bulletin</i> , or repealed text not printed in <i>Bulletin</i>
5YR = Five-Year Review	
EXD = Expired	



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	23713	R590-177	5YR	04/30/2001	2001-10/91
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	23519	R223-2	NSC	02/23/2001	Not Printed
<b><u>LICENSE</u></b>					
Environmental Quality, Radiation Control	23312	R313-19	AMD	01/26/2001	2000-23/19
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	23296	R156-26a	AMD	01/04/2001	2000-23/11
	23309	R156-28	AMD	see CPR	2000-23/15
	23309	R156-28	CPR	03/08/2001	2001-3/80
	23401	R156-37-502	NSC	02/01/2001	Not Printed
	23535	R156-47b	5YR	02/26/2001	2001-6/49
	23696	R156-50	5YR	04/26/2001	2001-10/90
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	23374	R156-55b	AMD	04/30/2001	2001-1/4
	23375	R156-55c-102	AMD	04/30/2001	2001-1/5
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	23421	R414-304	AMD	03/13/2001	2001-3/56
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	23422	R414-305	AMD	03/13/2001	2001-3/60
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	23572	R865-21U	5YR	03/27/2001	2001-8/88
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<b><u>TRAFFIC VIOLATIONS</u></b>					
Public Safety, Driver License	23402	R708-3	AMD	03/06/2001	2001-3/75
	23514	R708-3	NSC	02/22/2001	Not Printed
<b><u>TRAINING</u></b>					
Corrections, Administration	23512	R251-301	5YR	02/05/2001	2001-5/40
	23400	R251-301	AMD	03/13/2001	2001-3/8
<b><u>TRANSPORTATION</u></b>					
Environmental Quality, Radiation Control	23312	R313-19	AMD	01/26/2001	2000-23/19
Transportation, Motor Carrier	23460	R909-1	AMD	03/20/001	2001-4/44
Transportation, Program Development	23311	R926-6	AMD	01/03/2001	2000-23/55
<b><u>TRANSPORTATION CORRIDOR PRESERVATION REVOLVING LOAN FUND</u></b>					
Transportation, Program Development	23311	R926-6	AMD	01/03/2001	2000-23/55
<b><u>TRANSPORTATION PLANNING</u></b>					
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<b><u>TRANSPORTATION SAFETY</u></b>					
Transportation, Motor Carrier	23460	R909-1	AMD	03/20/2001	2001-4/44
	23573	R909-1	NSC	04/01/2001	Not Printed
<b><u>TRUCKING INDUSTRIES</u></b>					
Tax Commission, Auditing	23555	R865-6F-1	NSC	04/01/2001	Not Printed
	23556	R865-6F-15	NSC	04/01/2001	Not Printed
<b><u>TRUCKS</u></b>					
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<b><u>TUBERCULOSIS</u></b>					
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<b><u>UMAP (Utah Medical Assistance Program)</u></b>					
Health, Health Care Financing, Converge and Reimbursement Policy	23349	R414-309	AMD	01/17/2001	2000-24/24
	23700	R414-309	EMR	05/01/2001	2001-10/82
Health, Health Care Financing, Medical Assistance Program	23351	R420-1	AMD	01/23/2001	2000-24/28
	23701	R420-1	EMR	05/01/2001	2001-10/85
<b><u>UNDERCOVER IDENTIFICATION</u></b>					
Public Safety, Law Enforcement and Technical Services, Regulatory Licensing (Changed to Public Safety, Criminal Investigations and Technical Services, Criminal Identification)	23447	R724-7 (Changed to R722-320)	NSC	02/01/2001	Not Printed
<b><u>UNDERGROUND INJECTION CONTROL</u></b>					
Environmental Quality, Water Quality	23162	R317-7	AMD	see CPR	2000-19/34
	23162	R317-7	CPR	01/23/2001	2000-24/75
<b><u>UNEMPLOYMENT COMPENSATION</u></b>					
Workforce Services, Workforce Information and Payment Services	23525	R994-406-304	AMD	04/05/2001	2001-5/28
<b><u>UNIVERSAL SERVICE</u></b>					
Public Service Commission, Administration	23271	R746-360	AMD	02/15/2001	2000-22/45
<b><u>USER TAX</u></b>					
Tax Commission, Auditing	23572	R865-21U	5YR	03/27/2001	2001-8/88
	23553	R865-21U-6	NSC	04/01/2001	Not Printed
<b><u>UTILITY RULES</u></b>					
Transportation, Preconstruction	23198	R930-6	AMD	01/19/2001	2000-21/43
	23443	R930-6	NSC	02/12/2001	Not Printed
<b><u>UTILITY SERVICE SHUTOFF</u></b>					
Public Service Commission, Administration	23353	R746-200	AMD	02/15/2001	2000-24/66
<b><u>VETERINARY MEDICINE</u></b>					
Commerce, Occupational and Professional Licensing	23309	R156-28	AMD	see CPR	2000-23/15
	23309	R156-28	AMD	03/08/2001	2001-3/80
<b><u>VICTIM COMPENSATION</u></b>					
Crime Victim Reparations, Administration	23527	R270-1	AMD	04/03/2001	2001-5/11
<b><u>VICTIMS OF CRIMES</u></b>					
Crime Victim Reparations, Administration	23527	R270-1	AMD	04/03/2001	2001-5/11

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	22858	R315-315-8	CPR (First)	see CPR (Second)	2000-17/67
	22858	R315-315-8	CPR (Second)	01/05/2001	2000-23/58
Environmental Quality, Water Quality	23164	R317-1-3	AMD	see CPR	2000-19/25
	23164	R317-1-3	CPR	01/23/2001	2000-24/74
	23161	R317-8	AMD	see CPR	2000-19/40
	23161	R317-8	CPR	01/23/2001	2000-24/78
<b><u>WATER POLLUTION</u></b>					
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<b><u>WATER QUALITY</u></b>					
Environmental Quality, Water Quality	23162	R317-7	AMD	see CPR	2000-19/34
	23162	R317-7	CPR	01/23/2001	2000-24/75
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<b><u>WILDLAND FIRE FUND</u></b>					
Natural Resources, Forestry and State Lands	23425	R652-121	AMD	03/12/2001	2001-3/64
<b><u>WILDLIFE</u></b>					
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	23356	R657-5	AMD	01/16/2001	2000-24/40
	23528	R657-5	AMD	04/03/2001	2001-5/19
	23189	R657-13	AMD	01/02/2001	2000-21/23
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	23362	R657-41	AMD	01/16/2001	2000-24/56
	23364	R657-42	AMD	01/16/2001	2000-24/60
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	<b><u>WILDLIFE LAW</u></b>				
Natural Resources, Wildlife Resources	23189	R657-13	AMD	01/02/2001	2000-21/23
	23455	R657-27	AMD	03/26/2001	2001-4/39
<b><u>WILDLIFE PERMITS</u></b>					
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<b><u>WORKERS' COMPENSATION</u></b>					
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	23223	R612-1-10	AMD	see CPR	2000-21/18
	23223	R612-1-10	CPR	03/20/2001	2001-1/36
	23463	R612-2-3	NSC	02/15/2001	Not Printed
	23548	R612-2-5	EMR	03/08/2001	2001-7/43
	23464	R612-2-5	NSC	02/15/2001	Not Printed
	23465	R612-2-6	NSC	02/15/2001	Not Printed
	23466	R612-2-11	NSC	02/15/2001	Not Printed
	23467	R612-2-16	AMD	03/20/2001	2001-4/32
	23468	R612-2-17	NSC	02/15/2001	Not Printed
	23469	R612-2-22	AMD	03/20/2001	2001-4/33
	23470	R612-2-23	NSC	02/15/2001	Not Printed
	23471	R612-2-24	AMD	03/20/2001	2001-4/34
	23472	R612-2-26	NSC	02/15/2001	Not Printed
	23520	R612-4	5YR	02/08/2001	2001-5/41
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Human Services, Administration, Administrative Services, Licensing	23322	R501-8	AMD	01/16/2001	2000-23/33
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<b><u>ZOOLOGICAL ANIMALS</u></b>					
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