UTAH STATE BULLETIN

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

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

Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 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.utah.gov/

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

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TABLE OF CONTENTS

1. SPECIAL NOTICES

2. NOTICES OF PROPOSED RULES

3. NOTICES OF 120-DAY (EMERGENCY) RULES

4. FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

SPECIAL NOTICES

GOVERNOR'S EXECUTIVE ORDER: DECLARING A STATE OF EMERGENCY BECAUSE OF FIRE DANGER

Whereas, the danger from wildland fires is extremely high throughout the State of Utah; and

Whereas, numerous wildland fires are burning and continue to burn in various areas statewide and present a serious threat to public safety, property, natural resources and the environment; and

Whereas, some of the areas are extremely remote and inaccessible and the situation has the potential to greatly worsen if left unattended; and

Whereas, immediate action is required to suppress the fires and mitigate post-burn flash floods to protect public safety, property, natural resources and the environment; and

Whereas, these conditions do create a disaster emergency within the intent of the Disaster Response and Recovery Act of 1981; and

Now, Therefore, I, Michael O. Leavitt, Governor of the State of Utah, by virtue of the power vested in me by the constitution and the laws of the State of Utah;

Do Hereby Order That: It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of July 10, 2003, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

In Testimony, Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah, this 10th day of July, 2003.

(State Seal)

Michael O. Leavitt
Governor

Attest:

Olene S. Walker
Lieutenant Governor

HEALTH
ADMINISTRATION

PUBLIC HEARING ON WHETHER SUFFICIENT CAPACITY EXISTS AMONG CURRENTLY CERTIFIED MEDICAID ICF/MR PROGRAMS IN SALT LAKE AND UTAH COUNTIES TO MEET THE PUBLIC NEED

The Department of Health will hold a hearing on Monday, August 11, 2003, Cannon Health Building, 288 North 1460 West, Room 125, Salt Lake City, Utah commencing at noon and running for at least 30 minutes or until all interested parties have an opportunity to be heard.

The purpose of the hearing is to obtain public comment on whether sufficient capacity exists among currently certified Medicaid ICF/MR programs in Salt Lake and Utah County to meet the public need. Utah Administrative Code Section R414-7A-5 provides that the department may certify additional ICF/MR programs if the executive director or his designee determines that there is insufficient capacity at certified programs in a service area to meet the public need. Little Cottonwood Developmental Services, 10421 South Jordan Gateway, Suite 550, South Jordan, UT 84095, through its owner/operator Joyce L. Halling by letter dated June 30, 2003, asserts that the need is not being met in Salt Lake County, Utah. Medallion Manor, Inc., 1701 West 600 South, Provo, UT 84601, through its assistant administrator, Merlin Moyes by letter dated July 9, 2003, asserts that the need is not being met in Utah County, Utah.

Background: Utah Administrative Code Rule R414-7A (Medicaid Certification of New Nursing Facilities) was adopted to control the supply of Medicaid nursing facility programs. An oversupply of nursing facility programs in the state could adversely affect the Utah Medicaid program and the health of the people within the state. The July 1990 Report of the Governor's Task Force on Long Term Care recommended continuation of this prohibition. The Task Force concluded, "Market entry into the nursing home industry should be regulated to allow supply to come more in line with demand". This rule also supports the policy of the department to direct new resources into community-based alternatives.

If after receiving public comments, the Executive Director finds that there is insufficient capacity to meet the need for ICF/MR services in Salt Lake and/or Utah County, the Department will proceed to issue a request for proposals from new programs only if:

(a) after 30-day notice to the Department of Human Services of the department's finding that there is insufficient capacity at certified programs in Salt Lake County to meet the public need, the Department of Human Services cannot demonstrate that community-based services can meet the public need; and

(b) after the close of the 30-day notice to the Department of Human Services and a separate 30-day notice to all ICF/MR programs operating in Salt Lake and Utah County, the certified programs operating cannot demonstrate that they have tangible plans to add additional capacity to their programs to meet the public need.

For further information or for accommodations, please contact Doug Springmeyer at (801) 538-6111.

End of the Special Notices Section

NOTICES OF
PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between July 2, 2003, 12:00 a.m., and July 15, 2003, 11:59 p.m. are included in this, the August 1, 2003, issue of the *Utah State Bulletin*.

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

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (· · · · · ·) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least September 2, 2003. 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 November 29, 2003, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

Administrative Services, Fleet Operations
R27-3
Vehicle Use Standards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26459
FILED: 07/09/2003, 08:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment establishes the conditions that must be met in order to obtain authorization for the operation of a vehicle outside the continental U.S.; establishes that employees with individual permanently assigned vehicles because they have 24 Hour on-call status, may use on-line forms to track commute mileage; places limitations on the maximum number of occupants in monthly lease 15-passenger vans; and makes limitations on the maximum number of occupants in daily pool 15-passenger vans consistent with those on monthly lease 15-passenger vans.

SUMMARY OF THE RULE OR CHANGE: Adds Subsection R27-3-4(3) which establishes the conditions to be met in order for a state vehicle to be operated outside the continental U.S. In Subsection R27-3-7(1), adds that an employee with an individual permanently assigned vehicle may drive the vehicle to and from his/her home when one or more of the listed conditions exist, and deletes the general phrase about appropriateness under the listed circumstances. In Subsection R27-3-7(1)(a), adds that agencies may use DFO's online forms to track commute mileage and deletes that paper copies be sent to the Division of Fleet Operations. Subsection R27-3-9(3) is added which limits the number of occupants in monthly lease 15-passenger vans to 10 individuals, and in Subsection R27-3-11(2)(c) changes the maximum number of individuals from 9 to 10.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63A-9-401(1)(c)(ii) and 63A-9-401(1)(c)(viii)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There are no costs or savings to the Division of Fleet Operations.
❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local governments since the rule and amendments apply only to state agencies.
❖ OTHER PERSONS: The Division of Fleet Operations has been advised by an agency that complying with the limit on the number of occupants in a 15-passenger van may result in increased costs but no specific number was given.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division of Fleet Operations has been advised by an agency that complying with the limit on the number of occupants in a 15-passenger van may result in increased costs but no specific number was given.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Agencies may refrain from requesting the purchase of 15-passenger vans if the industry does not respond and address safety concerns. However, it is also anticipated that agencies will opt to obtain vehicles for which there are no National Highway Traffic Safety Administration (NHTSA) bulletins in order to meet their operational needs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FLEET OPERATIONS
Room 4120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sal Petilos at the above address, by phone at 801-538-3091, by FAX at 801-538-3844, or by Internet E-mail at spetilos@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Steve Saltzgiver, Director

R27. Administrative Services, Fleet Operations.
R27-3. Vehicle Use Standards.
R27-3-4. Authorized and Unauthorized Use of State Vehicles.

(1) State vehicles shall only be used for official state business.

(2) Except in cases where it is customary to travel out of state in order to perform an employee's regular employment duties and responsibilities, the use of a state vehicle outside the State of Utah shall require the approval of the director of the department that employs the individual.

(3) The use of a state vehicle for travel outside the continental U.S. shall require the approval of the director of the employing department, the director of DFO, and the director of the Division of Risk Management. All approvals must be obtained at least 30 days from the departure date. The employing agency shall, prior to the departure date, provide DFO and the Division of Risk Management with proof that proper automotive insurance has been obtained. The employing agency shall be responsible for any damage to vehicles operated outside the United States regardless of fault.

[~~(3)~~](4) Unless otherwise authorized, the following are examples of the unauthorized use of a state vehicle:

(a) Transporting family, friends, pets, associates or other persons who are not state employees or are not serving the interests of the state.

(b) Transporting hitchhikers.

(c) Transporting acids, explosives, weapons, ammunition, hazardous materials, and flammable materials. The transport of the above-referenced items or materials is deemed authorized when it is specifically related to employment duties.

(d) Extending the length of time that the state vehicle is in the operator's possession beyond the time needed to complete the official purposes of the trip.

(e) Operating or being in actual physical control of a state vehicle in violation of Subsection 41-6- 44(2), (Driving under the influence of alcohol, drugs or with specified or unsafe blood alcohol concentration),Subsection 53-3-231, (Person under 21 may not operate a vehicle with detectable alcohol in body), or an ordinance that complies with the requirements of Subsection 41-6-43(1), (Local DUI and related ordinances and reckless driving ordinances).

(f) Operating a state vehicle for personal use as defined in R27-1-2(30). Generally, except for approved personal uses set forth in R27-3-5 and when necessary for the performance of employment duties, the use of a state vehicle for activities such as shopping, participating in sporting events, hunting, fishing, or any activity that is not included in the employee's job description, is not authorized.

(g) Using a state vehicle for personal convenience, such as when a personal vehicle is not operational.

(h) Pursuant to the provisions of R27-7-1 et seq., the unauthorized use of a state vehicle may result in the suspension or revocation of state driving privileges.

R27-3-7. Criteria for Commute Privilege Approval.

(1) Commute privileges. An employee with an individual permanently assigned vehicle may drive the vehicle to and from his/her home when one or more of the following conditions exist:[~~are generally considered appropriate under the following circumstances:~~]

(a) 24-hour "On-Call." Where the agency clearly demonstrates that the nature of a potential emergency is such that an increase in response time, if a commute privilege is not authorized, could endanger a human life or cause significant property damage. In the event that emergency response is the sole purpose of the commute privilege, each driver is required to keep[~~submit~~] a complete list of all call-outs on the monthly DF-61 form for audit purposes. Agencies may use DFO's online forms to track commute mileage.[~~, and to send copies to the Division of Fleet Operations.~~] Approval for commute use under this subsection is effective for one (1) year only. A new application for commute use under this subsection must be submitted and approved annually for the commute use privilege to continue.

(b) Virtual office. Where an agency clearly demonstrates that an employee is required to work at home or out of a vehicle, a minimum of 80 percent of the time and the assigned vehicle is required to perform critical duties in a manner that is clearly in the best interest of the state.

(c) When the agency clearly demonstrates that it is more practical for the employee to go directly to an alternate work-site rather than report to a specific office to pick-up a state vehicle.

(d) When a vehicle is provided to appointed or elected government officials who are specifically allowed by law to have an assigned vehicle as part of their compensation package. Individuals using this criterion must cite the appropriate section of the Utah Code on the MP-2 form.

R27-3-9. Use Requirements for Monthly Lease Vehicles.

(1) Agencies that have requested, and received monthly lease options on state vehicles shall:

(a) Ensure that only authorized drivers whose names and all other information required by R27-3-3(1) have been entered into DFO's fleet information system, completed all the training and/or safety programs, and met the age restrictions for the type of vehicle being operated, shall operate monthly lease vehicles.

(b) Report the correct odometer reading when refueling the vehicle. In the event that an incorrect odometer reading is reported, agencies shall be assessed a fee whenever the agency fails to correct the mileage within three (3) business days of the agency's receipt of the notification that the incorrect mileage was reported. When circumstances indicate that there was a blatant disregard of the vehicle's actual odometer reading at the time of refueling, a fee shall be assessed to the agency even though the agency corrected the error within three (3) days of the notification.

(c) Return the vehicle in good repair and in clean condition at the completion of the replacement cycle period or when the vehicle has met the applicable mileage criterion for replacement, reassignment or reallocation.

(i) Agencies shall be assessed a detailing fee for vehicles returned that are in need of extensive cleaning.

(ii) Agencies shall pay the insurance deductible associated with repairs made to a vehicle that is damaged when returned.

(d) Return the vehicle unaltered and in conformance with the manufacturer's specifications.

(e) Pay the applicable insurance deductible in the event that monthly lease vehicle in its possession or control is involved in an accident.

(f) Not place advertising or bumper stickers on state vehicles without prior approval of DFO.

(2) The provisions of Rule R27-4-6 shall govern agencies when requesting a monthly lease.

(3) Under no circumstances shall the total number of occupants in a monthly lease 15-passenger van exceed ten (10) individuals, the maximum number recommended by the Division of Risk Management.

R27-3-11. Daily Motor Pool Sedans, Four Wheel Drive Sport Utility Vehicle (4x4 SUV), Cargo Van, Multi-Passenger Van and Alternative Fuel Vehicle Lease Criteria.

(1) The standard state vehicle is a compact sedan, and shall be the vehicle type most commonly used when conducting state business.

(2) Requests for vehicles other than a compact sedan may be honored in instances where the agency and/or driver is able to identify a specific need.

(a) Requests for a four wheel drive sport utility vehicle (4x4 SUV) may be granted with written approval from an employee's supervisor.

(b) Requests for a seven-passenger van may be granted in the event that the driver is going to be transporting more than three authorized passengers.

(c) Requests for a fifteen (15) passenger van may be granted in the event that the driver is going to be transporting more than six authorized passengers. Under no circumstances shall the total number of occupants exceed ten (10)[~~nine (9)~~] individuals, the maximum number recommended by the Division of Risk Management.

(3) Cargo vans shall be used to transport cargo only. Passengers shall not be transported in cargo area of said vehicles.

(4) Non-traditional (alternative) fuel shall be the primary fuel used when driving a bi-fuel or dual-fuel state vehicle. Drivers shall, when practicable, use an alternative fuel when driving a bi-fuel or dual-fuel state vehicle.

KEY: state vehicle use
May 15, 2003
53-13-102
63A-9-401(1)(c)(viii)

Commerce, Occupational and Professional Licensing
R156-9
Funeral Service Licensing Act Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26451
FILED: 07/07/2003, 16:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2003 legislative session, S.B. 91 was passed which combined the former Preneed Funeral Arrangement Act, Title 58, Chapter 58, into the Funeral Service Licensing Act, Title 58, Chapter 9. These proposed rule amendments combine provisions of the preneed rules (Rule R156-58) into the funeral act rules (Rule R156-9) to conform with the new statute and to make a number of technical changes and clarifications. (DAR NOTE: S.B. 91 is found at UT L 2003 Ch 49 and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: Except as noted below, most of the items deleted from the existing Rule R156-9 are the result of the items now being adequately addressed in the new statute (Title 58, Chapter 9). Except as noted below, most of the new sections are actually sections which were moved out of the preneed rules (Rule R156-58) and into these funeral rules (Rule R156-9). In Section R156-9-102, the unprofessional conduct provisions were moved out of definitions to new Section R156-9-501 to conform to the standard format. Added definitions for "contract", "contract seller", guaranteed product contract" and "recipient of goods and services". Deleted definitions for "qualified continuing professional education", "supervision of a funeral service apprentice", "supervision of staff" and "supervising sales of preneed funeral plans or contracting with or employing individuals to sell preneed funeral plans". In Section R156-9-302a, corrects and updates cross referenced sections to new statute and clarifies requirements for laws and rules exam. Sections R156-9-302b and R156-9-302 are being deleted because they are outdated and are adequately addressed in the new statute. In Section R156-9-304, technical corrections are made for better clarification. Section R156-9-402 is a new section which has been added to follow the format of other professions and to clarify the duties of the funeral service director while supervising other persons. Section R156-9-501 is being deleted for clarification and the failure to comply with federal laws was included in the definition of unprofessional conduct. Section R156-9-601 is renumbered to Section R156-9-403, and technical corrections are made for clarification. Section R156-9-501 is new and is the consolidation of the unprofessional conduct aspects of the two rules into the correct section and rewording is done for clarification. New Sections R156-9-604 through R156-9-618 are added. Wording for each section has been moved out of former preneed rules (Rule R156-58) to this funeral service rule. Former Sections R156-58-601, R156-58-602, and R156-58-603 are being eliminated and not carried over to this rule from Rule R156-58 as they are no longer needed. Subsection R156-9-607(6) is a new requirement that if a funeral home states the contract is approved by the Division, the funeral home must also state what that the approval only means that the contract includes the minimum requirements as specified in the statute and rule. This was to resolve the recurring complaint that preneed sales agents were often misrepresenting what approval by the Division meant. (DAR NOTE: The proposed repeal of Rule R156-58 is under DAR No. 26469 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-9-504, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The Division will incur a cost of approximately $150 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
❖ LOCAL GOVERNMENTS: Proposed rule amendments do not apply to local governments, therefore there are no costs or savings to local government.
❖ OTHER PERSONS: These proposed rule amendments do not substantially change the existing requirements, and it appears there will be little or no financial impact on affected persons other than the cost of reprinting the rule identified above.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These proposed rule amendments do not substantially change the existing requirements and it appears there will be little or no financial impact on affected persons other than the cost of reprinting the rule identified above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule attempts to combine the preneed funeral arrangement rules with the funeral service rules as required by the Utah Legislature's passage of S.B. 91 during the 2003 Legislative Session. Additionally, the rule contains technical
corrections and clarifies standards of practice. There appears to be no foreseeable financial impact to businesses as a result of this rule change that was not already anticipated and considered by the Legislature. Klarice A. Bachman, Executive Director

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
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 dsjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 8/28/2003 at 9:00 AM, 160 East 300 South, Conference Room 4A (Fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-9. Funeral Service Licensing Act Rules.
R156-9-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 9, as defined or used in these rules:

[~~(1) "Qualified continuing professional education" as used in these rules means continuing professional education that meets the standards set forth in Section R156-9-304.~~

~~(2) "Supervision of a funeral service apprentice" means that a licensed funeral service director shall be available at all times for consultation, direction and instruction. The funeral service director shall be present and directly supervise the apprentice during the first 50 embalmings. After the first 50 embalmings, the funeral service director shall be available in the facility for consultation, direction and instruction. All embalming performed by the apprentice shall be recorded and reported to the division on forms supplied by the division at the time of application for licensure as a funeral service director.~~

~~(3) "Supervision of staff" including apprentices means that the funeral service director is responsible for the funeral service activities, duties and functions performed by the staff.~~

~~(4) "Supervising sales of preneed funeral plans or contracting with or employing individuals to sell preneed funeral plans" means that a licensed funeral service establishment shall make application with the division to sell preneed funeral plans and be responsible for and sign all contracts written by staff, employees or subordinates who are hired or contracted with to sell preneed; and to insure that all individuals selling preneed funeral plans are licensed by the division as seller agents.~~](1) "Contract" means a guaranteed preneed funeral arrangement contract.

(2) "Contract seller" means the licensed preneed funeral arrangement provider.

(3) "Guaranteed product contract" means a contract wherein goods or services are selected which will be provided at the time of need for the consideration specified in the contract regardless of the market price at the time of need.

(4) "Recipient of goods and services" is synonymous with "beneficiary" as defined in Subsection 58-9-102(1), and is used herein to avoid confusion with various common meanings of the term "beneficiary".

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(5) in Section R156-9-501.[~~to include the following acts when committed by an applicant for funeral service director or a licensed funeral service director or licensed funeral service apprentice:~~

~~(a) violates the ethical standards of the profession;~~

~~(b) fails to comply with the standards set forth under the Preneed Funeral Arrangement Act and Administrative Rules;.~~

~~(c) fails to comply with the local, state, or federal health, safety and sanitation codes;.~~

~~(d) fails to comply with the requirements for CPE;~~

~~(e) fails to comply with the Funeral Service Licensing Act or the Funeral Service Licensing Act Rules;~~

~~(f) fails to comply with the disclosure requirements of the Federal Trade Commission;~~

~~(g) fails to accurately report and record information required by law to be reported on a death certificate;.~~

~~(h) solicitation or the direct or indirect offer to pay a commission for the procurement of dead human bodies by the licensee or his apprentices, staff, agents or employees; or~~

~~(i) fails to comply with the Utah Vital Statistics Rules as promulgated by the Utah Department of Health.~~]

R156-9-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(7) and 58-1-301(3), the qualifications for licensure in [~~Section 58-9-6~~]Subsections 58-9-302(1)(g), 58-9-302(2)(e), 58-9-302(5)(e) and 58-9-306(2)(d) and (e) are defined, clarified, or established as follows:

(1) An applicant for licensure as a funeral service director shall be required to pass the funeral service examination of the Conference of Funeral Service Examining Board[~~, except as provided in Sections R156-9-302c and R156-9-302d~~]. The examination may be taken while the individual is enrolled in an approved funeral service school.

(2) All applicants for licensure as a funeral service director, funeral service apprentice and preneed funeral arrangement sales agent[~~including out of state applicants and apprentices~~] shall be required to pass the Utah law and rules and ethics examination[~~with a passing score of 70%~~].

[~~**R156-9-302b. Qualifications for Licensure - Education Requirements.**~~

~~In accordance with Subsections 58-1-203(7) and 58-1-301(3), the qualifications for licensure in Section 58-9-6(1)(e) are defined, clarified, or established as follows:~~

~~(1) Before April 30, 1991, an applicant for licensure shall complete 12 months or equivalent of academic instruction in a prescribed course at a school of funeral service accredited by the American Board of Funeral Service Education and complete an additional 12 months or equivalent of academic instruction from a school approved by the board.~~

~~(2) After April 30, 1991, an applicant for licensure shall obtain a two year associates degree in mortuary science from a school of funeral service accredited by the American Board of Funeral Service Education or other accrediting body recognized by the U.S. Department of Education, except that a person who was enrolled in funeral service school prior to April 30, 1991 may be permitted to be licensed by completing the educational requirements established prior to the enactment of the April 1991 law as set forth in Subsection (1) above.~~

~~**R156-9-302c. Qualifications for Licensure - Reinstatement.**~~

~~An individual whose license as a funeral service director in Utah expires and is not renewed within two years after the date of expiration shall reinstate his license in accordance with one of the following:~~

~~(1) If the license was issued prior to April 30, 1991 and the individual practiced as a funeral service director the equivalent of full-time for ten out of the past 15 years immediately preceding the expiration date of the license, such practice shall be considered to be the equivalent of the education, apprenticeship and examination requirements established in Section 58-9-6. The individual, in order to reinstate his license, shall complete the following:~~

~~(a) complete 20 hours of continuing professional education approved by the board prior to the reinstatement of the funeral service director license;~~

~~(b) pass the current Utah law and rules examination for funeral service director; and~~

~~(c) make application and pay the required fees.~~

~~(2) If the license was issued after April 30, 1991 or the individual did not have the equivalent qualifying experience as set forth in Subsection (1) above, the individual shall reinstate his license in accordance with the following:~~

~~(a) complete 20 hours of continuing professional education approved by the board prior to the reinstatement of the funeral service director license;~~

~~(b) pass the current Utah law and rules examination for funeral service director;~~

~~(c) meet the requirements for a new license which requires passing the funeral service examination of the Conference of Funeral Service Examining Board and completing a two year associates degree in mortuary science from a school of funeral service accredited by the American Board of Funeral Service Education. A person who has been licensed in Utah as a funeral service director shall not be required to document or complete a new apprenticeship.~~

~~**R156-9-302d. Qualifications for Licensure - Endorsement.**~~

~~In accordance with Subsections 58-1-203(7) and 58-301(3) and Section 58-1-302, the qualifications for licensure in Section 58-9-6 are defined, clarified, or established as follows:~~

~~(1) A person who is currently licensed or permitted to embalm dead human bodies in any state or territory of the United States and was engaged in the full-time practice of embalming for ten out of the past 15 years immediately preceding the date of the application may be considered to have the equivalent education, apprenticeship and examination requirements established under Section 58-9-6 and may be licensed as a funeral service director in this state without the necessity of documenting or completing the current education, examination, and apprenticeship requirements, upon completing the following:~~

~~(a) submit a verification of licensure from the state the application was licensed and practicing in;~~

~~(b) pass the current Utah law and rules examination for funeral service director;~~

~~(c) complete 20 hours of continuing professional education approved by the board prior to the issuance of the funeral service director license; and~~

~~(d) make application and pay the required fees.~~

~~(2) All other persons who are applying for licensure as a funeral service director who are currently licensed in another state or territory of the United States shall qualify for licensure as provided in Title 58, Chapter 9 and these rules.~~

]**R156-9-304. Continuing Professional Education - Funeral Service Directors.**

[~~(1)~~]In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b) and Section 58-9-[~~8~~]304, the continuing education requirements for funeral service directors is defined, clarified or established as follows:[~~there is created a continuing professional education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 9.~~]

([~~2~~]1) Continuing professional education shall consist of 20 hours of qualified continuing professional education in each preceding two-year period of licensure or expiration of licensure.

([~~3~~]2) If a renewal period is shortened or extended to effect a change of renewal cycle or if an initial license is granted for a period of less than two years, the continuing professional education hours required for that [~~renewal~~]period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

([~~4~~]3) The standards for qualified continuing professional education are:

(a) College classes, seminars, or workshops sponsored by professional associations in areas related to funeral service will generally qualify for continuing professional education (CPE) if the education contributes to the professional competence and knowledge of the funeral service director and if the program complies with the standards set forth under Subsection (b).

(b) CPE programs shall meet the following requirements:

(i) the course shall be formally organized and be primarily instructional;

(ii) the sponsor shall prepare an outline of the course which shall be retained for a minimum of four years following the presentation;

(iii) the sponsor shall list the hour rating of the course in the course outline. One hour of CPE shall be credited for each 50 minute period of instruction;

(iv) the sponsor shall record and keep an accurate record of course attendance including the date, place, and the name of the licensed funeral service directors attending the course; and

(v) the sponsor shall issue a certificate of completion listing the time, date, place, name of licensee, number of hours of CPE completed and the course title.

(c) [~~Self directed studies may qualify for CPE if the studies can be documented by a certificate of completion.~~]Formal correspondence or other individual study programs which require registration, provide evidence of satisfactory completion including test results and meet all other requirements as specified in this section will qualify.

(d) Each semester hour of college credit shall equal 15 hours of CPE. A quarter hour shall equal ten hours of CPE.[

~~(e) Individuals who become licensed between renewal periods shall be required to complete CPE based upon 2.5 hours per calendar quarter for the remainder of the reporting period.~~]

([~~5~~]4) Upon written request from the licensee, the board may waive the requirement for CPE for a period of up to three years on the basis that the licensee will be engaged in activities or be subject to circumstances which prevent the licensee from meeting the requirements.

([~~6~~]5) The licensee is responsible to insure that the program will qualify for CPE. Each licensee shall keep an accurate record of CPE on forms supplied by the division. The records shall be maintained for a minimum of four years.

([~~7~~]6) The division in collaboration with the board shall perform random audits to determine if the licensee is in compliance with the CPE requirements. If audited, or upon request by the division, the licensee is responsible to submit documentation of compliance with CPE requirements[~~course completions. The licensee shall be required to complete any deficiencies within a period of time specified by the board~~].

R156-9-402. Duties and Responsibilities of a Funeral Service Director in Supervision of Funeral Service Apprentices, Preneed Funeral Arrangement Sales Agents and Unlicensed Staff.

The duties and responsibilities of a supervising funeral service director include:

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

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee 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;

(4) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the funeral service profession, including the Utah Vital Statistics Rules of the Utah Department of Health;

(5) submit appropriate documentation to the division with respect to all work completed by the funeral service apprentice evidencing the performance of the supervisee during the period of supervised training, including the supervisor's evaluation of the supervisee's competence in the practice of the funeral service profession. This report shall be submitted to the Division within 30 days after the supervisor-supervisee relationship is terminated or within 30 days after the supervisee has completed 2000 hours of supervised experience in a period exceeding one year and has performed 50 embalmings;

(6) supervise not more than one funeral service apprentice at any given time unless approved by the board and division;

(7) be physically present and directly supervise the first 50 embalmings completed by a funeral service apprentice;

(8) be responsible for and sign all preneed and at need funeral contracts sold by persons under supervision;

(9) assure each supervisee is appropriately licensed as a funeral service apprentice or preneed funeral arrangement sales agent prior to beginning the supervision;

(10) notify the division of beginning or ending of association or employment of a preneed sales agent with the licensed preneed provider within ten days. Notification shall be made on forms provided by the division; and

(11) assure that the supervision requirements are met as required in Section 58-9-307.

[~~**R156-9-501. Disclosure Information.**~~

~~(1) Funeral service directors are responsible to comply with the Federal Trade Commission laws and rules. Specific rules include:~~

~~(a) provide consumers with a written, itemized general price list, casket price list and outer burial container price list;~~

~~(b) make truthful representations regarding legal and other requirements concerning funeral arrangements;~~

~~(c) permit consumers to select and purchase only those goods and services they desire;~~

~~(d) obtain express permission before performing embalming;~~

~~(e) refrain from misrepresenting the preservative and protective value of funeral goods and services; and~~

~~(f) provide price information over the telephone.~~

]

R156-9-[~~601~~]403. Death Registration - Removal of Body - Transportation and Preservation of Dead Human Bodies.

(1) A funeral service director licensed in another state may enter the state of Utah for the purpose of transporting a dead human body [~~back~~]to [~~the originating~~]another state without being in violation of Title 58, Chapter 9. However, the person shall comply with the Utah Vital Statistics Rules of the Utah Department of Health and any other statute or rule regulated by the Utah Department of Health.

(2) All licensed funeral service directors, who release a dead human body to such persons, are responsible to insure that the out of state persons and[~~they or~~] their staff comply with the Utah Vital Statistics Rules of the Utah Department of Health.

R156-26a-501. Unprofessional Conduct.

"Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(5) to include:

(1) violating the ethical standards of the profession;

(2) failing to comply with laws and rules established by any local, state, federal or other authority regarding funeral services, preneed contracts, health, safety, sanitation, regarding funeral establishments or transportation or handling of dead human bodies, or disclosure requirements to purchasers or prospective purchasers of funeral services or preneed contract;

(3) failing to comply with any provision of the Title 58, Chapter 9, Funeral Service Licensing Act or these Funeral Service Licensing Act Rules;

(4) failing to comply with the disclosure requirements of the Federal Trade Commission;

(5) failing to accurately report and record information required by law to be reported on a death certificate;.

(6) solicitation or the direct or indirect offer to pay a commission for the procurement of dead human bodies;

(7) failing to comply with the Utah Vital Statistics Rules as promulgated by the Utah Department of Health;

(8) selling preneed funeral arrangements by a preneed funeral arrangement sales agent when the sales agent is not associated with or employed by a preneed funeral arrangement provider;

(9) selling a preneed funeral arrangement when the preneed funeral arrangement sales agent has not obtained approval to do so from the preneed funeral arrangement provider and the contract is not approved by the supervising funeral director;

(10) selling an insurance policy to fund a preneed funeral arrangement contract naming a preneed funeral arrangement provider as beneficiary, prior to executing the underlying preneed funeral arrangement contract;

(11) selling a preneed funeral arrangement without executing an approved preneed funeral arrangement contract within ten working days following the sale;

(12) failing to notify the Division of the beginning or ending of association or employment of a preneed funeral arrangement sales agent;

(13) exercising undue influence over a consumer thereby requiring or causing the consumer to purchase goods or services beyond those the consumer desires or needs;

(14) collecting or receiving money from the sale of an insurance policy funding a preneed funeral arrangement contract unless the person is collecting or receiving the money as a licensed insurance agent or broker;

(15) violating Section 31A-23-310, containing the fiduciary duties of a trustee with respect to money collected or received as a licensed insurance agent or broker;

(16) receiving a death benefit payment of life insurance proceeds beyond the provider's insurable interest in the recipient of goods and services specified in a preneed contract, unless the excess is promptly returned to the insurance company or paid to those entitled to the funds;

(17) converting a preneed funeral arrangement funded by money placed in trust to insurance except as provided by these rules;

(18) failing to provide guaranteed goods and services at time of need in accordance with the terms of a preneed funeral arrangement contract;

(19) retaining life insurance proceeds of a policy purchased to fund funeral arrangements but not accompanied by a preneed funeral arrangement contract, unless the licensee provides an equivalent value of funeral goods and services;

(20) failing to report known violations of governing law or rules to the Division and to appropriate law enforcement or other appropriate agencies; and

(21) failing to handle, remit or deposit funds received in payment for a preneed funeral arrangement contract by placing the funds in trust or remitting the funds to an insurance carrier as is required by the contract terms and conditions and by all laws and rules regulating the sale of preneed funeral arrangements and insurance and annuity policies.

R156-9-604. Affiliation of Licensed Sales Agent with Licensed Provider.

(1) When a licensed sales agent enters association with a licensed provider and such association is not currently registered with the division under the provisions of Subsection 58-9-302(5)(f), or this subsection, the licensed provider shall file a notice of association with the division on forms provided by the division within ten days after commencement of association.

(2) The licensed provider shall provide the licensed sales agent with a copy of the notice filed with the division.

(3) If a notice of association is not filed by the licensed provider within ten days after association, the sales agent may not represent the licensed provider with respect to any preneed funeral arrangement until such notice is filed.

R156-9-605. Licensure of Persons Selling Preneed Funeral Arrangements to be Funded by Proceeds from Insurance or Annuity Policy.

(1) Any person who sells or represents that they will or intend to sell specific funeral goods or services, represents that goods or services will be provided by a specific funeral establishment, represents that specified amount of money will purchase defined funeral goods or services, or represents that payment for those goods or services to be provided at some future date shall be accomplished through the purchase of a life insurance policy or annuity policy, is engaged in the sale of a preneed funeral arrangement and is required to be licensed as a preneed funeral arrangement provider or sales agent.

(2) Any person who sells or represents that they will or intend to sell an insurance or annuity policy which will provide a certain benefit at time of death, represents that such benefit will be available to pay for funeral arrangements and no reference is made to specific funeral goods or services, to the cost of specific funeral goods or services, or to the services of a specific funeral service establishment, is not engaged in the sale of a preneed funeral arrangement and is not required to be licensed as a preneed funeral arrangement provider or sales agent.

(3) Nothing in this section shall be interpreted to affect or modify any requirement under state law regarding licensure of persons engaged in the sale of insurance or annuity policies.

R156-9-606. Preneed Funeral Arrangement Contracts Funded by Insurance or Annuity Policy.

(1) The beneficiary designation on any insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be a contingent designation using such wording as "as their interests may appear under a funeral arrangement contract" with information identifying the funeral arrangement contract, or other substantially equivalent beneficiary designation language.

(2) Monies received by a licensee in payment for an insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be handled in accordance with the contractual terms and conditions of the policy and the insurance laws applicable to the policy.

R156-9-607. Contract Forms - Division Model - Certification Required by Provider.

(1) To assist applicants for a provider's license and provider licensees meet the requirements of Section 58-9-701, the division shall publish a model guaranteed preneed funeral arrangement contract form which meets the requirements of Section 58-9-701.

(2) In accordance with the provisions of Subsection 58-9-701(1) a provider must submit to the division a copy of every preneed contract form it intends to market and receive approval of each contract form before the contract form may be used in marketing the licensee's preneed funeral arrangement plan under that contract form.

(3) If a proposed contract form is in substantially the same form as the model contract, the applicant or licensee requesting approval of the contract form may accompany the contract form with the provider's certification that the form is substantially the same as the model contract form. The certification shall contain a listing of each and every deviation of the proposed contract from the model contract.

(4) If a proposed contract form is substantially different from the model contract form, the applicant or licensee requesting approval of the contract form shall obtain an opinion from independent legal counsel representing that the contract form complies with the provisions of Section 58-9-701, and these rules. Such opinion shall be accompanied by an explanation of deviations between the proposed contract from the model contract.

(5) In accordance with the provisions of Subsection 58-9-701(2)(a), easy-to-read type size is hereby defined to be of a type size large enough to accommodate no more than six lines per vertical inch and no more than 15 characters per horizontal inch.

(6) While a preneed contract must be approved by the Division, it is not required that the contract contain a clause stating

that the contract has been approved by the Division. However, if a preneed contract contains language indicating that the form has been approved by the Division, such language shall be immediately followed by the following sentences: "Please be aware that the Division's approval, only means that the contract meets minimum content requirements contained in the Utah Funeral Services Licensing Act and Rules. This approval does not constitute a finding that the contract meets the requirements of any other statute or any other legal requirement, does not constitute a review of the provider's financial ability to provide the goods and services at any future date and does not constitute a determination that purchasing a preneed contract is the best alternative for a person to plan for their funeral. Purchaser should consider seeking appropriate advise from qualified persons, such as an attorney or CPA before entering into any contract."

R156-9-608. Contract Notice Regarding Medicaid.

The following notice shall appear in all preneed contracts: "Notice: Under Federal regulations, a Medicaid recipient whose preneed contract is revoked, canceled, or mutually rescinded may become ineligible for Medicaid benefits. Before permitting or causing your preneed agreement to be revoked, canceled or rescinded, you should seek the advice of an attorney or a Medicaid representative."

R156-9-609. Retention of Completed or Terminated Contracts.

Contracts shall be maintained for a period of five years after the contracts have been serviced and obligations of the provider have been completed, or after the contracts have been otherwise terminated. The contracts shall be filed and maintained with a copy of the death certification or burial transit permit with respect to those contracts for which services have been provided, and with sufficient documentation to clearly identify the basis for termination of otherwise terminated.

R156-9-610. Cash Advance Item Prohibited Unless a Guaranteed Product.

A cash advance item as defined in 16 CFR Part 453, Funeral Industry Practices Trade Regulation Rule, of the Federal Trade Commission is prohibited in a preneed funeral arrangement contract unless the item is a guaranteed product permitting the contract to meet the requirements of Subsection 58-9-701(2)(d).

R156-9-611. Use of Funds in Trust Account to Purchase Insurance or Annuity Policy.

A provider may convert a contract funded by monies held in trust with a contract funded by the proceed from an insurance or annuity policy provided:

(1) the buyer consents in writing to the conversion after full disclosure of the consequences of the transaction in writing by the provider;

(2) the buyer's consent is given without coercion, threat, concealment of material fact, undue influence, or other prejudicial influence inconsistent with the buyer's best interest;

(3) the provider uses all monies held in the individual trust account, including interest, as premium for the purchase of the life insurance or annuity policy, unless otherwise directed in writing by the buyer;

(4) the new preneed funeral arrangement contract must be in writing and must provide for goods and services which at least equal to those required of the provider under the original contract, and

(5) the new contract meets all requirements of Title 58, Chapter 9, and these rules.

R156-9-612. Conversion of Trust Accounts Under Prior Law Prohibited.

Conversion of funds held in trust which was established under any prior law regulating preneed funeral arrangements, may not be converted to a trust under the provisions of current statute and rules, but shall continue to be held in trust under the terms and conditions of the predecessor law. However, the preneed provider is required to file reports with the Division as required under these rules.

R156-9-613. Prohibition Against Provider Accepting Payment in a Form Other Than Cash, Cash Equivalents, or Negotiable Instruments.

A provider may accept in payment for a preneed funeral arrangement contract only cash, cash equivalents, or negotiable instruments which are readily convertible to cash.

R156-9-614. Provider Expenditure of Earnings from Trust Account.

(1) In accordance with Subsection 58-9-704(1), earnings of a preneed funeral arrangement trust account shall be available to the provider for expenditure toward reasonable trustee expenses of administering a trust account, not to exceed the lesser of the earnings remaining in the trust account or 1% of the entire trust account, plus any amounts necessary to pay taxes incurred on the entire trust account's earnings.

(2) In accordance with Subsection 58-9-704(2), earnings of an individual account within the trust shall be available to the provider for expenditure toward other authorized reasonable provider expenses incurred against the individual account, not to exceed earnings totaling 30% of the sales amount of the respective preneed funeral arrangement contract.

(3) Remaining earnings of individual accounts within the trust shall, except as provided in Subsection 58-9-704(3), remain in each individual account within the trust to pay by account, the costs of providing the goods and services required under respective preneed funeral arrangement contracts.

R156-9-615. Maximum Life Insurance Proceeds Payable to Provider.

(1) Preneed life insurance proceeds payable to a provider shall not exceed the provider's insurable interest in the recipient of goods and services which, by definition, shall not exceed the provider's current retail price for the goods and services provided, as determined by the provider's price list in effect at the recipient of goods and service's death.

(2) Excess preneed life insurance proceeds not paid to the provider shall be returned to the owner of the life insurance policy or his heirs and beneficiaries unless otherwise designated by the owner or his heirs and beneficiaries.

R156-9-616. Reporting Requirements.

(1) In accordance with Section 58-9-706, each provider or contract seller who has discontinued the sale of contracts but who has outstanding contracts and each currently licensed provider shall submit an annual report to the division by April 15 of each year. The report shall be submitted on forms available from the division or their equivalent and shall include:

(a) a statement of compliance certifying:

(i) that all payments received from the sale of contracts have been:

(A) placed in the provider's trust account in accordance with Section 58-9-702 and administered in accordance with Sections 58-9-703 through 58-9-705 and these rules; or

(B) submitted to the insurance company whose insurance or annuity policy funds the contract;

(ii) that complete and accurate information concerning the preneed funeral arrangements by the provider or the provider's sales agents was furnished or made available to the independent certified public accountant who prepared the report of agreed upon procedures; and

(iii) that the annual report is complete and accurate;

(b) an report from a bank trust department or a report from a licensed insurance company or a report of agreed upon procedures on forms available from the division or their equivalent completed by an independent certified public accountant licensed under Title 58, Chapter 26a, which reports upon:

(i) reconciliation of trust account balances to the annual report; and

(ii) reconciliation of insurance in force to the annual report;

(c) an exhibit listing preneed contracts sold prior to April 29, 1991, funded by money, 75% of which is required to be maintained in the name of the contract buyer in the provider's or contract seller's trust account as provided in Section 58-9-703, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different, and balance due; the individual trust account number and amount trusted; and the trust earnings, earnings used, and trust balance;

(d) an exhibit listing preneed contracts sold after April 28, 1991, funded by money, 100% of which is required to be maintained in the name of the contract buyer in the provider's trust account as provided in Section 58-9-703, which shall include at a minimum the information required under subsection (c);

(e) an exhibit listing preneed contracts funded by money placed in trust which were serviced, revoked, rescinded, or amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different; the individual trust account number and trust balance at the recipient of goods and service's death; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced;

(f) an exhibit listing preneed contracts sold after April 28, 1991, funded in whole or in part by insurance, which shall include at a minimum: the contract number, date, amount, recipient of goods and services and buyer if different; the insurance company; the policy number, policy holder, and face amount; and

(g) an exhibit listing preneed contracts funded by insurance which were serviced, revoked, rescinded, or otherwise amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services, and buyer if different; the insurance company; the policy number and policy holder; the policy proceeds; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced.

R156-9-617. Maximum Revocation Fee.

(1) If a buyer revokes or defaults under a guaranteed preneed funeral arrangement contract, the provider may retain a revocation fee from the trust corpus, not to exceed 25% of the amount received from the sale of the contract and trust earnings thereupon, provided the revocation fee is clearly identified in the contract.

(2) The revocation fee shall not be in an amount which results in the provider receiving proceeds from the trust in excess of that permitted under Subsection R156-9-615(2).

R156-9-618. Goods and Services Not Provided - Refund.

If goods or services selected in the preneed contract are not provided at the time of need, the amount paid for those goods and services and any unexpended earnings thereupon will be distributed to the preneed contract buyer or the buyer's representative or in their absence, the buyer's heirs and beneficiaries.

KEY: funeral industries, licensing, funeral services, preneed [~~1993~~]2003
Notice of Continuation February 7, 2002
58-1-106(1)(a)
58-1-202(1)(a)
58-9-[~~1~~]504

Commerce, Occupational and Professional Licensing

R156-58

Preneed Funeral Arrangement Act Rules

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 26469
FILED: 07/14/2003, 13:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2003 legislative session, S.B. 91 was passed which combined the former Preneed Funeral Arrangement Act, Title 58, Chapter 58, into the Funeral Service Licensing Act, Title 58, Chapter 9. Therefore, this rule is being repealed in its entirety, however some of the provisions from this rule are being combined into the funeral act rules (Rule R156-9) to conform with the new statute in a separate rule filing. (DAR NOTES: S.B. 91 is found at UT L 2003 Ch 49 and was effective May 5, 2003. The proposed amendments to Rule R156-9 are under DAR No. 26451 in this issue.)

SUMMARY OF THE RULE OR CHANGE: This rule is being repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division does not anticipate any costs or savings as a result of this rule being repealed in its entirety since necessary provisions from this rule are being combined into the funeral service act rules (Rule R156-9) under a separate rule filing.

❖ LOCAL GOVERNMENTS: Proposed rule deletion does not apply to local governments.
❖ OTHER PERSONS: The deletion of this rule does not substantially change the existing requirements because certain provisions are being moved to another rule (Rule R156-9) and it appears there will be little or no financial impact on affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The deletion of this rule does not substantially change the existing requirements because certain provisions are being moved to another rule (Rule R156-9) and it appears there will be little or no financial impact on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment repeals the preneed funeral arrangement act rules that are now combined with the funeral services rules as required by the Utah Legislature's passage of S.B. 91 during the 2003 legislative session. There appears to be no foreseeable financial impact to businesses as a result of this rule change that was not already anticipated and considered by the Legislature. Klarice A. Bachman, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
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 dsjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
[~~**R156-58. Preneed Funeral Arrangement Act Rules.**~~
~~**R156-58-101. Title.**~~
~~These rules are the "Preneed Funeral Arrangement Act Rules".~~

~~**R156-58-102. Definitions.**~~
~~In addition to the definitions in Title 58, Chapters 1 and 58, as used in Title 58, Chapters 1 and 48, or these rules:~~
~~(1) "Contract" means a guaranteed preneed funeral arrangement contract.~~
~~(2) "Contract seller" as set forth in Section 58-58-13 means the licensed preneed funeral arrangement provider.~~
~~(3) "Guaranteed product contract" means that the goods or services selected in the contract will be provided at the time of need regardless of the market price at the time of need, and that if goods or services selected in the contract are not used, the amount paid for those goods and services and any unexpended earnings thereupon will be distributed to the preneed contract buyer or the buyer's representative or in their absence, the buyer's heirs and beneficiaries.~~
~~(4) "Recipient of goods and services" is synonymous with "beneficiary" as defined in Subsection 58-58-2(2), and is used herein to avoid confusion with various common meanings of the term "beneficiary".~~
~~(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 58, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-58-502.~~

~~**R156-58-103. Authority - Purpose.**~~
~~These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 58.~~

~~**R156-58-104. Organization - Relationship to Rule R156-1.**~~
~~The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.~~

~~**R156-58-302a. Qualifications for Licensure - Examination Requirements.**~~
~~(1) Each applicant for licensure as a preneed funeral arrangement sales agent shall pass the Utah Preneed Funeral Arrangement Law and Rules examination.~~

~~**R156-58-303. Renewal Cycle - Procedures.**~~
~~(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 58, is established by rule in Section R156-1-308.~~
~~(2) Renewal procedures shall be in accordance with Section R156-1-308.~~

~~**R156-58-501. Unprofessional Conduct.**~~
~~"Unprofessional conduct" includes:~~
~~(1) selling preneed funeral arrangements when the licensee is not associated with or employed by a preneed funeral arrangement provider;~~
~~(2) selling a preneed funeral arrangement funded by insurance when the licensee has not obtained approval to do so from the preneed funeral arrangement provider the licensee represents;~~
~~(3) selling an insurance policy to fund a preneed funeral arrangement contract naming a preneed funeral arrangement provider as beneficiary, prior to executing the underlying preneed funeral arrangement contract;~~
~~(4) selling a preneed funeral arrangement without executing an approved preneed funeral arrangement contract within ten working days following the sale;~~
~~(5) failing to report preneed funeral arrangement sales agent association or employment as required by Chapter 58, Title 58 and these rules;~~
~~(6) failing to furnish accurate and understandable price information to consumers;~~
~~(7) exercising undue influence over a consumer thereby requiring or causing the consumer to purchase goods or services beyond those the consumer desires or needs;~~

~~(8) collecting or receiving money from the sale of an insurance policy funding a preneed funeral arrangement contract unless the licensee is collecting or receiving the money as a licensed insurance agent or broker;~~

~~(9) violating Section 31A-23-310, containing the fiduciary duties of a trustee with respect to money collected or received as a licensed insurance agent or broker;~~

~~(10) receiving payment of life insurance proceeds beyond the provider's insurable interest in the recipient of the goods and services of a preneed contract as set forth in R156-58-616(1);~~

~~(11) failing to deposit and trust or verify the deposit and subsequent trust of 100% of money received from the sale of a guaranteed preneed funeral arrangement contract to be funded by money placed in trust, within the time periods specified by Section 58-58-9 and these rules;~~

~~(12) failing to ensure that the provider's trust agreement conforms to the requirements of Section 58-58-10, including among other requirements that money is deposited into trust in the name of the recipient of goods and services and the contract number, and that the trust establishes a separate account within the trust for each recipient of goods and services and contract number, separately accounting for each contract with regard to trust earnings and disbursements;~~

~~(13) withdrawing money from a trust account in excess of any maximums established by these rules;~~

~~(14) converting a preneed funeral arrangement funded by money placed in trust to insurance except as provided by these rules;~~

~~(15) failing to provide guaranteed goods and services at time of need in accordance with the terms of a preneed funeral arrangement contract;~~

~~(16) retaining life insurance proceeds of a policy purchased to fund funeral arrangements but not accompanied by a preneed funeral arrangement contract, unless the licensee provides an equivalent value of funeral goods and services;~~

~~(17) failing to comply with the annual reporting requirements as required by Section 58-58-13 and these rules;~~

~~(18) failing to report known violations of governing law or rules by other licensees;~~

~~(19) failing to comply with any other provisions of Chapter 58, Title 58, or these rules, not specifically referenced in this section;~~

~~(20) failing to comply with applicable state or federal statutes, regulations, or other governing authority;~~

~~(21) selling a preneed funeral arrangement contract in a form not approved by the division, or not in compliance with the provisions of Title 58, Chapter 58, or these rules; and~~

~~(22) failing to handle, remit or deposit funds received in payment for a preneed funeral arrangement contract by placing the funds in trust or remitting the funds to an insurance carrier as is required by the contract terms and conditions and by all laws regulating the sale of preneed funeral arrangements and insurance and annuity policies.~~

~~R156-58-601. Requirement to Operate from a Licensed Funeral Establishment.~~

~~A licensed preneed funeral arrangement provider shall conduct business as a licensee only from the facilities of a licensed funeral service establishment which serves to qualify the licensee under the provision of Subsection 58-58-5(1)(c).~~

~~R156-58-602. Sale of Funeral Goods or Services Not Delivered Contemporaneous with Sale Considered Preneed Funeral Arrangement Sale.~~

~~The sale of funeral goods or services to a buyer by any person who does not deliver such goods or services at the time of the sale or in close proximity to the sale and such later delivery is agreed upon between the buyer and seller either orally or in writing constitutes the sale of a preneed funeral arrangement. Such sale may be engaged in only by persons licensed to engage in preneed funeral arrangement sales. This applies to persons including cemeteries, monument manufacturers and sellers, casket manufacturers and sellers, and vault manufacturers and sellers.~~

~~R156-58-603. Termination of Sales Agent - Notification to Division.~~

~~A licensed preneed funeral arrangement provider shall notify the division of termination of association of a preneed sales agent with that licensed provider within ten days after termination of association. Notification shall be made on forms provided by the division.~~

~~R156-58-604. Affiliation of Licensed Sales Agent with Licensed Provider.~~

~~(1) When a licensed sales agent enters association with a licensed provider and such association is not currently registered with the division under the provisions of Subsection 58-58-5(2)(f), or this subsection, the licensed provider shall:~~

~~(a) file an notice of association with the division on forms provided by the division within ten days after commencement of association; and~~

~~(b) pay a fee established by the department under Section 63-38-3.2.~~

~~(2) The licensed provider shall provide the licensed sales agent with a copy of the notice filed with the division.~~

~~(3) If a notice of association is not filed by the licensed provider within ten days after association, the sales agent may not represent the licensed provider with respect to any preneed funeral arrangement until such notice is filed.~~

~~R156-58-605. Licensure of Persons Selling Preneed Funeral Arrangements to be Funded by Proceeds from Insurance or Annuity Policy.~~

~~(1) Any person who sells or represents that they will or intend to sell specific funeral goods or services, represents that goods or services will be provided by a specific funeral establishment, represents that specified amount of money will purchase defined funeral goods or services, or represents that payment for those goods or services to be provided at some future date shall be accomplished through the purchase of a life insurance policy or annuity policy, is engaged in the sale of a preneed funeral arrangement and is required to be licensed as a preneed funeral arrangement provider or sales agent.~~

~~(2) Any person who sells or represents that they will or intend to sell an insurance or annuity policy which will provide a certain benefit at time of death, represents that such benefit will be available to pay for funeral arrangements and no reference is made to specific funeral goods or services, to the cost of specific funeral goods or services, or to the services of a specific funeral service~~

establishment, is not engaged in the sale of a preneed funeral arrangement and is not required to be licensed as a preneed funeral arrangement provider or sales agent.

(3) Nothing in this section shall be interpreted to affect or modify any requirement under state law regarding licensure of persons engaged in the sale of insurance or annuity policies.

R156-58-606. Preneed Funeral Arrangement Contracts Funded by Insurance or Annuity Policy.

(1) The beneficiary designation on any insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be a contingent designation using such wording as "as their interests may appear under a funeral arrangement contract" with information identifying the funeral arrangement contract, or other substantially equivalent beneficiary designation language.

(2) Monies received by a licensee in payment for an insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be handled in accordance with the contractual terms and conditions of the policy and the insurance laws applicable to the policy.

R156-58-607. Contract Forms - Division Model - Certification Required by Provider.

(1) To assist applicants for a provider's license and provider licensees meet the requirements of Section 58-58-8, the division shall publish a model guaranteed preneed funeral arrangement contract form which meets the requirements of Section 58-58-8.

(2) In accordance with the provisions of Subsection 58-58-8(1) a provider must submit to the division a copy of every contract form it intends to market and receive approval of each contract form before the contract form may be used in marketing the licensee's preneed funeral arrangement plan under that contract form.

(3) If a proposed contract form is in substantially the same form as the model contract, the applicant or licensee requesting approval of the contract form may accompany the contract form with the provider's certification that the form is substantially the same as the model contract form. The certification shall contain a listing of each and every deviation of the proposed contract from the model contract.

(4) If a proposed contract form is substantially different from the model contract form, the applicant or licensee requesting approval of the contract form shall obtain an opinion from independent legal counsel representing that the contract form complies with the provisions of Section 58-58-8, and these rules. Such opinion shall be accompanied by an explanation of deviations between the proposed contract from the model contract.

(5) In accordance with the provisions of Subsection 58-58-8(2)(a), easy-to-read type size is hereby defined to be of a type size large enough to accommodate no more than six lines per vertical inch and no more than 15 characters per horizontal inch.

R156-58-608. Contract Notice Regarding Medicaid.

The following notice shall appear in all contracts:

Notice: Under Federal regulations, a Medicaid recipient whose preneed contract is revoked, canceled, or mutually rescinded may become ineligible for Medicaid benefits. Before permitting or causing your preneed agreement to be revoked, canceled or rescinded, you should seek the advice of an attorney or a Medicaid representative.

R156-58-609. Retention of Completed or Terminated Contracts.

Contracts shall be maintained for a period of five years after the contracts have been serviced and obligations of the provider have been completed, or after the contracts have been otherwise terminated. The contracts shall be filed and maintained with a copy of the death certification or burial transit permit with respect to those contracts for which services have been provided, and with sufficient documentation to clearly identify the basis for termination of otherwise terminated.

R156-58-610. Cash Advance Item Prohibited Unless a Guaranteed Product.

A cash advance item as defined in 16 CFR Part 453, Funeral Industry Practices Trade Regulation Rule, of the Federal Trade Commission is prohibited in a preneed funeral arrangement contract unless the item is a guaranteed product permitting the contract to meet the requirements of Subsection 58-58-8(2)(d).

R156-58-611. Use of Funds in Trust Account to Purchase Insurance or Annuity Policy.

A provider may convert a contract funded by monies held in trust with a contract funded by the proceed from an insurance or annuity policy provided:

(1) the buyer consents in writing to the conversion after full disclosure of the consequences of the transaction in writing by the provider;

(2) the buyer's consent is given without coercion, threat, concealment of material fact, undue influence, or other prejudicial influence inconsistent with the buyer's best interest;

(3) the provider uses all monies held in the individual trust account, including interest, as premium for the purchase of the life insurance or annuity policy, unless otherwise directed in writing by the buyer;

(4) the new preneed funeral arrangement contract must be in writing and must provide for goods and services which at least equal to those required of the provider under the original contract, and

(5) the new contract meets all requirements of Title 58, Chapter 58, and these rules.

R156-58-612. Conversion of Trust Accounts Under Prior Law Prohibited.

Conversion of funds held in trust which was established under any law regulating preneed funeral arrangements prior to the adoption of Title 58, Chapter 58, may not be converted to a trust under the provisions of Title 58, Chapter 58, but shall continue to be held in trust under the terms and conditions of the predecessor law.

R156-58-613. Prohibition Against Provider Accepting Payment in a Form Other Than Cash, Cash Equivalents, or Negotiable Instruments.

A provider may accept in payment for a preneed funeral arrangement contract only cash, cash equivalents, or negotiable instruments which are readily convertible to cash.

R156-58-614. Provider Expenditure of Earnings from Trust Account.

(1) In accordance with Subsection 58-58-11(1), earnings of a preneed funeral arrangement trust account shall be available to the

~~provider for expenditure toward reasonable trustee expenses of administering a trust account, not to exceed the lesser of the earnings remaining in the trust account or 1% of the entire trust account, plus any amounts necessary to pay taxes incurred on the entire trust account's earnings.~~

~~(2) In accordance with Subsection 58-58-11(2), earnings of an individual account within the trust shall be available to the provider for expenditure toward other authorized reasonable provider expenses incurred against the individual account, not to exceed earnings totaling 30% of the sales amount of the respective preneed funeral arrangement contract.~~

~~(3) Remaining earnings of individual accounts within the trust shall, except as provided in Subsection 58-58-11(4)(b), remain in each individual account within the trust to pay by account, the costs of providing the goods and services required under respective preneed funeral arrangement contracts.~~

~~(4) In accordance with Subsection 58-58-11(4)(a), the provider shall be paid remaining trust account earnings after furnishing the goods and services required under respective preneed funeral arrangement contracts.~~

~~R156-58-615. Maximum Life Insurance Proceeds Payable to Provider.~~

~~(1) Preneed life insurance proceeds payable to a provider shall not exceed the provider's insurable interest in the recipient of goods and services which, by definition, shall not exceed the provider's current retail price for the goods and services provided, as determined by the provider's price list in effect at the recipient of goods and service's death.~~

~~(2) Excess preneed life insurance proceeds not paid to the provider shall be returned to the owner of the life insurance policy or his heirs and beneficiaries unless otherwise designated by the owner or his heirs and beneficiaries.~~

~~R156-58-616. Reporting Requirements.~~

~~(1) In accordance with Section 58-58-13, each provider or contract seller who has discounted the sale of contracts but who has outstanding contracts and each currently licensed provider shall submit an annual report to the division by April 15 of each year. The report shall be submitted on forms available from the division or their equivalent and shall include:~~

~~(a) a statement of compliance certifying:~~

~~(i) that all payments received from the sale of contracts have been:~~

~~(A) placed in the provider's trust account in accordance with Section 58-58-9 and administered in accordance with Sections 58-58-10 through 58-58-12 and these rules; or~~

~~(B) submitted to the insurance company whose insurance or annuity policy funds the contract;~~

~~(ii) that complete and accurate information concerning the preneed funeral arrangements by the provider or the provider's sales agents was furnished or made available to the independent certified public accountant who prepared the report of agreed upon procedures; and~~

~~(iii) that the annual report is complete and accurate;~~

~~(b) a report of agreed upon procedures on forms available from the division or their equivalent completed by an independent certified public accountant licensed under Title 58, Chapter 26, which reports upon:~~

~~(i) reconciliation of trust account balances to the annual report; and~~

~~(ii) reconciliation of insurance in force to the annual report;~~

~~(c) an exhibit listing preneed contracts sold prior to April 29, 1991, funded by money, 75% of which is required to be maintained in the name of the contract buyer in the contract seller's trust account as provided in Section 58-58-10, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different, and balance due; the individual trust account number and amount trusted; and the trust earnings, earnings used, and trust balance;~~

~~(d) an exhibit listing preneed contracts sold after April 28, 1991, funded by money, 100% of which is required to be maintained in the name of the contract buyer in the provider's trust account as provided in Section 58-58-10, which shall include at a minimum the information required under subsection (c);~~

~~(e) an exhibit listing preneed contracts funded by money placed in trust which were serviced, revoked, rescinded, or amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different; the individual trust account number and trust balance at the recipient of goods and service's death; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced;~~

~~(f) an exhibit listing preneed contracts sold after April 28, 1991, funded in whole or in part by insurance, which shall include at a minimum: the contract number, date, amount, recipient of goods and services and buyer if different; the insurance company; the policy number, policy holder, and face amount; and~~

~~(g) an exhibit listing preneed contracts funded by insurance which were serviced, revoked, rescinded, or otherwise amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services, and buyer if different; the insurance company; the policy number and policy holder; the policy proceeds; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced.~~

~~R156-58-617. Maximum Revocation Fee.~~

~~(1) If a buyer defaults under a guaranteed preneed funeral arrangement contract, the provider may retain a revocation fee from the trust corpus, not to exceed 25% of the amount received from the sale of the contract and trust earnings thereupon, provided the revocation fee is clearly identified in the contract.~~

~~(2) The revocation fee shall not be in an amount which results in the provider receiving proceeds from the trust in excess of that permitted under Subsection R156-58-615(2).~~

~~R156-58-618. Conflict with Federal Laws or Rules.~~

~~In the event of a conflict between the requirements of federal law or rules, in particular the Federal Trade Commission Rules, and Title 58, Chapter 58, Preneed Funeral Arrangement Act or these rules, federal law or rules shall govern.~~

~~KEY: licensing, funeral industries, preneed*~~
~~June 3, 1997~~
Notice of Continuation January 14, 2002
~~58-58-1~~
~~58-1-106(1)~~
~~58-1-202(1)~~]

Commerce, Securities
R164-11-2
Hearings for Certain Exchanges of Securities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26481
FILED: 07/15/2003, 11:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To set forth the procedure and requirements to be met when seeking a fairness hearing under Section 61-1-11.1. (DAR NOTE: Section 61-1-11.1 was enacted by H.B. 290, is found at UT L 2003 Ch 245, and is effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: Section R164-11-2 sets forth the procedure and requirements to be met when seeking a fairness hearing under Section 61-1-11.1 including permissible parties, application requirements, notice requirements, hearing information, findings and exemptions from registration.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-11.1

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Any cost associated with the Fairness Hearings was contemplated by the legislature in enacting Section 61-1-11.1. Section R164-11-2 implements the statute and will not cost nor save any additional money.
❖ LOCAL GOVERNMENTS: None--Local governments are not involved in the fairness hearings and will not incur any costs.
❖ OTHER PERSONS: None--Cost savings to issuers of securities was contemplated by the legislature in enacting Section 61-1-11.1. Section R164-11-2 implements the statute but does not by itself, save the issuers any additional money.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Application for a fairness hearing is voluntary. Cost savings to issuers of securities was contemplated by the legislature in enacting Section 61-1-11.1.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment enacts various procedural rules pursuant to the requirements of Section 61-1-11.1, which was enacted by the Utah Legislature during the 2003 Legislative Session. There appears to be no foreseeable financial impact to business as a result of this rule change that was not already anticipated and considered by the Legislature.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Paula Faerber at the above address, by phone at 801-530-6976, by FAX at 801-530-6980, or by Internet E-mail at pfaerber@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Paula Faerber, Staff Attorney

R164. Commerce, Securities.
R164-11. Registration Statement.
R164-11-2. Hearings for Certain Exchanges of Securities.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-11.1 and 61-1-24.

(2) This rule sets forth the procedure and requirements to be met when seeking a fairness hearing for certain exchanges of securities.

(3) A finding of fairness under Section 61-1-11.1 does not constitute a registration or exemption unless the requirements of Paragraph (H) are met.

(B) Definitions.

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Interested person" means any officer, director or security holder of either party involved in the transaction, or other persons as the Division may permit.

(C) Parties.

The Division will only consider an application under Section 61-1-11.1 for a transaction where:

(1) Either party to the transaction is a domestic business entity formed, organized or incorporated under the laws of Utah;

(2) Either party to the transaction is a business entity whose headquarters or principal place of business is located in Utah; or

(3) Fifty percent or more of the persons to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection 61-1-11.1(1) are persons who are Utah residents.

(D) Application Requirements.

An application may be made to the Division under Subsections 61-1-11.1(1) and 61-1-11.1(5) by filing with the Division:

(1) Division Form 11.1;

(2) NASAA Form U-2, Uniform Consent to Service of Process;

(3) A fee as specified in the Division's fee schedule; and

(4) Other documents as the Division may request.

(E) Notice.

(1) At least 30 calendar days prior to the hearing, the applicant must provide notice of the hearing, as approved by the Division, to any person to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection 61-1-11.1(1).

(2) The Notice must contain the following information:
(A) A brief statement of the facts which give rise to the hearing, including an outline of the terms and conditions of the proposed transaction;
(B) A statement of the issues to be considered at the hearing, together with the relevant statutes and rules;
(C) The time and place of the hearing; and
(D) Any other information requested by the Division.
(3) Prior to or at the hearing, the applicant must file an affidavit stating that in compliance with Subparagraphs (E)(1) and (E)(2), a notice has been sent to all persons to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection 61-1-11.1(1), including a description of how the notice was sent.
(F) Hearing.
(1) Within a reasonable time after the receipt of the application, the Division may schedule a hearing to be conducted under Subsection 61-1-11.1(2).
(2) hearing under Section 61-1-11.1 shall be conducted by a hearing officer designated by the Director.
(3) Any interested person may attend a hearing under Section 61-1-11.1.
(4) Any interested person may participate in the hearing by giving written notice, within a reasonable time prior to the hearing, of his intention to appear and participate in the hearing. Interested persons may participate:
(A) In person;
(B) By telephone; or
(C) By affidavit.
(5) The hearing shall be recorded electronically and transcribed by the Division. The transcription costs will be assessed to the Applicant. Upon request, the Division will hire a court reporter at the requester's expense.
(G) Findings and Order.
Within a reasonable time after completion of the hearing, the Director shall issue an order pursuant to Subsection 61-1-11.1(3).
(H) Exemptions.
The issuer of securities may request that the transaction be exempt from registration under Subsection 61-1-14(2)(s).

KEY: securities regulation
[~~1987~~]2003
Notice of Continuation November 4, 2002
61-1-11(7)(b)

Environmental Quality, Air Quality
R307-214-2
Part 63 Sources

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26468
FILED: 07/14/2003, 09:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to incorporate by reference federal standards into Utah rules, so that they will be enforced by the State of Utah rather than by EPA.

SUMMARY OF THE RULE OR CHANGE: Sixteen new federal standards for hazardous air pollutants (HAPs) are proposed for incorporation by reference into Section R307-214-2. There are sources of these pollutants in Utah that will be regulated under five of these new standards. The Clean Air Act of 1990 required EPA to issue standards for HAPs; these standards are commonly called Maximum Achievable Control Technologies (MACTs). In 1994 when the Division of Air Quality sought federal approval to implement the Operating Permits Program under 40 CFR Part 70, one component was a commitment to adopt, implement, and enforce the MACTs standards.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a); and Clean Air Act, Section 112

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There are no costs to the state budget for implementing the MACTs, as all sources are required to hold Operating Permits, and their costs are built into the fees paid by sources of HAPs under the Operating Permit Program.
❖ LOCAL GOVERNMENTS: The only new MACT that will affect local governments is 40 CFR Part 63, Subpart AAAA, National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for HAPs for Municipal Solid Waste Landfills. Only seven landfills in Utah are affected, and the cost for each is likely to be about $1,700 (1998 dollars) per year, which is less than 0.001 percent of the tipping fees collected by such landfills.
❖ OTHER PERSONS: 1) 40 CFR Part 63, Subpart OOOO, Printing, Coating, and Dyeing of Fabrics and Other Textiles: Only two sources in Utah are known to be subject to this rule. Nationwide, this rule will result in a 60% decrease in emissions of hazardous air pollutants from these sources. There may be very minimal cost increases and a small price increase to consumers of such products. 2) 40 CFR Part 63, Subpart WWWW: Only two sources in Utah are known to be subject to this rule. Nationally, implementation of the rule will reduce HAPs from these sources by approximately 43%. The cost increase may be approximately $2,800 per ton of HAPs reduced, with prices for the finished product increasing by 0.7%, on average across the U.S. 3) 40 CFR Part 63, Subpart FFFFF: Only one source in Utah is known to be subject to this rule. Across the U.S., emissions will be reduced by approximately 20% and the price of products from this industry may rise approximately <1%. 4) 40 CFR Part 63, Subpart JJJJJ: Only one source in Utah is known to be subject to this rule. Costs per year are expected to be only about $1,200 per year, because the work practice standards required by the rule are already in use by all affected sources, and only the new record keeping requirements require additional expense. 5) There are no known sources in Utah that are subject to the other federal requirements being incorporated by reference, and thus there is no cost or benefit information.

COMPLIANCE COSTS FOR AFFECTED PERSONS: 1) 40 CFR Part 63, Subpart OOOO, Printing, Coating, and Dyeing of Fabrics and Other Textiles: Only two sources in Utah are known to be subject to this rule. Nationwide, this rule will result in a 60% decrease in emissions of hazardous air pollutants from these sources. There may be very minimal cost increases and a small price increase to consumers of such products. 2) 40 CFR Part 63, Subpart WWWW: Only two sources in Utah are known to be subject to this rule. Nationally, implementation of the rule will reduce HAPs from these sources by approximately 43%. The cost increase may be approximately $2,800 per ton of HAPs reduced, with prices for the finished product increasing by 0.7%, on average across the U.S. 3) 40 CFR Part 63, Subpart FFFFF: Only one source in Utah is known to be subject to this rule. Across the U.S., emissions will be reduced by approximately 20% and the price of products from this industry may rise approximately <1%. 4) 40 CFR Part 63, Subpart JJJJJ: Only one source in Utah is known to be subject to this rule. Costs per year are expected to be only about $1,200 per year, because the work practice standards required by the rule are already in use by all affected sources, and only the new record keeping requirements require additional expense. 5) There are no known sources in Utah that are subject to the other federal requirements being incorporated by reference, and thus there is no cost or benefit information.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Costs for Utah businesses to implement these requirements are very small, and will not affect the viability of any Utah business.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 8/19/2003 at 1:30 PM, DAQ Main Conference Room, 150 N 1950 W, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 09/04/2003

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-214. National Emission Standards for Hazardous Air Pollutants.
R307-214-2. Part 63 Sources.

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2002, or later for those whose subsequent publication citation is included below, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the executive secretary, unless by federal law the authority is specific to the Administrator and cannot be delegated.

(1) 40 CFR Part 63, Subpart A, General Provisions.

(2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).

(3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

(4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

(5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.

(6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

(7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production, published on July 10, 2002 at 67 FR 45885.

(8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.

(9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

(10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

(11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.

(12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.

(13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

(14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.

(15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.

(16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.

(17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.

(18) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

(23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.

(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT)

(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, published on July 12, 2002, at 67 FR 46257.

(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

(42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(43) 40 CFR Part 63, Subpart JJJ, National Emission Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills, published on January 16, 2003 at 68 FR 2227.

(5[4]5) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(5[~~5~~]6) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

(5[~~6~~]7) 40 CFR Part 63, Subpart HHHH - National Emission Standards for Wet-Formed Fiberglass Mat Production.

(58) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations, published on December 4, 2002 at 67 FR 72330.

(5[~~7~~]9) 40 CFR Part 63, Subpart NNNN - National Emission Standards for Large Appliances Surface Coating Operations, published on July 23, 2002, at 67 FR 48253.

(60) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating & Dyeing Surface Coating Operations, published on May 29, 2003 at 68 FR 32172.

(61) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products, published on May 28, 2003 at 68 FR 31746.

(62) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations, published on May 23, 2003 at 68 FR 28606.

([~~58~~]63) 40 CFR Part 63, Subpart SSSS - National Emission Standards for Metal Coil Surface Coating Operations.

([~~59~~]64) 40 CFR Part 63, Subpart TTTT - National Emission Standards for Leather Tanning and Finishing Operations.

([~~60~~]65) 40 CFR Part 63, Subpart UUUU - National Emission Standards for Cellulose Product Manufacturing.

([~~61~~]66) 40 CFR Part 63, Subpart VVVV - National Emission Standards for Boat Manufacturing.

(67) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production, published on April 21, 2003 at 68 FR 19375.

(6[~~2~~]8) 40 CFR Part 63, Subpart XXXX - National Emission Standards for Tire Manufacturing, published on July 9, 2002, at 67 FR 45589.

(69) 40 CFR Part 63, Subpart BBBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing, published on May 22, 2003 at 68 FR 27913.

(70) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, published on April 14, 2003 at 68 FR 18008.

(71) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing, published on May 20, 2003 at 68 FR 27646.

(72) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing, published on May 16, 2003 at 68 FR 26690.

(73) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing, published on May 16, 2003 at 68 FR 26690.

(74) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing, re-published on May 7, 2003 at 68 FR 24562.

(75) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations, published on April 14, 2003 at 68 FR 18062.

(76) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production published on April 17, 2003 at 68 FR 19076.

(77) 40 CFR Part 63, Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands, published on May 27, 2003 at 68 FR 28774.

([~~63~~]78) 40 CFR Part 63, Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities, published on October 18, 2002, at 67 FR 64497.

(79) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing, published on April 16, 2003 at 68 FR 18730.

KEY: air pollution, hazardous air pollutant, MACT
[~~June 17,~~]2003
Notice of Continuation February 3, 1999
19-2-104(1)(a)

▼ ▼

Financial Institutions, Credit Unions
R337-5
Allowance for Loan Losses - Credit Unions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26458
FILED: 07/08/2003, 15:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment brings up to date the methodology to determine the amounts needed in the allowance account for all state-chartered credit unions under the jurisdiction of the Department of Financial Institutions in accordance with changes in the industry and federal law.

SUMMARY OF THE RULE OR CHANGE: The amendments are: changes the rule for state-chartered credit unions that requires the establishment of an allowance account; requires the credit union to establish and maintain a methodology to determine the amounts needed in the allowance account; requires an annual validation of the methodology by a qualified party; requires that the credit union maintain sufficient documentation to support the methodology; and requires the credit union's Board adopt a policy regarding the timely fashion of loan write offs.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 7-9-29

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No impact on the State budget as compliance to the rule affects the financial institutions themselves not the department.
❖ LOCAL GOVERNMENTS: The rule does not affect local government, therefore there are no cost or savings to local government.
❖ OTHER PERSONS: State-chartered Credit Unions are currently required to comply with this rule and modifications to the rule should have minimal budgetary impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: State-chartered Credit Unions are currently required to comply with this rule and modifications to the rule should have minimal budgetary impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: State-chartered Credit Unions are currently required to comply with this rule and modifications to the rule should have minimal budgetary impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
CREDIT UNIONS
Room 201

324 S STATE ST
SALT LAKE CITY UT 84111-2393, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Paul Allred at the above address, by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at PALLRED@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Edward Leary, Commissioner

R337. Financial Institutions, Credit Unions.
R337-5. Allowance for Loan and Lease Losses - Credit Unions.
R337-5-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-9-29.

(2) This rule applies to all state-chartered credit unions.

(3) This rule requires [~~an~~]the allowance account for loan and lease losses [~~and prescribes the optional methods of determining the required amount~~](ALLL) be maintained in accordance with Generally Accepted Accounting Principles (GAAP).

R337-5-2. Definitions.

[~~(1) "Adjustment Method" means an allowance based on a complete review by the credit union at least quarterly, or at the close of each share account dividend period, of all loans delinquent two months or more, to estimate potential losses which will be sustained in the collection of outstanding loans.~~

~~(2) "Aging Method" means an allowance based on an amount equal to 50% of the sum of the loan balance of all loans 6-12 months past due plus 100% of the loans 12 months or more past due.~~

~~(3) "Collection Problem Loans" means an amount equal to 50% of loans classified doubtful plus 100% of loans classified loss at the most recent examination by the Department of Financial Institutions.~~

~~(4) "Commissioner" means the Commissioner of Financial Institutions.~~

~~(5) "Experience Method" means the ratio of loan losses (actual losses less recoveries) to the average total loans outstanding for the current year and for each of the preceding five years, multiplied by the total loans in the loan portfolio which are not delinquent.~~](1) "Adjusted Loss" means the historical loss adjusted for economic or other factors.

(2) "Historical Loss" means the ratio of loan losses (actual losses less recoveries) to the average total loans outstanding for the period.

(3) "Homogeneous Loan Pools" means groups of loans sharing common risk factors.

(4) "In process of collection" means collection of the debt is proceeding in due course either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status in the near future.

(5) "Well secured" means a debt that is secured by:

(a) collateral with sufficient realizable value to discharge the debt in full, including accrued interest; or

(b) the guarantee of a financially responsible party.

R337-5-3. Allowance Account for Loan and Lease Losses.

(1) Each credit union is required to establish and maintain a methodology to determine the amount needed in an allowance account for loan and lease losses in accordance with GAAP. [~~It~~]The account should be shown on the books as a contra-asset account, not an equity account. In determining the appropriate allowance account balance, each credit union shall:

(a) Separate the loan portfolio into homogeneous loan pools based upon common risk factors;

(b) Calculate the net loss percentage of each pool, using the historical loss or adjusted loss method, and apply that percentage to all loans in that pool;

(c) Individually classify loans with unique characteristics; and

(d) Add the resulting amounts to determine the amount needed in the ALLL.

[~~(2) Adjustments necessary to maintain the account may be determined using the "Experience Method" and the "Aging Method" or the "Adjustment Method", whichever provides for the best estimation of the net realizable value of the loan portfolio. Other methods may be used subject to the approval in writing of the commissioner.~~](2) At least annually, the method used by the credit union to determine the ALLL must be validated by a qualified party independent from the estimation process.

(3) Sufficient documentation must be maintained to support the methodology and allow the ALLL to be validated.

(4) In conjunction with this rule, the credit union's Board of Directors must adopt a policy ensuring that loans are written off in a timely manner. The policy should include as a minimum a requirement that loans be charged off at 180 days past due unless well secured and in the process of collection.

[~~(3)~~](5) Whenever the allowance account for loan and lease losses is materially less than or greater than collection problem loans or does not fairly represent the estimated losses in the portfolio, an immediate adjustment shall be made for the amount of the deficiency or surplus. Adjustments to the account will be accomplished by debit or credit entries to a "Provision for Loan Losses" expense account in accordance with generally accepted accounting principles.

[~~(4)~~](6) At the close of each accounting period and prior to the payment of a dividend, a credit union shall make a placement to the regular reserve as required by Section 7-9-30. After the required placement has been made, unless the credit union is under prompt corrective action, a credit union may transfer from the regular reserve to undivided earnings, the amount that has been expended to the provision for loan and lease losses during the same period.

[~~(5)~~](7) The regular reserve and allowance for loan and lease losses shall not be combined for purposes of calculating the placement to the regular reserve as required by Section 7-9-30.

KEY: credit unions, loans
[~~November 3, 1997~~]2003
Notice of Continuation September 9, 2002
7-9-29

▼ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-504
Nursing Facility Payments

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26490
FILED: 07/15/2003, 15:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Input from federal regulators regarding the Medicaid state plan amendment that mirrors this rule, indicated that language matching payments to appropriations was impermissible. Other changes address language that has proven to be ambiguous as applied. The process is added for applying for adjusted payments as a sole community provider

SUMMARY OF THE RULE OR CHANGE: Definitions for nursing costs, sole community provider and urban provider are added. Language that called for payments to be matched to appropriations is deleted. Terms and conditions to qualify for a rate adjustment as a sole community provider are added. Language is added to clarify that the urban rural differential applies to nursing costs. The methodology for setting the differential is clarified. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 26492 in this issue, and is effective as of July 15, 2003.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5, 26-18-2, and 26-18-3

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No change--The clarifications in this rule change will not change the amount of state and federal funds that will be distributed to regulated health care facilities.
❖ LOCAL GOVERNMENTS: Local government operated nursing homes may benefit from the sole community provider adjustment. This rule sets the terms and conditions for qualifying. This could have a positive benefit for local government.
❖ OTHER PERSONS: Except for sole community nursing facilities which may benefit from a rate adjustment, the overall impact on nursing facilities will be budget neutral. Facilities wishing to qualify for the sole community provider adjustment will be required to submit financial information and other data to support that they are in financial distress. Application for the adjustment is voluntary.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Except for sole community nursing facilities which may benefit from a rate adjustment, the overall impact on nursing facilities will be budget neutral. Facilities wishing to qualify for the sole community provider adjustment will be required to submit financial information and other data to support that they are in financial distress. Application for the adjustment is voluntary.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is necessary to keep nursing home reimbursement in harmony with federal interpretation and will have an overall positive impact on regulated facilities. 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 BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Doug Springmeyer at the above address, by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-1. Introduction.

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System). This system reimburses facilities based on the case mix index of the facility.

(2) This rule is authorized by Utah Code sections 26-1-5, 26-18-2, and 26-18-3.

R414-504-2. Definitions.

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility.

(3) "Facility Case Mix Rate" means the rate the Department issues to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

(4) "FCP" means the Facility Cost Profile cost report filed by the provider on an annual basis.

(5) "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

(6) "Nursing Costs" means the most current property costs from the annual FCP report reported on lines 070-012 Nursing Admin Salaries & Wages; 070-013 Nursing Admin Tax & Benefits; 070-040 Nursing Direct Care Salaries and Wages; and 070-041 Nursing Direct Care Tax and Benefits

(7) "Nursing facility" or "facility" means a[~~ny~~] Medicaid-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

([~~7~~]8) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

([~~8~~]9) "Property costs" means the most current property costs from the annual FCP report reported on lines 230 (Rent and Leases Expense), 240 (Real Estate and Personal Property Taxes), 250 (Depreciation - Building and Improvement), 260 (Depreciation - Transportation Equipment), 270 (Depreciation - Equipment), 280 (Interest - Mortgage, Personal Property Furniture and Equipment - Small Items), 300 (Property Insurance).

([~~9~~]10) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" is assigned a weight based on an assessment of its relative value as measured by resource utilization.

([~~10~~]11) "RUGS score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS is calculated from the information obtained through the submission of the MDS data.

(12) "Sole community provider" means a facility that is the only facility:

(a) within a city, if the facility is located within the incorporated boundaries of a city; or

(b) within the unincorporated area of the county if it is located in an unincorporated area.

(13) "Urban provider" means a facility located in a county of more than 90,000 population.

R414-504-3. Principles of Facility Case Mix Rates and Other Payments.

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patients.

(1) Effective January 1, 2003 approximately 50% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 38% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) The Department calculates each nursing facility's case mix index quarterly based upon the previous 12 month moving average case mix history.

(3)[~~ For any fiscal year, the total amount paid to nursing facilities will be matched to available appropriations. The Department may adjust rates as needed to reflect changes in appropriations or to match payments to available appropriations.~~

~~(4)~~] A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. The Resident Assessment Section will make the determination as to qualification for any additional payment. The Division of Health Care Financing [~~will~~]shall determine the amount of any add-on[~~ based on available appropriations~~].

([~~5~~]4) Property costs are paid separately from the RUGS rate. Each facility's property payment is as follows:

(a) Each facility's reimbursement rate effective July 1, 2002 includes a property payment between $11.19 per patient day or up to a maximum of $20.00 per patient day. No facility may receive a higher payment attributable to property as a result of this rule. The property payment shall be reduced if the occupancy of the facility is below 75%, by assuming occupancy of 75% and adjusting 2001 FCP allowable property costs accordingly. This adjusted patient day figure is then divided into actual property costs to determine allowable property costs.

(b) The property payment shall be set on January 1, 2003, based on the calculation in (a), above. Property payments shall be phased out by reducing the payment by 25% of the January 1, 2003 amount for each of the succeeding two calendar years, with property payment stopping effective January 1, 2006. The amount reduced from property payments shall be shifted to other components of the rate and distributed to facilities[~~ consistent with R414-504-3(3)~~].

([~~6~~]5) Newly constructed facilities' case mix component of the rate shall be paid at the average rate. This average rate shall remain in place for a new facility for six months, whereupon the provider's case mix index and property payment is established. At this point, the Department shall issue a new case mix adjusted rate. The property payment to the facility is controlled by R414-504-3([~~5~~]4). A newly constructed facilities' property payment may not exceed $20.00 per patient day and shall be reduced if R414-504-3([~~5~~]4)(b) is applicable.

([~~7~~]6) An existing facility acquired by a new owner will continue at the same case mix index and property cost payment established for the facility under the previous ownership for the remainder of the quarter. The new owners property payment may not exceed $20.00 per patient day and shall be reduced if R414-504-3([~~5~~]4)(b) is applicable.

([~~8~~]7)[~~ If the Department determines that a facility is located in an under-served area, or addresses an under-served need, the Department may negotiate a payment rate that is different from the case-mix-index-established rate. This exception may be awarded only after consideration of historical payment levels and need.~~](a) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate.

(b) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) steps taken by the facility to reduce costs and increase occupancy.

(c) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility, and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than 10% of the state share required to fund the proposed adjustment. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(d) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(e) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(f) The Department's determination shall be based on maintaining access to services on and maintaining economy and efficiency in the Medicaid program.

(g) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(h) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(i) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

([~~9~~]8) A provider may challenge the rate set pursuant to this rule using the appeal in R410-14. A provider must exhaust administrative remedies before challenging rates in any other forum.

([~~10~~]9) The Department may [~~increase~~]adjust reimbursement to urban [~~nursing homes~~]providers if it determines that there is a significant difference in industry wide nursing costs as between urban and other providers. Any adjustment shall use[~~using~~] either:

(1) a wage index adjustment [~~to recognize~~]that reflects local labor market nursing costs relative to the state as a whole[~~-~~]; or

(2) [~~The Department shall use a wage index that reflects nursing home costs~~]a Department analysis of nursing costs reported on FCPs.[~~This adjustment may cause a decrease in reimbursement to rural nursing homes.~~]

R414-504-4. Transition Reimbursement Principles.

For each quarter of calendar year 2003 and for the first two quarters of calendar year 2004:

(1) The Department shall determine if any facility's total rate is scheduled to be reduced by more than $5.00 per patient day, as compared to the total rate for that facility in effect on December 31, 2002. The total rate amount for the facility determined to be in effect as of December 31, 2002 shall be adjusted by any disallowances or other adjustments;

(2) For all facilities with a drop of more than $5.00 per patient day in their total rate as of the applicable quarterly adjustment, the Department shall adjust up the total rate of all such facilities to a rate where the loss is equal to $5.00 per patient day; and

(3) The total rate for all facilities with a gain in rate or a drop of less than $5.00 per patient day shall be proportionately adjusted down to fund the adjustment in R414-504-4(2).

KEY: Medicaid
[~~June 9,~~]2003
26-1-5
26-18-2
26-18-3

Human Services, Aging and Adult Services
R510-100-2
In-Home Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26467
FILED: 07/11/2003, 14:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change authorizes the Division to phase in, over a five year period, the impact of the changing demographics in the state, and to correct an error in the methodology used to allocate In-Home Service funds to Area Agencies on Aging.

SUMMARY OF THE RULE OR CHANGE: Subsection R510-100-2(5) is added authorizing the Division to adjust, during a five year period, the allocation of In-Home Service funds allocated to Area Agencies on Aging. Adjustment will address the significant demographic changes noted in the 2000 census and inaccurate application of the 1993 hold harmless provision that occurred during the previous years.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-3-108

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no effect upon the state budget. The total amount to be distributed to the Area Agencies on Aging remains the same.

❖ LOCAL GOVERNMENTS: The total value of the correction being accomplished is approximately $140,000, with six area agencies receiving a phased increase in funds and six receiving a phased decrease.

❖ OTHER PERSONS: Potentially some clients around the state will be impacted by the availability or nonavailability of services due to funding. It is impossible at this time to

estimate the cost of a services that may be denied or provided to a client.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs cannot be estimated at this time. Some clients will be placed on waiting lists while others will receive services immediately.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change is necessary to phase in demographic changes and a correction to the methodology used to allocated certain funds to area agencies of aging. While it is possible that some service providers may see a decrease in need for their service, the impact should by minor.

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

HUMAN SERVICES
AGING AND ADULT SERVICES
Room 325
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Mike Bednarek or Sheldon Elman at the above address, by phone at 801-538-3922 or 801-538-3921, by FAX at (n/a) or 801-538-4395, or by Internet E-mail at mjbednarek@utah.gov or selman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/11/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R510. Human Services, Aging and Adult Services.
R510-100. Funding Formulas.
R510-100-2. In-Home Services.

(1) Affected Funding Sources for In-Home Services.

(a) The funding formula shall include all federal and state funds appropriated for use by local area agencies on aging to be used for in-home services with the exception of:

(i) funds allocated under Section R510-100-1 and

(ii) funds identified under Section 62A-3-108(2), and

(iii) Adult Services funded under the Division pursuant to Section 62A-3-301 et seq.

(2) Funding Formula Factors for In-Home Services.

(a) The funding formula shall include the following factors:

(i) Land area factor consisting of each AAA's proportion of the state's total adjusted square miles.

(ii) Population factor comprised of each AAA's proportion of the designated population factors.

(iii) Base amount of $16,000 allocated to each Area Agency on Aging.

(b) Designated population factors shall consist of the following:

(i) The number of minority persons, as defined by the Governor's Office of Planning and Budget, age 60 and over weighted 10%,

(ii) The number of all persons age 18-59 weighted 5%,

(iii) The number of all persons 60 years of age and over weighted 55%, and

(iv) The number of all persons 75 years of age and over weighted 30%.

(c) All population figures utilized shall reflect the most recent U.S. census figures adjusted on an annual basis based on available population estimates from the Governor's Office of Planning and Budget.

(3) Funding Distribution for In-Home Services.

(a) Distribution of funds under the formula will be as follows:

(i) 10% of total formula funds allocated to the land area factor; and

(ii) 90% of total formula funds allocated to the population factor.

(4) Funding Formula Phase-In for In-Home Services.

(a) Funds allocated in fiscal year 1993 shall be held harmless.

(b) New funds above the fiscal year 1993 level shall be allocated by the in-home services funding formula.

(5) The following is the funding formula adjustment phase-in period for In-Home Services:

(a) The Division is authorized to apply an adjustment to the allocation calculated in accord with funding formula contained in paragraph (2) of this section for five fiscal years beginning with FY 2004.

(b) Each adjustment shall be applied to the allocation to all area agencies calculated in accord with the funding formula contained in paragraph (2) of this section and shall represent 20% of the difference between the funds allocated in accord with paragraph (2) of this section and the allocation for FY 2004.

KEY: elderly, funding formula, long-term care ombudsman
[~~May 21,~~]2003
Notice of Continuation November 1, 2002
62A-3-108

▼ ▼

Human Services, Child and Family Services

R512-70

Composition and Operation of the Consumer Hearing Panel, and the Requirements for Filing a Complaint with the Panel

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 26465
FILED: 07/11/2003, 13:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule must be removed because of the passage of H.B. 5005 sponsored by Representative Matt Throckmorton during the 2002 Fifth Special Session. This act repealed the Consumer Hearing Panel which was not funded during the General

Session for fiscal year 2003. (DAR NOTE: H.B. 5005 is found at UT L 2002, 5th Spec Sess Ch 6, and was effective July 23, 2002.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-4a-102 and 62A-4a-207

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Any savings to the state budget was recognized during the 2002 General Session when funding to the Consumer Hearing Panel was cut. There is no further anticipated cost or savings.
❖ LOCAL GOVERNMENTS: There is no cost to local government because the rule does not affect local government.
❖ OTHER PERSONS: Complainants to the Office of Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Complainants to the Office of Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There was/is no anticipated fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vanessa Thompson at the above address, by phone at 801-538-9877, by FAX at 801-538-4016, or by Internet E-mail at vthompson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R512. Human Services, Child and Family Services.

[~~R512-70. Composition and Operation of the Consumer Hearing Panel, and the Requirements for Filing a Complaint with the Panel.~~

~~R512-70-1. Authority and Purpose.~~

~~(1) This rule defines the composition and operation of the Consumer Hearing Panel as authorized by Subsection 62A-4a-102(4)(a) and the requirements for filing a complaint with the Panel.~~

~~R512-70-2. Definitions.~~

~~(1) The definitions contained in Section 63-46b-2 apply. In addition, for the purposes of this section, the definitions contained in R512-75-1 apply.~~

~~R512-70-3. The Composition and Operation of the Consumer Hearing Panel.~~

~~(1) The Consumer Hearing Panel consists of three regular members and two alternate members. Alternate members are authorized to act in the event that regular members are unable to serve. In addition, alternate members shall perform such tasks as the Panel may assign to them within the statutory authority of the Panel.~~

~~(2) Each member shall serve for three years, with initial terms staggered two and three years to be determined by lot.~~

~~(3) The Panel shall hear complaints on a regularly scheduled basis. One Panel member shall preside at meetings, as provided in the by-laws.~~

~~(4) Panel by-laws specify the procedures for the operation of the Consumer Hearing Panel, the number of meetings per month (including provisions for scheduling supplemental and replacement hearings when necessary), the standards under which emergency hearings are held, and the location of hearings, which procedures are binding on persons who file complaints/grievances.~~

~~R512-70-4. Filing of Complaints.~~

~~(1) A request to amend a division record, or a grievance resulting from a Notice of Agency Action from the Division of Child and Family Services shall be submitted to the Office of Administrative Hearings in the Department of Human Services and shall not be submitted to the Consumer Hearing Panel.~~

~~(2) A consumer complaint against the Division of Child and Family Services may be filed with the Consumer Hearing Panel if the complaint could not be resolved through the Division regional office and the Office of the Child Protection Ombudsman, as specified in rule R512-75.~~

~~(3) A consumer complaint against the Division shall be submitted to the Panel in writing and shall include the name, address, and phone number of the aggrieved person, the alleged act or omission, the action desired and the signature of the aggrieved person or the aggrieved person's representative.~~

~~(4) An optional standardized form to be used by the complainant or the aggrieved person shall be available from the Division. The form and instructions for using the form shall be available in English or Spanish.~~

~~(5) A complaint filing procedure for a non-English speaking aggrieved person and/or an illiterate aggrieved person shall be available from the Division.~~

~~(6) When requested, the Division shall assist an aggrieved person needing help to complete the form.~~

~~(7) An aggrieved person may hire an attorney or representative. The attorney or representative shall comply with R512-75.~~

~~KEY: consumer hearing panel*, grievance procedures~~
~~October 1, 1997~~
~~Notice of Continuation November 14, 2000~~
~~62a-4a-102~~
~~63-46b-2~~
~~63-2-603~~]

Human Services, Child and Family Services
R512-75-1
Introductory Provisions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26466
FILED: 07/11/2003, 13:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section must be amended because of the passage of H.B. 5005 sponsored by Representative Matt Throckmorton during the 2002 Fifth Special Session. This act repealed the Consumer Hearing Panel which was not funded during the General Session for fiscal year 2003. (DAR NOTE: H.B. 5005 is found at UT L 2002, 5th Spec Sess Ch 6, and was effective July 23, 2002.)

SUMMARY OF THE RULE OR CHANGE: The amendment removes references to the Consumer Hearing Panel from the definitions in Subsections R512-75-1(ii) and (iv).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-4a-102 and 62A-4a-207

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Any savings to the state budget was recognized during the 2002 General Session when funding to the Consumer Hearing Panel was cut. There is no further anticipated cost or savings.
❖ LOCAL GOVERNMENTS: There is no cost to local government because this rule does not affect local government.
❖ OTHER PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vanessa Thompson at the above address, by phone at 801-538-9877, by FAX at 801-538-4016, or by Internet E-mail at vthompson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R512. Human Services, Child and Family Services.
R512-75. Rules Governing Adjudication of Consumer Complaints.
R512-75-1. Introductory Provisions.

(1) Authority and Purpose.

(a) This rule defines consumer complaint procedures in accordance with Subsection 62A-4a-102(4). These procedures are intended to provide for the prompt and equitable resolution of a consumer complaint filed in accordance with this rule.

(2) Definitions.

(a) The definitions contained in Section 63-46b-2 apply. In addition, the following terms are defined for the purposes of this section:

(i) "Absorbable within the Division's appropriation authority" means those expenditures that fall within the Division's budgetary parameters.[

~~(ii) "Panel Action" means all actions by the Consumer Hearing Panel that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all panel actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, and, judicial review of these actions.~~]

[~~(iii)~~](ii) "Aggrieved Person" means any person who is alleged to have been adversely affected by an act or omission of the Division or its employees.[

~~(iv) "Consumer Hearing Panel" or "Panel" means those persons appointed by the Board of Child and Family Services to adjudicate consumer complaints in accordance with Section 62A-4a-102.~~]

[~~(v)~~](iii) The "Department" means the Department of Human Services.

[~~(vi)~~](iv) The "Director" means the Director of the Division.

[~~(vii)~~](v) The "Division" means the Division of Child and Family Services of the Department of Human Services, including its regional offices.

[~~(viii)~~](vi) "Office of the Child Protection Ombudsman" means the office, separate from the Division of Child and Family Services, designated by the Department to investigate a consumer complaint regarding the Division of Child and Family Services.

[~~(ix)~~](vii) "Ombudsman" means the representative from the Office of the Child Protection Ombudsman designated to investigate a consumer complaint.

[~~(x)~~](viii) "Reasonable time" means the time specified in the action plan.

KEY: consumer hearing panel[~~s~~], grievance procedures
[~~September 18, 2001~~]2003
Notice of Continuation November 14, 2000
62A-4a-102
63-2-303
63-2-304
63-2-603
63-46b

Human Services, Child and Family Services

R512-75-3

Procedures for Filing an Informal Non-adjudicative Complaint With the Office of the Child Protection Ombudsman

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26464
FILED: 07/11/2003, 13:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section must be amended because of the passage of H.B. 5005 sponsored by Representative Matt Throckmorton during the 2002 Fifth Special Session. This act repealed the Consumer Hearing Panel which was not funded during the General Session for fiscal year 2003. (DAR NOTE: H.B. 5005 is found at UT L 2002, 5th Spec Sess Ch 6, and was effective July 23, 2002.)

SUMMARY OF THE RULE OR CHANGE: The amendment removes reference to the Consumer Hearing Panel from Section R512-75-3.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-4a-102 and 62A-4a-207

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Any savings to the state budget was recognized during the 2002 General Session when funding to the Consumer Hearing Panel was cut. There is no further anticipated cost or savings.
❖ LOCAL GOVERNMENTS: There is no cost to local government because this rule does not affect local government.
❖ OTHER PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vanessa Thompson at the above address, by phone at 801-538-9877, by FAX at 801-538-4016, or by Internet E-mail at vthompson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R512. Human Services, Child and Family Services.
R512-75. Rules Governing Adjudication of Consumer Complaints.
R512-75-3. Procedures for Filing an Informal Non-adjudicative Complaint With the Office of the Child Protection Ombudsman.

(1) An aggrieved person may file a complaint to decision rendered by a regional office to the Office of the Child Protection Ombudsman, or if the Division is unable to resolve the complaint, it shall be forwarded to the Office of Child Protection Ombudsman.[~~ If the complaining party is not satisfied with the response they may file a complaint with the Consumer Hearing Panel.~~]

(2) A complaint to the Office of the Child Protection Ombudsman shall be submitted in writing on a form provided by the Office of the Child Protection Ombudsman.

(3) If a consumer complaint indicates an immediate threat to the safety of a child, the Office of the Child Protection Ombudsman shall facilitate an immediate referral to Child Protective Services.

(4) If a consumer complaint indicates no immediate risk to the child, and if there has been no attempt to resolve the problem with the caseworker or the regional director, the complaint shall be referred back to the Division.

KEY: consumer hearing panel[~~s~~], grievance procedures
[~~September 18, 2001~~]2003
Notice of Continuation November 14, 2000
62A-4a-102
63-2-303

63-2-304
63-2-603
63-46b

Human Services, Child and Family Services
R512-75-5
Filing of a Consumer Complaint with the Panel without a Decision by the Office of Child Protection Ombudsman

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26462
FILED: 07/11/2003, 13:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section must be removed because of the passage of H.B. 5005 sponsored by Representative Matt Throckmorton during the 2002 Fifth Special Session. This act repealed the Consumer Hearing Panel which was not funded during the General Session for fiscal year 2003.

SUMMARY OF THE RULE OR CHANGE: Section R512-75-5 will be removed because of the passage of H.B. 5005 during the 2002 Fifth Special Session. The Consumer Hearing Panel was not funded for fiscal year 2003 and was repealed from statute after the 2002 Fifth Special Session. (DAR NOTE: H.B. 5005 is found at UT L 2002, 5th Spec Sess Ch 6, and was effective July 23, 2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-4a-102 and 62A-4a-207

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Any savings to the state budget was recognized during the 2002 General Session when funding to the Consumer Hearing Panel was cut. There is no further anticipated cost or savings.
❖ LOCAL GOVERNMENTS: There is no cost to local government because this rule does not affect local government.
❖ OTHER PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vanessa Thompson at the above address, by phone at 801-538-9877, by FAX at 801-538-4016, or by Internet E-mail at vthompson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R512. Human Services, Child and Family Services.
R512-75. Rules Governing Adjudication of Consumer Complaints.
[~~R512-75-5. Filing of a Consumer Complaint with the Panel without a Decision by the Office of the Child Protection Ombudsman.~~
~~(1) A consumer complaint received by the Consumer Hearing Panel that was not previously filed with the Office of the Child Protection Ombudsman shall be forwarded to the Ombudsman for investigation.~~
~~(2) The Office of the Child Protection Ombudsman may forward a consumer complaint to the Consumer Hearing Panel for resolution without having reached a decision on the complaint.~~
~~(3) A complaint filed with the Ombudsman that is not resolved within a reasonable amount of time, depending on the complexity of the complaint, from the date of the filing shall be forwarded to the Consumer Hearing Panel. The Office of Child Protection Ombudsman shall notify the aggrieved person in writing of the reason for the delay and the additional time needed to reach a decision.~~
~~(4) A complaint forwarded to the Consumer Hearing Panel without a decision by the Ombudsman shall be reviewed in the same manner as an appeal of an Ombudsman decision received directly from an aggrieved person.~~]

KEY: consumer hearing panel[~~*~~], grievance procedures
[~~September 18, 2001~~]2003
Notice of Continuation November 14, 2000
62A-4a-102
63-2-303
63-2-304
63-2-603
63-46b

Human Services, Child and Family Services

R512-75-6

Request for Panel Action and Appeal of an Ombudsman Decision to the Consumer Hearing Panel

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26461
FILED: 07/11/2003, 13:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section must be removed because of the passage of H.B. 5005 sponsored by Representative Matt Throckmorton during the 2002 Fifth Special Session. This act repealed the Consumer Hearing Panel which was not funded during the General Session for fiscal year 2003.

SUMMARY OF THE RULE OR CHANGE: Section R512-75-6 will be removed because of the passage of H.B. 5005 during the 2002 Fifth Special Session. The Consumer Hearing Panel was not funded for fiscal year 2003 and was repealed from statute after the 2002 Fifth Special Session. (DAR NOTE: H.B. 5005 is found at UT L 2002, 5th Spec Sess Ch 6, and was effective July 23, 2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-4a-102 and 62A-4a-207

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Any savings to the state budget was recognized during the 2002 General Session when funding to the Consumer Hearing Panel was cut. There is no further anticipated cost or savings.
❖ LOCAL GOVERNMENTS: There is no cost to local government because this rule does not affect local government.
❖ OTHER PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vanessa Thompson at the above address, by phone at 801-538-9877, by FAX at 801-538-4016, or by Internet E-mail at vthompson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R512. Human Services, Child and Family Services.
R512-75. Rules Governing Adjudication of Consumer Complaints.
[~~R512-75-6. Request for Panel Action and Appeal of an Ombudsman Decision to the Consumer Hearing Panel.~~

~~(1) Filing of an Appeal to the Consumer Hearing Panel.~~

~~(a) The aggrieved person may file the complaint with Consumer Hearing Panel by filing a request for panel action within 15 working days from receipt of the decision.~~

~~(b) The request shall be filed or documented in writing to the Consumer Hearing Panel. Information specified in R512-70-4(2) shall be included in the request. A form provided by the Division as described in R512-70-4(3) may be used, but shall not be mandatory as long as all required information is included.~~

~~(c) The filing of a request shall be an authorization by the aggrieved person for the Consumer Hearing Panel to review all information permitted by law, including information classified as private or controlled.~~

~~(d) The request shall describe in sufficient detail why the Ombudsman's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.~~

~~(e) An allegation specified in the complaint to the Panel may be amended by the aggrieved person or other complainant no less than 20 days prior to commencement of the hearing. The Consumer Hearing Panel shall request a response to the amended allegation from the regional office of the Division. The Division shall have ten days to submit a response to the Panel. Amendments made during or after a hearing may be made only with the permission of the Consumer Hearing Panel. The Panel shall permit liberal amendment of requests for panel action and filing of supplemental requests for panel action.~~

~~(f) An amendment or a supplemental request for panel action shall be filed in the same manner as an original request for panel action.~~

~~(g) A request for panel action or a supplemental request for panel action may be withdrawn by the aggrieved person prior to the issuance of a final order.~~

~~(h) The mailing specified in Subsection 63-46b-3(3) shall be performed by the Consumer Hearing Panel. In doing so, the panel shall assume that, pursuant to Subsection 63-46b-3(3)(b), the aggrieved person and the Division regional office are those having a "direct interest" in the requested panel action.~~

~~(2) Investigation and Rendering of a Decision by the Consumer Hearing Panel.~~

~~(a) On an appeal from the Ombudsman, the Consumer Hearing Panel shall review the factual findings of the investigation and the aggrieved person's statement regarding the inappropriateness of the Ombudsman's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted, if necessary, to clarify questions of fact before making any decision not absorbable within the Division's appropriation authority.~~

~~(b) The Consumer Hearing Panel shall issue a written decision within 20 working days after receiving the appeal or concluding the hearing process.~~

~~(c) If the Consumer Hearing Panel is unable to reach a decision within 20 working days, the aggrieved person shall be notified in writing of the reason for the delay and the additional time needed to reach a decision.~~

~~(3) Classification of Proceeding for Purpose of Utah Administrative Procedures Act.~~

~~(a) Any meetings, hearings, or conference proceedings held by the Panel shall be considered adjudicative proceedings and shall be informal in accordance with Sections 63-46b-4 and 63-46b-5.~~

~~(4) Availability of Hearings Before the Panel.~~

~~(a) A hearing shall be held if the aggrieved person requests a hearing within the time frame specified in R512-75-6(1)(a).~~

~~(5) Hearing before the Panel.~~

~~(a) A hearing shall be held only after notice to all parties at least five working days in advance.~~

~~(b) The Panel may issue subpoenas or other orders to compel production of necessary evidence and the appearance of witnesses.~~

~~(c) All parties shall have access to information contained in the Division's files and to all materials and information gathered in any investigation, to the extent permitted by GRAMA.~~

~~(d) All hearings shall be open to the parties.~~

~~(e) Within a reasonable time after the close of an informal adjudicative proceeding, the Consumer Hearing Panel shall issue a signed order in writing that states its:~~

~~(i) findings of fact;~~

~~(ii) conclusions;~~

~~(iii) decision;~~

~~(iv) a notice of any right of administrative or judicial review available to the parties; and~~

~~(v) the time limits for filing a petition for judicial review.~~

~~(f) The Panel's order shall formulate its factual findings based on the evidence before the Panel.~~

~~(g) The Panel shall have authority to add to a client record in accordance with Section 63-2-603 of the Government Records Management Act (GRAMA).~~

~~(h) A copy of the Consumer Hearing Panel's order shall be promptly mailed to each of the parties.~~

~~(i) The Panel shall record all hearings.~~

~~(j) Any party, at his own expense, may have a reporter approved by the Panel prepare a transcript from the Panel's record of the hearing.~~

~~(6) Classification of Records.~~

~~(a) The record of each complaint filed with the Division and each appeal to the Consumer Hearing Panel, and all written records produced or received as part of such proceedings, shall be classified as protected as defined under Section 63-2-304 until the Ombudsman or Consumer Hearing Panel issues the decision, at which time any portions of the records which pertains to an individual's medical condition shall be classified as controlled as defined under Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. The Panel may release reports of Panel findings and decisions in a format suitable for public release that does not identify specific individuals and does not include controlled, protected, or private information.~~

~~(7) Agency Review.~~

~~(a) Agency review shall not be allowed. Nothing contained in this rule prohibits a party from filing a petition for reconsideration pursuant to Section 63-46b-13.~~]

KEY: consumer hearing panel[~~*~~], grievance procedures
[~~September 18, 2001~~]2003
Notice of Continuation November 14, 2000
62A-4a-102
63-2-303
63-2-304
63-2-603
63-46b

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Human Services, Child and Family Services

R512-75-7

Compliance with Recommendations of the Consumer Hearing Panel

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26485
FILED: 07/15/2003, 12:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section must be removed because of the passage of H.B. 5005 sponsored by Representative Matt Throckmorton during the 2002 Fifth Special Session. This act repealed the Consumer Hearing Panel which was not funded during the General Session for fiscal year 2003.

SUMMARY OF THE RULE OR CHANGE: Section R512-75-7 will be removed because of the passage of H.B. 5005 during the 2002 Fifth Special Session. The Consumer Hearing Panel was not funded for fiscal year 2003 and was repealed from statute after the 2002 Fifth Special Session. (DAR NOTE: H.B. 5005 is found at UT L 2002, 5th Spec Sess Ch 6, and was effective July 23, 2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-4a-102 and 62A-4a-207

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Any savings to the state budget was recognized during the 2002 General Session when funding to the Consumer Hearing Panel was cut. There is no further anticipated cost or savings.

❖ LOCAL GOVERNMENTS: There is no cost to local government because this rule does not apply to local government.

❖ OTHER PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings

of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vanessa Thompson at the above address, by phone at 801-538-9877, by FAX at 801-538-4016, or by Internet E-mail at vthompson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R512. Human Services, Child and Family Services.
R512-75. Rules Governing Adjudication of Consumer Complaints.
[~~R512-75-7. Compliance with Recommendations of the Consumer Hearing Panel.~~

~~The Division shall have no longer than 60 calendar days to implement the recommendations of the Consumer Hearing Panel and provide documentation of compliance. Failure to do so may result in an order to the Division to show cause why the Division should not be held in contempt for failing to comply with the recommendations of the Panel. If the Division cannot implement the recommendations within 60 days a status report and implementation plan must be submitted to the panel before the expiration 60 days.~~]

KEY: consumer hearing panel[~~*~~], grievance procedures
[~~September 18, 2001~~]2003
Notice of Continuation November 14, 2000
62A-4a-102
63-2-303
63-2-304
63-2-603
63-46b

▼ ▼

Human Services, Child and Family Services

R512-75-8

Judicial Review of a Decision by the Consumer Hearing Panel

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26463
FILED: 07/11/2003, 13:36

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section must be removed because of the passage of H.B. 5005 sponsored by Representative Matt Throckmorton during the 2002 Fifth Special Session. This act repealed the Consumer Hearing Panel which was not funded during the General Session for fiscal year 2003.

SUMMARY OF THE RULE OR CHANGE: Section R512-75-6 will be removed because of the passage of H.B. 5005 during the 2002 Fifth Special Session. The Consumer Hearing Panel was not funded for fiscal year 2003 and was repealed from statute after the 2002 Fifth Special Session. (DAR NOTE: H.B. 5005 is found at UT L 2002, 5th Spec Sess Ch 6, and was effective July 23, 2002.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-4a-102 and 62A-4a-207

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Any savings to the state budget was recognized during the 2002 General Session when funding to the Consumer Hearing Panel was cut. There is no further anticipated cost or savings.
❖ LOCAL GOVERNMENTS: There is no cost to local government because this rule does not affect local government.
❖ OTHER PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Complainants to the Office of the Child Protection Ombudsman who are not satisfied with the findings of that office will no longer be able to appeal to the Consumer Hearing Panel. They may incur the cost of retaining their own counsel to represent them at an administrative hearing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES

Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vanessa Thompson at the above address, by phone at 801-538-9877, by FAX at 801-538-4016, or by Internet E-mail at vthompson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R512. Human Services, Child and Family Services.
R512-75. Rules Governing Adjudication of Consumer Complaints.
[~~R512-75-8. Judicial Review of a Decision by the Consumer Hearing Panel.~~
~~(1) An aggrieved person may seek judicial review of a Panel decision in accordance with Section 63-46b-14.~~]

KEY: consumer hearing panel[~~*~~], grievance procedures
[~~September 18, 2001~~]2003
Notice of Continuation November 14, 2000
62A-4a-102
63-2-303
63-2-304
63-2-603
63-46b

▼ ▼

Human Services, Child and Family Services
R512-100
Home Based Services

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26471
FILED: 07/14/2003, 14:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of Home Based Services is to allow children at risk to remain safely in their own home, and provide services to facilitate the return home of children who have been placed in the custody of the Division.

SUMMARY OF THE RULE OR CHANGE: Home Based Services provide case management, skills development, family education, counseling, and therapy for children in the custody of the Division in their own home.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-105

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Home Based Services are provided within the current Division budget.
❖ LOCAL GOVERNMENTS: Local health and mental health agencies may provide some services to families and children receiving home based services, but these services are already a part of local government budgets and should not impose any additional costs.
❖ OTHER PERSONS: Only individuals receiving home based services are affected. There will be no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Families and children receiving home based services may have additional compliance costs if a court orders counseling, mental health services, medical services, substance abuse services, or other services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Families and children receive home based services not businesses. There should be no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/29/2003 at 9:00 AM, Department of Human Services, 120 North 200 West, Room 129, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Richard Anderson, Director

R512-100. Human Services, Child and Family Services.
R512-100. Home Based Services.
R512-100-1. Authority and Purpose.
A. The purpose of Home Based Services is to provide services to allow children at risk to remain safely in their own home, and provide services to facilitate the return home of children who have been placed in the custody of the Division (DCFS).

B. The components of Home Based Intervention include:
1. Case Management,
2. Skills Development and Family Education,
3. Counseling/Therapy,
4. Home visits: The DCFS worker will visit with the child and family a minimum of one time per month.
5. Private conversation with one or more of the child(ren) if the child(ren) has(have) been substantiated as a victim of abuse or neglect.

C. Pursuant to Section 62A-4a-105 the Division is authorized to provide Home Based Services.

R512-100-2. Definitions.

A. Child and Family Plan is based on the assessment of the child and family's strengths and needs which will enable them to work toward their goals.

B. Child and Family Team: A group that meets together as often as needed and works to support the family and assist them in meeting their needs. This may include the referent or other concerned individuals identified by the family as support persons.

C. Functional Assessment defines the child and family's strengths and needs and provides the framework from which to access appropriate services. Evaluate progress toward goals and adjust plans and interventions accordingly.

R512-100-3. Qualification.

A. Home Based services may be provided to children who are potentially at risk of abuse and neglect and their families. The family must agree to work voluntarily with Child and Family Services with regard to Early Intervention services.

B. Requests for Home Based Services will be evaluated as soon as possible after receiving the request. The initial level of intensity will be decided also and is assigned at the discretion of DCFS. Acceptance may be based on any of the following criteria:
1. the ongoing risk of abuse/neglect of a child,
2. the minimal or no risk of removal of the child from his/her home,
3. the past history of abuse/neglect of a child,
4. the family's willingness to accept Home Based Services,
5. the need for ongoing monitoring by DCFS.

C. DCFS will have the discretion to determine whether a request for Home Based DCFS Services is accepted unless those services are court-ordered. Home Based Services are appropriate when any of the following conditions exist:
1. a child has experienced abuse or neglect but can remain safely in the home;
2. when a child is returned home from out of home care;
3. when an adoptive placement may disrupt or dissolve and intensive services are needed to maintain the family in the adoptive home; or
4. when reunification is likely within 14 days and intensive support is needed to prepare for and facilitate the reunification.

D. A child and family will not be accepted for Home Based Services if all of the following conditions are present:
1. a family has the ability to access resources, supports and services on their own,
2. there is minimal risk or no of abuse/neglect to the child; and the family does not require ongoing services.

E. The family will be asked to sign a consent for services after the case is opened by a DCFS worker and prior to the time services begin.

F. If the DCFS response to a request is that the family needs Home Based Services but the family refuses to accept these services and the child is determined to be at risk of abuse/neglect, by the evidence from the initial assessment, safety/risk assessments or by observation by the Home Based Worker, the DCFS worker will screen the case with an Assistant Attorney General and will consider filing a petition for court-ordered services.

G. The family and the referent will be contacted and informed of the decision to provide or not to provide Home Based Services. Notification may be verbal or written and will be documented in the file.

H. If a request for Home Based Services is denied, the reasons for denial of Home Based Services will be documented and explained to the referent and family. The worker will provide suggestions to the family for other resources, supports and services to meet the family's needs. Referral resources will also be recorded in the closing summary.

R512-100-5. Service Delivery.

A. A Child and Family Team will be developed or strengthened for every family receiving Home Based Services.

B. Ongoing Child and Family Team meetings will be held for every family receiving Home Based Services to ensure safety of the child and appropriateness and quality of services provided to the family. Child and Family Team Meetings must be held at least once every six months to track and adapt the plan.

C. Ongoing Child and Family Team Meetings for Home Based services will include, but are not limited to, the following:
1. .Initial Child and Family Team Meeting which will be held for each Home Based Services case to establish case intensity and to discuss options for service provision.
2. Transition Child and Family Team Meeting may be held prior to the family's transition from services with the following goals:
a. assess safety of and ongoing risk to the child;
b. identify continuing and additional service needs ; and
c. assess the family's ability to meet their own needs and access services without further DCFS involvement.

D. A functional assessment will be updated as new information is obtained for each child and family receiving Home Based Services, and prior to the development of the Child and Family Plan.

E. A Child and Family Plan will be developed for each family receiving Home Based Services. The plan will be developed by the Child and Family Team and will have the goal of identifying avenues through which the family can establish and meet their needs.

F. Child and Family plans will be reviewed at a minimum every three months and updated as needed. The worker will request information from Child and Family Team members when reviewing, tracking and adapting the Child and Family Plan.

G. The child and family plan will be complete when the worker, their supervisor and the child and family team have agreed to the plan and it is finalized in SAFE. Signatures will be obtained as soon as possible after the plan is finalized in SAFE. If a family member refuses to sign the plan, the worker will document that family member's reasons for refusal.

H. The worker will provide a copy of the Child and Family Plan to the family, other Child and Family Team members and, if services are court ordered, to the attorney general, guardian ad litem and the court.

I. When Home Based Services are court ordered, it is the responsibility of DCFS to determine the level of intensity of the services to be provided to the family unless a court order specifically sets a level of intensity.

J. If services are court ordered but the assessment indicates that Home Based Services are not appropriate, the DCFS worker will contact the assistant attorney general and guardian ad litem, explain the situation and request a petition be filed with the court to terminate services.

K. The family and referent must be informed of the results of a functional assessment when the Home Based worker has concluded that Home Based Services are inappropriate and is recommending that those services should be terminated. If needs have been identified that could not be met by other means then other service options should be explored with the family prior to ending services with the family.

L. When determining the level of service intensity, the DCFS worker will consider the following factors:

1. The degree of risk to the child;.
2. the extent of services to be provided;
3. The needed frequency and duration of contacts with the family;
4. The amount of time needed for case management activities;
5. If a clinical service is needed; and
6. The family's schedule.

M. The intensity of service may change during the course of Home Based Services. A change in intensity level does not require termination of service or starting a new service and does not require a worker change.

N. The needs of the child and family and the intensity of the service will determine the frequency of home visits to the child and family. The worker, or another member of the team will contact the child/family at a minimum, once monthly. Contact may include a Home or Community Visit. If a team member other than the identified DCFS targeted case manager contacts the family, they will report the nature and outcome of the visit to the case manager.

O. Unannounced visits are permissible and the likelihood of such visits should be explained to the family.

R512-100-6. Duration of Services.

A. Early intervention services may last for 30 to 90 days, or, if determined by the worker, supervisor and the child and family team to be necessary, may be extended as long as the family needs to reduce risks and develop or strengthen a support system separate from Child and Family Services.

B. Intensive services will be provided for a period of 60 to 90 days. If intensive services beyond the 60 to 90 days are in the best interest of the child and family, the supervisor or designee may approve an extension. The reasons for the extension must be documented and include specific desired results and treatment methods.

R512-100-7. Termination of Services.

A. If the initial functional assessment indicates that Home Based Services are not appropriate, services may be terminated (unless court ordered) without development of a Child and Family Plan. Termination will occur prior to the due date of the Child and Family Plan.

B. When it is determined that services will no longer be provided, a final progress summary will be completed, including the reason for closure.

C. If there are two DCFS workers assigned to the case, the workers will collaborate prior to making a decision to remove the child from the home, unless the removal is due to an emergency.

D. If a child needs to be removed from the home in which the child's family is receiving Home Based Services, the Home Based Services worker will follow the requirement specified in Rule R512-200, obtaining a warrant, motion hearing, or if appropriate circumstances exist, will remove without a warrant.

E. A consultation is required prior to the removal of the child and will include the Home Based Services supervisor, a DCFS Child Protective Services (CPS) supervisor or a CPS worker. The Home Based worker should also consult with the guardian ad litem and assistant attorney general.

R512-100-8. Documentation.

A. If Domestic Violence (DV) is identified through the provision of the service where it wasn't before, the worker will document the completion of the following:

1. staff with supervisor and/or DV specialist/or community specialist; and
2. conduct assessment alone with the victim or see that a domestic violence or
3. community specialist conducts an assessment.
4. complete Risk of Danger form;
5. create Safety Plan; and
6. interview child and assess.

KEY: child welfare
2003
62A-4a-105

Human Services, Child and Family Services
R512-200
Child Protective Services, Intake Services

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26478
FILED: 07/14/2003, 14:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of Intake Services is to receive, evaluate, and assign for investigation, referrals of suspected child abuse, neglect, and dependency.

SUMMARY OF THE RULE OR CHANGE: The Division will maintain a system for receiving referrals or reports about child abuse, neglect, or dependency when there is reasonable cause to believe that abuse, neglect, or dependency occurred. The system shall supply Child Protective Services workers with a complete history for each child, including siblings, foster care episodes, all reports of abuse, neglect, or dependency, treatment plans, and casework deadlines.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-105

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Intake Services will be provided within the current Division budget.
❖ LOCAL GOVERNMENTS: Local law enforcement agencies sometimes assist with investigation of child abuse or neglect. These investigation are already a part of law enforcement agency budgets and do not impose an additional cost on local governments.
❖ OTHER PERSONS: Only person directly involved in child abuse or neglect investigations are effected. There will be no cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals who are the subject of an investigation for child abuse or neglect may elect to retain legal counsel to represent their interests. There may also be the compliance cost of court ordered counseling, mental health services, medical services, substance abuse services or other services as the result of an investigation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Child abuse or neglect investigations impact individuals not businesses. There should be no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/29/2003 at 9:00 AM, 1385 South State Street, Room 157A, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.
R512-200. Child Protective Services, Intake Services.
R512-200-1. Authority and Purpose.
A. The purpose of Intake Services is:
1. to receive and evaluate whether an investigation is needed;
2. assign for investigation, referrals of suspected child abuse, neglect, and dependency.
B. Pursuant to Section 62A-4a-105 and 62A-4a-403, the Division of Child and Family Services (DCFS) is authorized to provide child protective services.

R512-200-2. Definitions.
A. The following terms are defined for the purposes of this rule:
1. SAFE: DCFS' Child Welfare Management Information System.

R512-200-3. Scope of Services.
A. Qualification for Services.
1. DCFS will maintain a system for receiving referrals or reports about child abuse, neglect, or dependency. The system shall supply DCFS Child Protective Services (CPS) workers with a complete previous Division history for each child, including siblings, foster care episodes, all reports of abuse, neglect, or dependency, treatment plans, and casework deadlines.
B. Priority of the referral.
1. The Division establishes CPS priority time frames as follows:
a. A Priority 1 response shall be assigned when the child referred is in need of immediate protection. Intake will begin to collect information immediately after the completion of the initial contact from the referent. As soon as possible thereafter intake will obtain additional information, staff the referral to determine the priority, notify law enforcement, and assign to the DCFS CPS worker. Intake shall provide the DCFS CPS worker with information concerning prior investigations on SAFE. The DCFS CPS worker has as a standard of 60 minutes from the time Intake notifies the worker to initiate efforts to make face-to-face contact with an alleged victim. For a Priority 1R (rural) referral, a DCFS CPS worker has, as a standard, three hours to initiate efforts to make face to face contact if the alleged victim is more than 40 miles from the investigator who is assigned to make the face-to-face contact.
b. A Priority 2 response shall be assigned when physical evidence is at risk of being lost or the child is at risk of further abuse, neglect, or dependency, but the child does not have immediate protection and safety needs, as determined by the Intake checklist. Intake will begin to collect information as soon as possible after the completion of the initial contact from the referent. As soon as possible Intake will obtain additional information, staff the referral to determine the priority, assign the referral to the DCFS CPS worker, and notify law enforcement. Intake shall give verbal notification to the assigned DCFS CPS worker. Intake shall also provide the DCFS CPS worker with information concerning prior investigations on SAFE. The DCFS CPS worker has, as a standard, 24 hours from the time Intake notifies the worker to initiate efforts to make face-to-face contact with the alleged victim. Notification of a Priority 2 referral received after normal working hours (8:00 a.m. through 5:00 p.m.) shall occur as early as possible following morning.
c. A Priority 3 response shall be assigned when potential for further harm to the child and the loss of physical evidence is low. Prior to transferring the case to a CPS Intake worker will obtain additional information, research data sources, staff the referral as necessary, determine the priority, complete documentation including data entry, make disposition to CPS, and notify law enforcement. Intake shall also provide the DCFS CPS worker with information

concerning prior investigations on SAFE. The DCFS CPS worker will make the face-to-face contact with the alleged victim within a reasonable period of time.

d. A Priority 4 response shall be assigned when one or more of the following apply and there are no safety or protection issues identified:

1. A juvenile court or district court orders an investigation where there are no specific allegations of abuse, neglect, or dependency (unless otherwise ordered by the court).

2. There is an alleged out-of-home perpetrator (an alleged perpetrator who does not reside with or have access to the child) and there is no danger that critical evidence will be lost.

3. An agency outside the state of Utah requests a courtesy investigation, and the circumstances in the case do not meet the definition of a priority 1, 1R, 2, or 3.

C. Out-of-State Abuse or Neglect Report.

1. DCFS will take reasonable steps to ensure that reports of abuse or neglect are referred for investigation to the appropriate out-of-state agency and shall take reasonable steps to adequately protect children in Utah who were victims of abuse in another state or country from the alleged perpetrator.

2. When the referent identifies an incident of abuse or neglect that occurred outside Utah but the child is in Utah at the time of the referral, the DCFS CPS worker shall:

a. Obtain all the information needed to complete a referral.

b. Determine whether the child is at risk of abuse or neglect from the alleged perpetrator.

c. Contact the child protective service agency in the state where the incident of abuse occurred and complete the referral process of that state.

d. Assign the referral to a DCFS CPS worker for a courtesy interview and coordination with the other state's investigation, when requested.

e. In domestic violence related child abuse cases, recognize another state's protective order.

f. If the other state refuses to open an investigation or the investigation is contrary to the evidence acquired in Utah, the referral shall be assigned to a DCFS CPS worker for investigation. The DCFS CPS worker completing the investigation shall review the case with the Attorney General's Office for assistance with jurisdictional issues.

D. When a referent identifies an incident of abuse or neglect that occurred in Utah, and the child is not in Utah at the time of the referral, the Intake worker shall:

1. Obtain all the information needed to complete a referral.

2. Determine the location of the child and the length of time the child will be at their current location. If the child will be outside the state of Utah longer than 30 days, a request for courtesy casework will be made in the state where the child is currently located.

3. If the child is determined to be at risk, a request will be made for courtesy casework within the priority time frame.

E. The Department of Health Child Care Licensing unit and/or the DHS Office of Licensing and appropriate DCFS staff shall be notified by Intake when DCFS receives a referral for an allegation of child abuse, neglect, or dependency against a licensed child care provider or out-of-home care provider. The referral shall be forwarded to the contracted entity for conflict of interest investigations when the allegation involves a child living in substitute care while in protective custody or temporary custody of DCFS, or any other DCFS conflict of interest.

F. Availability.

1. CPS Services are available in all geographic regions of the state.

KEY: social services, child welfare, domestic violence, child abuse
2003
62A-4a-105

▼ ▼

Human Services, Child and Family Services
R512-201
Child Protective Services, Investigation Services

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26472
FILED: 07/14/2003, 14:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide investigation services for reported incidents of child abuse, neglect, and dependency.

SUMMARY OF THE RULE OR CHANGE: Protection and safety of children are promoted through completing accurate and timely investigations and assessments which determine the capability, willingness, and availability of resources for achieving safety, permanence, and well-being for the children. The Child Protective Services worker shall assess protection, risk, and safety needs of a child; the family strengths, needs, challenges, capacity, and willingness of the family to provide for and protect the child; and determine appropriate services.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-105

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Investigation services will be provided within the current Division budget.

❖ LOCAL GOVERNMENTS: Local law enforcement agencies sometimes assist with investigations of child abuse or neglect. These investigations are already a part of law enforcement agency budgets and should not impose any additional cost or savings.

❖ OTHER PERSONS: Only individuals involved in child abuse or neglect investigations are affected. There should be no cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals who are the subject of an investigation for child abuse or neglect may elect to retain legal counsel to represent their interests. There may also be the compliance cost of court ordered counseling, mental health services, medical services,

substance abuse services, or other services as the result of an investigation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Child abuse or neglect investigations impact individuals not businesses. There should be no fiscal impact on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/29/2003 at 9:00 AM, Department of Human Services Building, 120 North 200 West, Room 129, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.
R512-201. Child Protective Services, Investigation Services.
R512-201-1. Authority and Purpose.

A. Purpose. Promoting protection, Child Protective Services, and safety of children by: accurate and timely investigations; and

1. assessments which determine the capability, willingness, and the availability of resources for achieving safety, permanence and well-being for the children. The DCFS CPS worker shall assess protection, risk, and safety needs of a child, the families strengths, needs, and challenges, capacity and willingness of the family to provide for and protect the child, and determine appropriate services.

2. Authority. Pursuant to Sections 62A-4a-105 and 62A-4a-202.3, the Division of Child and Family Services (DCFS) is authorized to provide child protective services.

R512-201-2. Definitions.

A. Immediate Protection and Safety Assessment: An organized protocol whereby DCFS or another agency gathers information to identify the strengths and challenges and other factors of the family members that may contribute to safety or risk issues of a child who may be an alleged victim of abuse, neglect, or dependency.

R512-201-3. Qualifications.

A. Children who are the subject of a referral for child abuse, neglect, or dependency qualify for investigation services, as described in Section 62A-4a-403 and DHS Rule, R512-200, Child Protective Services, Intake Services.

R512-201-4. Scope of Services.

A. A CPS investigation shall include (but is not limited to) the following:

B. Immediate Protection and Safety Assessment for the Child

The DCFS CPS worker shall assess the immediate protection safety needs of a child and the family's capacity to protect the child. The DCFS CPS worker shall include a domestic violence assessment.

C. CPS Investigation and Assessment. In addition to the requirements of Sections 62A-4a-202.3 and 62A-4a-409, a CPS investigation may include, but is not limited to, the following:

1. Assessment of immediate risk, safety, and protection needs of a child to include an assessment of risk, that an absent parent or cohabitant may pose to the child.

2. assessment of risk, protection, and safety needs for any siblings or other children residing in the home as sibling or child at risk. Complete the team consultation of each case.

3. Assessment of the family's strengths, needs, challenges, limitations, struggles, ability, and willingness to protect the child.

4. Determination of eligibility for enrollment or membership in a Native American tribe.

5. Medical or mental health evaluations completed as required by statute within required time frames to negate or lesson the possibility of physical injury, severe physical abuse, medical neglect, exposure to a hazardous, illegal chemical environment, or recent sexual abuse.

C. Availability.

1. CPS Services are available in all geographic regions of the state.

2 Transfer of a Case When a Child has Moved Out of the State of Utah. DCFS regional and inter-regional offices will cooperate to ensure that a CPS investigation is not interrupted and children are not placed in danger when the child has moved out of the state.

3. If the child and family move outside the state of Utah before the DCFS CPS worker is able to make the face-to-face contact with the child and the new location of the child and family is known, the DCFS CPS worker shall contact the state child welfare agency where the family has moved and request courtesy casework. If the state child welfare agency where the family has moved refuses to complete courtesy casework, the case shall be closed as "unable to locate." If the receiving state child welfare agency agrees to complete the courtesy casework, the DCFS CPS worker shall make the appropriate finding based on information from the receiving state.

4. If the child and family move outside the state of Utah after the DCFS CPS worker has made the face-to-face contact with the alleged victim and the whereabouts of the child and family are known, the DCFS CPS worker who began the investigation shall contact the state child welfare agency where the family has moved and shall make a request for courtesy casework referral, providing the information that was obtained in the investigation. The case shall be closed as "unable to complete investigation" unless the

information obtained meets the standard of "reasonable cause to believe" that the abuse, neglect, or dependency occurred. If a finding of "supported" is made against one or both of the parents/caregivers, upon case closure a Notice of Agency Action shall be sent to the address of family in their current state of residence.

a. If the facts of the investigation establish reason to suspect the child is in imminent danger, CPS shall make appropriate referrals to CPS and law enforcement in the other state and screen the case with the Assistant Attorney General for legal action.

5. If the child and family move out of the state of Utah after the DCFS CPS worker has made the face-to-face contact with the alleged victim and the whereabouts of the child and family are unknown, the DCFS CPS worker shall make reasonable efforts to locate the family in order to make a referral to request courtesy casework from the state child welfare agency where the family now resides. Reasonable efforts include (but are not limited to) contacting the post office for a forwarding address and checking with the school to obtain the address where records are being transferred when there is a school-age child in the home.

6. Transfer of a Case When a Child has Moved Within the State of Utah. Regional and inter-regional offices will cooperate to ensure that a CPS investigation is not interrupted and children are not placed in danger when the child who is the subject of the investigation has moved within the state of Utah.

7. Request for Courtesy Casework. A DCFS CPS worker may request courtesy assistance for completion of specific investigative activities on an open CPS case when the child or other related individual is not accessible to the assigned DCFS CPS worker.

8. Courtesy Casework Request from Another State. A DCFS CPS worker shall assist in the protection and supervision of a child under the jurisdiction of another state.

C. Duration of Services.

1. Unable to Locate Within the State of Utah. A DCFS CPS worker shall not close an investigation solely on the grounds that the child could not be located until reasonable efforts have been made by the caseworker to locate the child and family members.

2. Case Finding. At the conclusion of a CPS investigation, a finding shall be made for each allegation identified at the time of Intake or identified during the investigation. Each alleged victim in the case shall be linked to a specific allegation or allegations and to an alleged perpetrator or alleged perpetrators. Acceptable findings include:

a. Supported. A case finding of supported shall be used when there is a reasonable basis to conclude that abuse, neglect, or dependency occurred, even if the alleged perpetrator is unknown.

b. Unsupported. A case finding of unsupported/not accepted shall be used when there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

c. Without Merit. A case finding of without merit shall be used when there is evidence that abuse, neglect, or dependency did not occur.

d. Unable to Locate. A case finding of unable to locate shall be used when the DCFS CPS worker was unable to complete face-to-face contact with the alleged victim and all reasonable efforts were made to locate the child and family members.

e. Child and Family Assessment (in approved pilot region offices). A case finding of child and family assessment in approved pilot region offices shall be used when the case is converted from a CPS investigation to a family assessment.

f. Unable to Complete Investigation. A case finding of unable to complete investigation shall be used when the caseworker is unable to complete the investigation because the subject of the investigation has moved out of the state or similar reason.

KEY: social services, child welfare, domestic violence, child abuse
2003
62A-4a-105

Human Services, Child and Family Services
R512-202
Child Protective Services, General Allegation Categories

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26480
FILED: 07/15/2003, 11:14

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes Allegation Categories used in Child Protective Services Investigations.

SUMMARY OF THE RULE OR CHANGE: This rule established the allegation categories used by Division workers to categorize the information received on suspected child abuse, neglect, and dependency incidents.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-105

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: All services that use Allegation Categories will be provided within the current Division budget.

❖ LOCAL GOVERNMENTS: Local law enforcement agencies sometimes assist with investigations of child abuse or neglect. These investigations are already a part of law enforcement agency budgets and do not impose an additional cost on local governments.

❖ OTHER PERSONS: Only persons directly involved in child abuse or neglect investigations are effected. There will be no cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals who are the subject of an investigation for child abuse or neglect may elect to retain legal counsel to represent their interests. There may also be the compliance cost of court ordered counseling, mental health services, medical services, substance abuse, or other services as the result of an investigation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Child abuse or neglect investigations impact individuals not businesses. There should be no fiscal impact on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/29/2003 at 9:00 AM, 1385 South State Street, Room 157A, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.
R512-202. Child Protective Services, General Allegation Categories.
R512-202-1. Authority and Purpose.

A. Pursuant to Section 62A-4a-105, the Division of Child and Family Services (DCFS) is authorized to provide Child Protective Services (CPS).

R512-202-2 Categories.

A. Qualification for Services. Referral and Investigation Allegation Categories for Abuse Neglect and Dependency. The Division worker receiving or investigating a report of child abuse, neglect, or dependency shall categorize the information into an allegation category. Severe and chronic categories of abuse and neglect are found in Sections 62A-4a-101 and 62A-4a-116.1. This rule contains the allegation categories that are not severe or chronic.

Abuse:

1. Child endangerment:

a. Driving under the influence with children in the vehicle;

b. Homes where there are lab paraphernalia, chemicals for manufacturing illegal drugs, access to illegal drugs, distribution of illegal drugs in the presence of a child, or loaded weapons within the reach of the child, or exposure to pornography;

c. Giving children illegal drugs or substances, alcohol, tobacco or non-prescribed/not recommended medications for that child;

d. Involving a child in the commission of crimes, such as shoplifting;

e. Other circumstances endangering a child.

2. Domestic Violence Related Child Abuse:

a. Potential for or actual injury to a child during a domestic violence episode;

b. Violent physical and/or verbal altercation between adults, in the presence a child.

3. Emotional abuse:

a. General emotional abuse, such as a pattern or severe isolated incident of:

i. Demeaning or derogatory remarks about the child or other family member in the presence of the child;

ii. Perception of or actual threatened harm;

iii. Corrupting or exploiting the child;

iv. Multiple false reports to CPS;

v. Terrorizing;

vi. Spurning (hostile rejecting);

vii. Denying emotional responsiveness;

viii. Isolating.

4. Material harmful to a child.

5. Physical abuse:

a. Physical abuse, general, excluding any physical abuse as defined herein, including (but not limited to):

i. Non-accidental injury to a child that may or may not be visible;

ii. Unexplained injuries to an infant or toddler;

iii. Unexplained injuries to a disabled or non-verbal child.

6. Fetal exposure to alcohol or other substances.

7. Fetal addiction to alcohol or other harmful substances.

8. Pediatric Condition Falsification (formerly known as Munchausen Syndrome by Proxy).

B Neglect:

1. Medical neglect. This allegation or finding needs to based on the opinion of the child's primary care physician or other licensed medical professional. A parent or guardian may obtain a second opinion to be considered in determining medical neglect, at their own expense. A parent or guardian may obtain a second medical opinion to present for consideration by DCFS, but DCFS is not bound by the opinion and shall consider the totality of the facts.

2. Baby Doe (congenital birth defect that parents or caregiver declines to treat).

3. Failure to thrive, based on the opinion of the child's primary care physician or other licensed medical professional.

4. Neglect of child's physical health.

5. Neglect of child's psychological health.

6. Neglect of child's dental health.

7. Pediatric Condition Falsification (formerly known as: Munchausen Syndrome by Proxy).

8. Physical neglect.

9. Sibling or child at risk.

10. Educational neglect occurs when a child has been frequently absent from school without good cause or that the parent has failed to cooperate with school authorities in a reasonable manner, Sections 62A-4a-101(14)(a)(iv), 62A-4a-101(14)(b), and 78-3a-316.

11. Failure to protect.

12. Non-supervision.

13. Abandonment.

14. Environmental neglect. Physical neglect of the environment such as absence of utilities, home conditions below minimum standards, hazards, etc.

15. Dependency. A child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian. Institutionalization of a parent or guardian who has not or cannot arrange for safe and appropriate care for the child.

C. Court ordered investigation. When a court orders an investigation on a case when the allegation is not one of the categories listed in this rule, the allegation category is court ordered.

D. Availability.

1. CPS Services are available in all geographic regions of the state.

KEY: social services, child welfare, domestic violence, child abuse
2003
62A-4a-105

Human Services, Child and Family Services
R512-300
Out of Home Services

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26473
FILED: 07/14/2003, 14:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of Out of Home Services is to provide a temporary, safe living arrangement for a child placed in the custody of the Division or Department by court order or through voluntary placement by the child's parent or guardian.

SUMMARY OF THE RULE OR CHANGE: Out of Home Services provide safe and proper care of children in the custody of the Division.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-105

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Out of Home Services will be provided within the current Division budget. There should be no additional cost or savings.

❖ LOCAL GOVERNMENTS: Local health and mental health agencies may provide some services to children receiving out of home services. These services are already a part of local government budgets and should not impose any additional costs.

❖ OTHER PERSONS: Only individuals receiving out of home services are effected. There should be no cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Families whose children are receiving out of home services may have compliance costs if ordered by a court to pay for counseling, mental health services, medical services, substance abuse services, or other services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Out of home services effect individuals not businesses. There should be no fiscal impact on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/29/2003 at 9:00 AM, 1385 South State Street, Room 157A, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.
R512-300. Out of Home Services.
R512-300-1. Purpose and Authority.

A. The purposes of Out of Home Services are:

1. To provide a temporary, safe living arrangement for a child placed in the custody of the Division or Department by court order or through voluntary placement by the child's parent or legal guardian.

2. To provide services to protect the child and facilitate safe return of the child home or to another permanent living arrangement.

3. To provide safe and proper care and address the child's needs while in agency custody.

B. Sections 62A-4a-105 and 62A-4a-106 authorize the Division to provide out-of-home services and 42 USC Section 472 authorizes federal foster care. 42 USC Section 472 (2000), and 45 CFR Parts 1355 and 1356 (2000) are incorporated by reference.

R512-300-2. Definitions.

The following terms are defined for the purposes of this rule:

A. Custody by court order means temporary custody or custody authorized by Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings or Section 78-3a-118. It does not include protective custody.

B. Division means the Division of Child and Family Services.

C. Department means the Department of Human Services.

D. Least restrictive means most family-like.

E. Placement means living arrangement.

R512-300-3. Scope of Services.

A. Qualification for Services. Out of home services are provided to:

1. A child placed in the custody of the Division by court order and the child's parent or guardian, if the court orders reunification;

2. A child placed in the custody of the Department by court order for whom the Division is given primary responsibility for case management or for payment for the child's placement, and the child's parent or guardian if reunification is ordered by the court;

3. A child voluntarily placed into the custody of the Division and the child's parent or guardian.

B. Service Description. Out of home services consist of:

1. Protection, placement, supervision and care of the child;

2. Services to a parent or guardian of a child receiving out of home services when a reunification goal is ordered by the court or to facilitate return of a child home upon completion of a voluntary placement.

3. Services to facilitate another permanent living arrangement for a child receiving out of home services if a court determines that reunification with a parent or guardian is not required or in the child's best interests.

C. Availability. Out of home services are available in all geographic regions of the state.

D. Duration of Services. Out of home services continue until a child's custody is terminated by a court or when a voluntary placement agreement expires or is terminated.

R512-300-4. Division Responsibility to a Child Receiving Out of Home Services.

A. Child and Family Team

1. With the family's assistance, a child and family team shall be established for each child receiving out of home services.

2. At a minimum, the child and family team shall assist with assessment, child and family plan development, and selection of permanency goals; oversee progress towards completion of the plan; provide input into adaptations to the plan; and recommend placement type or level.

B. Assessment

1. A written assessment is completed for each child placed in custody of the Division through court order or voluntary placement and for the child's family.

2. The written assessment evaluates the child and family's strengths and underlying needs.

3. The type of assessment is determined by the unique needs of the child and family, such as cultural considerations, special medical or mental health needs, and permanency goals.

4. Assessment is ongoing.

C. Child and Family Plan

1. Based upon an assessment, each child and family receiving out of home services shall have a written child and family plan in accordance with Section 62A-4a-205.

2. The child's parent or guardian and other members of the child and family team shall assist in creating the plan based on the assessment of the child and family's strengths and needs.

3. In addition to requirements specified in Section 62A-4a-205, the child and family plan shall include the following to facilitate permanency:

a. The current strengths of the child and family as well as the underlying needs to be addressed.

b. A description of the type of placement appropriate for the child's safety, special needs and best interests, in the least restrictive setting available and, when the goal is reunification, in reasonable proximity to the parent. If the child with a goal of reunification has not been placed in reasonable proximity to the parent, the plan shall describe reasons why the placement is in the best interests of the child.

c. Goals and objectives for assuring the child receives safe and proper care including the provision of medical, dental, mental health, educational, or other specialized services and resources.

d. If the child is age 16 or older, a written description of the programs and services to help the child prepare for the transition from foster care to independent living in accordance with Rule R512-305.

e. A visitation plan for the child, parents, and siblings, unless prohibited by court order.

f. Steps for monitoring the placement and plan for worker visitation and supports to the out of home caregiver for a child placed in Utah or out of state.

g. If the goal is adoption or placement in another permanent home, steps to finalize the placement, including child-specific recruitment efforts.

4. The child and family plan is modified when indicated by changing needs, circumstances, progress towards achievement of service goals, or the wishes of the child, family, or child and family team members.

5. A copy of the completed child and family plan shall be provided to the parent or guardian, out of home caregiver, juvenile court, assistant attorney general, guardian ad litem, legal counsel for the parent, and the child, if the child is able to understand the plan.

D. Permanency Goals

1. A child in out of home care shall have a primary permanency goal and a concurrent permanency goal identified by the child and family team.

2. Permanency goals include:

a. Return home

b. Adoption

c. Custody and Guardianship

d. Independent Living

e. Individualized Permanency

3. For a child whose custody is court ordered, both primary and concurrent permanency goals shall be submitted to the court for approval.

4. The primary permanency goal shall be return home unless the court has ordered that no reunification efforts be offered.

5. A determination that independent living services are appropriate for a child does not preclude adoption as a primary permanency goal. Enrollment in independent living services can occur concurrently with continued efforts to locate and achieve placement of an older child with an adoptive family.

E. Placement

1. A child receiving out of home services shall receive safe and proper care in an appropriate placement according to placement selection criteria specified in Rule R512-302.

2. The type of placement, either initial or change in placement, is determined within the context of the child and family team utilizing a need level screening tool designated by the Division.

3. Placement decisions are based upon the child's needs, strengths and best interests.

4. The following factors are considered in determining placement:

a. Age, special needs, and circumstances of the child;

b. Least restrictive placement consistent with the child's needs;

c. Placement of siblings together;

d. Proximity to the child's home and school;

e. Sensitivity to cultural heritage and needs of a minority child;

f. Potential for adoption.

5. A child's placement shall not be denied or delayed on the basis of race, color, or national origin of the out of home caregiver or the child involved.

6. Placement of an Indian child shall be in compliance with the Indian Child Welfare Act, 25 USC Section 1915, which is incorporated by reference.

7. When a young woman in Division custody is mother of a child, and desires and is able to parent the child with the support of the out of home caregiver, the child shall remain in the out of home placement with the mother. The Division shall only petition for custody of the young woman's child if there are concerns of abuse, neglect, or dependency in accordance with Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

8. The child and family team may recommend an independent living placement for a child age 16 year or older in accordance with Rule R512-305 when in the child's best interests.

G. Federal Benefits

1. The Division may apply for eligibility for Title IV-E foster care and Medicaid benefits for a child receiving out of home services. Information provided by the parent or guardian, as specified in Rule R512-301, shall be utilized in determining eligibility.

2. The Division may apply to be protective payee for a child in custody who has a source of unearned income, such as Supplemental Security Income or Social Security income. A trust account shall be maintained by the Division for management of the child's income. The unearned income shall be utilized only towards costs of the child's care and personal needs in accordance with requirements of the regulating agency.

H. Visitation with Familial Connections

1. The child has a right to purposeful and frequent visitation with a parent or guardian and siblings, unless the court orders otherwise.

2. Visitation is not a privilege to be earned or denied based on behavior of the child or the parent or guardian.

3. Visitation may be supplemented with telephone calls and written correspondence.

4. The child also has a right to communicate with extended family members, the child's attorney, physician, clergy, and others who are important to the child.

5. Intensive efforts shall be made to engage a parent or guardian in continuing contacts with a child, when not prohibited by court order.

6. If clinically contraindicated for the child's safety or best interests, the Division may petition the court to deny or limit visitation with specific individuals.

7. Visitation and other forms of communication with familial connections shall only be denied when ordered by the court.

8. A parent whose parental rights have been terminated does not have a right to visitation.

I. Out of Home Worker Visitation with the Child

1. The out of home worker shall visit with the child to ensure that the child is safe and is appropriately cared for while in an out of home placement. If the child is placed out of the area or out of state, arrangements may be made for another worker to perform some of the visits. The child and family team shall develop a specific plan for the worker's contacts with the child based upon the needs of the child.

J. Case Reviews

1. Pursuant to Sections 78-3a-311.5, 73-3a-312, and 78-31-313, periodic reviews of court ordered out of home services shall be held no less frequently than once every six months.

2. The Division shall seek to ensure that each child receiving out of home services has timely and effective case reviews and that the case review process:

a. Expedites permanency for a child receiving out of home services,

b. Assures that the permanency goals, child and family plan, and services are appropriate,

c. Promotes accountability of the parties involved in the child and family planning process, and

d. Monitors the care for a child receiving out of home services.

KEY: social services, child welfare, domestic violence, child abuse
2003
62A-4a-105

▼ ▼

Human Services, Child and Family Services

R512-301

Out of Home Services, Responsibilities Pertaining to a Parent or Guardian

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26475
FILED: 07/14/2003, 14:45

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of Out of Home Services, Responsibilities Pertaining to a Parent or Guardian is to clarify the role and responsibility of the Division to a parent or guardian of a child receiving out of home services.

SUMMARY OF THE RULE OR CHANGE: The Division is responsible to make reasonable efforts to reunify a child with a parent or guardian when a court has determined reunification is appropriate.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-105

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Out of Home Services, Responsibilities Pertaining to a Parent of Guardian will be provided within the current Division budget.

❖ LOCAL GOVERNMENTS: Local health and mental health agencies may provide some services to children receiving out of home services. These services are already a part of local government budgets and should not impose any additional costs.

❖ OTHER PERSONS: Only individuals receiving out of home services are effected. There should be no cost to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Families whose children are receiving out of home services may have costs if they elect to retain legal counsel to represent their interests and there may be compliance costs if a court orders counseling, mental health services, medical services, substance abuse services, or other services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Individuals receiving out of home services are effected not businesses, there should be no fiscal impact on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/29/2003 at 9:00 AM, 1385 South State Street, Room 157A, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.
R512-301. Out of Home Services, Responsibilities Pertaining to a Parent or Guardian
R512-301-1. Purpose and Authority.

A. The purposes of this rule are to clarify:

1. Roles and responsibilities of the Division to a parent or guardian of a child receiving out of home services in accordance with R512-300, and

2. Roles and responsibilities of a parent or guardian while a child is receiving out of home services.

B. Sections 62A-4a-105 and 62A-4a-106 authorize the Division to provide out-of-home services and 42 USC Section 472 authorizes federal foster care. 42 USC Section 472 (2000), and 45 CFR Parts 1355 and 1356 (2000) are incorporated by reference.

R512-301-2. Definitions.

The following terms are defined for the purposes of this rule:

A. Division means the Division of Child and Family Services.

B. Out of Home Services means those services defined in Rule R512-300.

C. Reunification means safely returning the child to the parent or guardian from whom the child was removed by court order or through a voluntary placement.

R512-301-3. Division Roles and Responsibilities to a Parent or Guardian of a Child Receiving Out of Home Services when Reunification is the Primary Permanency Goal.

A. The Division is responsible to make reasonable efforts to reunify a child with a parent or guardian when a court has determined that reunification is appropriate in accordance with Section 62A-4a-203 or when a child has been placed with the Division through a voluntary placement.

B. The Division shall actively seek the involvement of the parent or guardian in the Child and Family Team process, including participation in establishing the Child and Family Team, completing an assessment, developing the Child and Family Plan, and selecting the child's primary and concurrent permanency goals as described in Section R512-300-4.

C. The Child and Family Plan shall not only address child's strengths and needs, but shall also address the family's strengths and underlying needs. In accordance with Section 62A-4a-205, the plan shall identify specifically what the parents must do in order for the child to be returned home, including how those requirements may be accomplished behaviorally and how they shall be measured. Provisions of the plan shall be crafted by the Child and Family Team and designed to maintain and enhance parental functioning, care and familial connections.

D. In accordance with Section 62A-4a-205, additional weight and attention shall be given to the input of the child's parent in plan development.

E. The parent or guardian and the parent or guardian's legal counsel shall be provided a copy of the completed Child and Family Plan.

F. The worker shall have regular contact with the parent or guardian to facilitate progress towards goal achievement as determined by the needs of the parent and the recommendations of the Child and Family Team. At a minimum, the worker shall visit the parent or guardian at least once per month.

G. The Division shall make efforts to engage a parent or guardian in continuing contacts with the child, whether through visitation, phone, or written correspondence. Visitation requirements specified in Section R512-300-4 apply.

H. The Division shall also make efforts to engage a parent or guardian in appropriate parenting tasks such as attending school meetings and health care visits.

I. The parent or guardian has a right to reasonable notice and may participate in court and administrative reviews for the child in accordance with 42 USC Section 475(6) and Section 78-3a-314.

R512-301-4. Roles and Responsibilities of a Parent or Guardian of a Child Receiving Out of Home Services when Reunification is the Primary Permanency Goal.

In addition to responsibility to comply with orders made by the court, a parent or guardian has responsibility to:

A. Participate in the Child and Family Team process.

B. Provide input into the assessment and Child and Family Plan development process to help identify changes in behavior and actions necessary to enable the child to safely return home.

C. Complete goals and objectives of the plan.

D. Communicate with the worker about progress in completing the plan or regarding problems in meeting specified goals or objectives in advance of proposed completion time frames.

E. Maintain communication and frequent visitation with the child in accordance with Section R512-300-4, when not prohibited by the court.

F. Provide information necessary to determine the child's eligibility for Federal benefits while in care in accordance with Section R512-300-4, including information on household income, assets, and household composition.

G. Provide financial support for the child's care in accordance with 42 USC Subsection 471(a)(19) and Sections 62A-4a-114 and 78-3a-906, unless deferred or waived as specified in R495-879.

R512-301-5. Guidelines for Making Recommendations for Reunification to the Court.

A. In accordance with Section 62A-4a-205, when considering reunification, the child's health, safety, and welfare shall be the paramount concern.

B. The Child and Family Team shall consider the following factors in determining whether to recommend that the court order reunification:

1. The risk factors that led to the placement were acute rather than chronic.

2. The family assessments (including factors such as the initial risk assessment, level of informal and formal supports available to the family, and family history, including past patterns of behavior) conclude that the parent appears to possess or have the potential to develop the ability to ensure the child's safety and provide a nurturing environment.

3. The parent is committed to the child and indicates a desire to have the child returned home.

4. The child has a desire for reunification as determined using age appropriate assessments.

5. Members of the Child and Family Team support a reunification plan.

6. If the parent is no longer living with the individual who severely abused the minor, reunification may be considered if the parent is able to implement a plan that ensures the child's on-going safety.

7. Existence of factors or exceptions that preclude reunification as specified in Section 78-3a-311.

C. The Division shall provide additional relevant facts, when available, to assist the court in making a determination regarding the appropriateness of reunification services such as:

1. the parent's failure to respond to previous services or service plan;

2. the child being abused while the parent was under the influence of drugs or alcohol;

3. continuation of a chaotic, dysfunctional lifestyle;

4. the parent's past history of violent behavior;

5. the testimony of a properly qualified professional or expert witness that the parent's behavior is unlikely to be successfully changed.

R512-301-6. Return Home and Trial Home Placement.

A. When a child and family's safety needs have been met and the original reasons and risks have been reduced or eliminated, the child may return home, when allowable by court order or in conjunction with provisions of a voluntary placement.

B. The Child and Family Team shall plan for the transition and return home prior to the child being returned.

C. The Division shall provide reasonable notice (unless otherwise ordered by the court) of the date child will be returning home to all pertinent parties such as child, parents, guardian ad litem, foster care provider, school staff, therapist, and partner agencies, so all parties can be adequately prepared for the return home.

D. Prior to and when the child is returned home, the Division shall provide services directed at assisting the child and family with the transition back into the home and contact relevant parties to that no further abuse or neglect is occurring.

E. If it is determined that the child and family require more intensive services to ensure successful reunification, intensive family reunification services may be utilized in accordance with Rule R512-100.

F. A child may be returned home for a trial home visit for up to 60 days. The trial home visit shall continue until the court has terminated agency custody.

R512-301-7. Voluntary Relinquishment of Parental Rights.

A. When it is not in a child's best interest to be reunified with the child's parents, the Division may explore with both parents the option of voluntary relinquishment in accordance with Section 78-3a-414.

B. If the child is Indian, provisions of the Indian Welfare Act, 25 USC Section 1915, incorporated by reference, shall be met.

R512-301-8. Termination of Parental Rights.

A. If a court determines that reunification services are not appropriate, the Division shall petition for termination of parental rights in accordance with 42 USC Section 475 (5)(E), 42 CFR 1356.21(i), and Section 62A-4a-203.5 unless exceptions specified in 42 CFR 1356.21(i)(2) or Subsection 62A-203.5(3) apply.

B. The Division shall document in the Child and Family Plan care by kin or a compelling reasons for determining that filing for termination of parental rights is not in the child's best interests and shall make the plan available to the court for review.

C. When the Division files a petition to terminate parental rights, the worker must also concurrently begin to identify, recruit, process, and seek approval of a qualified adoptive family for the child. These efforts must be documented in the Child and Family Plan as specified in Section R512-300-4.

D. If the child is Indian, provisions of the Indian Welfare Act, 25 USC Section 1915, incorporated by reference, shall be met.

E. The Division shall not give approval to finalize an adoption until the period to appeal a termination of parental rights has expired.

KEY: social services, child welfare, domestic violence, child abuse
2003
62A-4a-105

Human Services, Child and Family Services

R512-302

Out of Home Services, Responsibilities Pertaining to Out of Home Caregiver

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26474
FILED: 07/14/2003, 14:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of Out of Home Services, Responsibilities Pertaining to an Out of Home Caregivers is to clarify roles, responsibilities, qualification, selection, and payment.

SUMMARY OF THE RULE OR CHANGE: This rule establishes standards for roles, responsibilities, qualification, selection, and payment.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-105

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Out of Home Services, Responsibilities Pertaining Out of Home Caregiver will be provided within the current Division budget.
❖ LOCAL GOVERNMENTS: Local health and mental health agencies may provide some services. These services are already a part of local government budgets and should impose no additional costs.
❖ OTHER PERSONS: Only those receiving out of home services are affected. There should be no cost to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Court ordered services may impose additional compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Out of Home services does not impact businesses. There should be no fiscal impact on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

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INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/29/2003 at 9:00 AM, 1385 South State Street, Room 157A, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.
R512-302. Out of Home Services, Responsibilities Pertaining to an Out of Home Caregiver.
R512-302-1. Purpose and Authority.

A. The purposes of this rule are to clarify:

1. Qualification, selection, payment criteria, and roles and responsibilities of a caregiver while a child is receiving out of home services, and

2. Roles and responsibilities of the Division to a caregiver for a child receiving out of home services in accordance with R512-300.

B. Sections 62A-4a-105 and 62A-4a-106 authorize the Division to provide out-of-home services and 42 USC Section 472 authorizes federal foster care. 42 USC Section 472 (2000), and 45 CFR Parts 1355 and 1356 (2000) are incorporated by reference.

R512-302-2. Definitions.

In addition to definitions in Section R512-300-2, the following terms are defined for the purposes of this rule:

A. Caregiver means a licensed resource family, also known as a licensed foster family, and may also include a licensed kin provider. Caregiver does not include a group home or residential facility that provides out of home services under contract with the Division.

B. Cohabiting means residing with another person and being involved in a sexual relationship.

C. Involved in a sexual relationship means any sexual activity and conduct between persons.

D. Out of Home Services means those services described in Rule R512-300.

E. Residing means living in the same household on an uninterrupted or an intermittent basis.

R512-302-3. Qualifying as a Caregiver for a Child Receiving Out of Home Services.

A. An individual or couple shall be licensed by the Office of Licensing as provided in Rule R501-12 to qualify as a caregiver for a child receiving out of home services. After initial licensure, the caregiver shall take all steps necessary for timely licensure renewal to ensure that the license does not lapse.

B. The Division or contract provider shall provide pre-service training required in Section R501-12-5 after the provider has held an initial consultation with the individual or couple to clearly delineate duties of caregivers.

C. The curriculum for pre-service and in-service training shall be developed by the contract provider and approved by the Division according to the Division's contract with the provider.

D. The Division or contract provider shall verify in writing a caregiver's completion of training required for licensure as provided in Section R501-12-5.

E. The Division or contract provider shall also verify in writing a caregiver's completion of supplemental training required for serving children with more difficult needs.

F. Once a licensed is issued, the caregiver's name and identifying information may be shared with the court, assistant attorney general, guardian ad litem, foster parent training contract provider, resource family cluster group, foster parent associations, the Department of Health, the Foster Care Citizen Review Board, and the child's primary health care providers.

R512-302-4. Selection of a Caregiver for a Child Receiving Out of Home Services.

A. A caregiver shall have the experience, personal characteristics, temperament, and training necessary to work with a child and the child's family to be approved and selected to provide out of home services.

B. An out-of-home caregiver shall be selected according to the caregiver's skills and abilities to meet a child's individual needs and, when appropriate, an ability to support both parents in reunification efforts and to consider serving as a permanent home for the child if reunification is not achieved. When dictated by a child's level of care needs, the Division may require one parent to be available in the home at all times.

C. A child in agency custody shall be placed with an out of home caregiver who is fully licensed as provided in Rule R501-12. A child may be placed in a home that is conditionally licensed only if the out of home caregiver is a kinship placement.

D. An out of home caregiver shall be given necessary information to make an informed decision about accepting responsibility to care for a child. The worker shall obtain all available necessary information about the child's permanency plan, family visitation plans, and needs such as medical, educational, mental health, social, behavioral, and emotional needs, for consideration by the caregiver.

E. If the court has not given custody to a non-custodial parent or kin provider, to provide safety and maintain family ties, the child shall be placed in the least restrictive placement that meets the child's special needs and is in the child's best interests, according to the following priorities:

1. With siblings.

2. In the home of licensed kin.

3. With a licensed caregiver, group, or residential provider within reasonable proximity to the child's family and community, if the goal is reunification.

4. With a licensed caregiver, group, or residential provider not in reasonable proximity to the child's family and community.

F. If a child is reentering custody of the Division, the child's former out of home caregiver shall be given preference as provided in Section 62A-4a-206.1.

G. A child's placement shall not be denied or delayed on the basis of race, color, or national origin of the out of home caregiver or the child involved.

H. Selection of a out of home caregiver for an Indian child shall be made in compliance with the Indian Child Welfare Act, 25 USC Section 1915, which is incorporated by reference.

R512-302-5. Division Roles and Responsibilities to a Caregiver for a Child Receiving Out of Home Services.

A. The Division shall actively seek the involvement of the caregiver in the child and family team process, including participation in the child and family team, completing an assessment, and developing the child and family plan as described in Section R512-300-4.

B. The child and family plan shall include steps for monitoring the placement and a plan for worker visitation and supports to the out of home caregiver for a child placed in Utah or out of state.

C. In accordance with Section 62A-4a-205, additional weight and attention shall be given to the input of the child's caregiver in plan development.

D. The caregiver shall be provided a copy of the completed child and family plan.

E. The caregiver has a right to reasonable notice and may participate in court and administrative reviews for the child in accordance with 42 USC Section 475(5) and Sections 78-3a-309 and 78-3a-314.

F. The Division shall provide support to the caregiver to ensure that the child's needs are met, and to prevent unnecessary placement disruption.

G. Options for temporary relief may include paid respite, non-paid respite, childcare, and babysitting.

H. The worker shall provide the caregiver with a portable, permanent record that provides available educational, social, and medical history information for the child and that preserves vital information about the child's life events and activities while receiving out of home services.

R512-302-6. Roles and Responsibilities of a Caregiver of a Child Receiving Out of Home Services.

A. An out of home caregiver shall be responsible to provide daily care, supervision, protection and experiences that enhance the child's development as provided in a written agreement entered into with the Division and the child and family plan.

B. The caregiver shall be responsible to:

1. Participate in the child and family team process.

2. Provide input into the assessment and child and family plan development process.

3. Complete goals and objectives of the plan relevant to the caregiver.

4. Promptly communicate with the worker the child's progress and concerns and progress in completing the plan or regarding problems in meeting specified goals or objectives in advance of proposed completion time frames. Support and assist with parental visitation

C. The caregiver shall document individualized services provided for the child, when required, such as skills development or transportation.

D. The caregiver shall maintain and update the child's portable, permanent record to preserve vital information about the child's life events, activities, health, social, and educational history while receiving out of home services. The caregiver shall share relevant health and educational information during visits with appropriate health care and educational providers to ensure continuity of care for the child.

R512-302-7. Payment Criteria for a Caregiver of a Child Receiving Out of Home Services.

A. An out of home caregiver shall receive payments according to the rate established for the child's need level, not upon the highest level of service the caregiver has been trained to provide.

B. The daily rate for the monthly foster care maintenance payment provides for the child's board and room, care and supervision, basic clothing and personal incidentals, and may also include a supplemental daily payment based upon a child's medical need or to assist with care of a youth's child while residing with the youth in an out of home placement. Foster care maintenance may also include periodic one-time payments for special needs such an initial clothing allowance, additional needs for a baby, additional clothing, gifts, lessons or equipment, recreation, non-tuition school expenses, and other needs recommended by the child and family team and approved by the Division.

C. A caregiver may also be reimbursed for transporting a foster child for visitation with a parent or siblings, to participate in case activities such as child and family team meetings and reviews, and for transporting the child to activities beyond those normally required for a family. The caregiver must document all mileage on a form provided by the Division.

D. The caregiver shall submit required documentation to receive payments for care or reimbursement for costs.

R512-302-8. Child Abuse Reporting and Investigation of a Caregiver Providing Out of Home Services.

A. Investigation of any report or allegation of abuse or neglect of a child that allegedly occurs while the child is living with an out of home caregiver shall be investigated by a contract agency or law enforcement as provided in Section 62A-4a-202.5.

R512-302-9. Removal of a Child from a Caregiver Providing Out of Home Services.

A. Removal of a child from a caregiver shall occur as provided in Section 62A-4a-206 and Rule R512-31.

R512-302-10 Cohabitation Not Permitted for Foster Parents.

A. foster parent or foster parents must complete a declaration of compliance with Section 78-30-9(3)(a and b) that they are not cohabiting with another person in a sexual relationship. Beginning May 1, 2000, the division gives priority for foster care placements to families in which both a man and a woman are legally married or valid proof that a court or administrative order has established a valid common law marriage, Section 30-1-4.5. An individual who is not cohabiting may also be a foster parent if the Region Director determines it is in the best interest of the child. Legally married couples and individuals who are not cohabiting and are blood relatives of the child in the divisions' custody may be foster parents pursuant to Section 78-3a-307(5).

KEY: child welfare
2003
62A-4a-105

▼ ▼

Human Services, Child and Family Services
R512-305
Out of Home Services, Independent Living Services

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26476
FILED: 07/14/2003, 14:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the Independent Living Services rule is to help prepare a youth who is receiving out of home services to make the transition to self-sufficiency.

SUMMARY OF THE RULE OR CHANGE: Independent living services consist of a variety of personalized strategies and resources that assist a youth to prepare for adult living, such as strength and needs assessment, planning, educational and employment guidance, basic skills training, personal and emotional support, and transitional placement.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-105

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Independent Living Services will be provided within the current Division budget.

❖ LOCAL GOVERNMENTS: Local health and mental health agencies may provide some services to children in independent living. These services are already a part of local government budgets and should not impose any additional costs.

❖ OTHER PERSONS: Only individuals receiving independent living services are effected. There will be no costs for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Court ordered services may impose some compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Independent living services should have no fiscal impact on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/29/2003 at 9:00 AM, 1385 South State Street, Room 157A, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.

R512-305. Out of Home Services, Independent Living Services.

R512-305-1. Purpose and Authority.

A. The purpose of independent living services is to help prepare a youth who is receiving out of home services in accordance with R512-300 to transition to self-sufficiency in adulthood.

B. Independent living services are authorized by the John H. Chafee Foster Care Independence Program, 42 USC 677 (1999), incorporated by reference.

R512-305-2. Scope of Services.

A. Qualification for and Duration of Services. Independent living services are offered to all youth age 14 or older who are receiving out of home services, regardless of permanency goal as specified in R512-300-4.D, or who formerly received out of home services. Services are:

1. Optional for a youth receiving out of home services who is age 14 or 15, when the Child and Family Team determines that services are appropriate;

2. Required for a youth receiving out of home services who is age 16 or older until agency custody is terminated;

3. Optional for a youth who attained age 18 while in agency custody, but who is no longer in agency custody, and may continue until the last day of the month in which the youth attains age 21, in accordance with R512-305-5.

B. Service Description. Independent living services consist of a variety of personalized strategies and resources that assist a youth to prepare for adult living, such as strength and needs assessment, planning, educational and employment guidance, basic skills training, personal and emotional support, and independent living placement.

C. Availability. Independent living services are available in all geographic regions of the state.

R512-305-3. Independent Living Services for a Youth in Agency Custody.

A. The Child and Family Team determines the independent living plan, with a youth age 16 or older taking the lead and setting goals.

B. The caseworker, with the assistance of the youth and Child and Family Team, completes an assessment to identify the strengths and needs of the youth.

C. Based upon the assessment, a plan is developed that identifies the youth's strengths and specific services and needs.

D. The plan includes a continuum of training and services to be completed by the youth in such settings as the foster home, with a therapist, at school, or through other community-based resources and programs.

E. Basic Living Skills training shall be offered to each youth who attains age 16. The training shall include human hygiene and sexuality and a basic knowledge of community resources. Other topics included in basic living skills training may include:

1. Communication, socialization and relationships
2. Job seeking information, assistance and maintenance skills
3. Money management
4. Housing
5. Food preparation and planning
6. Legal rights and responsibilities
7. Health care and counseling
8. Substance abuse
9. Decision making
10. Educational planning
11. Housekeeping
12. Transportation

F. Each youth who completes basic living skills training is entitled to receive a completion payment.

R512-305-4. Independent Living Placement for a Youth in Agency Custody.

A. An independent living placement may be used as an out-of-home care placement.

B. A youth must be at least 16 years of age to be in an independent living placement.

C. The Child and Family Team is responsible to determine if a recommendation for an independent living placement for a youth is appropriate.

D. The regional director or designee is authorized to approve an independent living placement.

E. The worker and youth shall complete a contract outlining responsibilities and expectations while in the placement.

F. The worker shall visit with and monitor progress of the youth at an interval determined by the Child and Family Team, but no less frequently than once per month.

G. The youth may receive an independent living stipend while in the independent living placement.

H. If the independent living placement is not successful, the Child and Family Team shall meet to determine, with the youth, a more appropriate living arrangement in accordance with R512-305-4.E.

R512-305-5. Division Responsibility to a Youth Leaving Out of Home Services at Age 18 or Older.

A. A youth who attained age 18 while in state custody, but who is no longer in state custody, may request independent living services from the Division until the last day of the month in which the youth attains age 21.

B. A youth may access services by contacting a Division office and being referred to a regional independent living coordinator.

C. If services will stabilize the youth's living situation and no other reasonable alternative exists to meet the needs, independent living services will be provided.

D. Services may include additional basic life skills training, information and referral, mentoring, computer access including word

processing, employment and educational counseling, information and referral, follow-up support, and assistance with costs of room and board, subject to the limits of available Division funding designated for this purpose.

E. Room and board includes rent, utilities, food, clothing, transportation costs, personal care items and other expenses related to daily living. Room and board does not include medical care, dental care, mental health care, tuition payments, or the purchase of automobiles.

F. The amount that a youth may receive for room and board is $500 per month, with a maximum of $2,000 per year.

G. Independent living services are available on the same basis to Indian youth who were formerly in tribal custody within the boundaries of the State, and whose tribal custody was terminated at age 18 or older, as they are for youth who received out of home services from the Division until age 18 or older.

KEY: social services, child welfare, foster care
2003
62A-4a-105

Human Services, Child and Family Services
R512-500
Kinship Services

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26477
FILED: 07/14/2003, 14:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of Kinship Services is make it possible for children to remain safely with relatives when they have been removed from their home as the result of suspected child abuse, or neglect.

SUMMARY OF THE RULE OR CHANGE: When a child has been removed from their home due to suspected child abuse or neglect, Kinship Services are provided to identify, recruit, and support a placement with a relative who can provide temporary care of the child.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 62A-4a-105

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Kinship Services will be provided within the current Division budget.
❖ LOCAL GOVERNMENTS: Local health and mental health services may provide services to some children. These services are already a part of local government budgets and should not impose additional costs.
❖ OTHER PERSONS: Only persons receiving kinship services are effected. There will be no costs for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Court ordered services may impose some compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Only those receiving kinship services are effected. There will be no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

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THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.
R512-500. Kinship Services.
R512-500-1. Purpose and Authority.

A. The purpose of Kinship care is to:

1. make it possible for children who cannot remain safely at home to live with persons they may already know and trust;

2. reduce the trauma children may experience when placed with a non-relative caregiver who is not known to the child;

3. maintain children's family history, culture, and sense of identity;

4. assist families to consider and rely on family resources and strengths; and

5. support families to provide children the support they need.

b. Pursuant to Sections 62A-4a-209 and 78-3a-307, the Division of Child and Family Services (DCFS) is authorized to provide kinship placements and services.

R512-500-2. Qualifications.

A. Relatives will be considered for an emergency kinship placement when they meet the requirements of Sections 62A-4a-209 and 78-3a-307 and the following:

1. When the relative agrees to care for the child on an emergency basis under the following conditions:

a. The relative agrees not to allow the custodial parent or guardian to have any unauthorized contact with the child to contact

law enforcement and DCFS if the custodial parent or guardian attempts to make unauthorized contact with the child;

b. The relative will agree not to talk to the child about the events that led to the removal, if the child wishes to talk about the events leading to the removal, refer to a therapist or other trusted individual who is not the relative caregiver;

c. The relative has been informed and understands that while they may be asked to be a potential long-term placement, DCFS will continue to search for other possible potential kinship placements for long-term care, if needed;

d. The relative is willing to assist the custodial parent or guardian in reunification efforts at the request of DCFS and to follow all court orders.

B. Criteria for an emergency kinship placement:

1. A relative will be considered as an emergency placement only if willing to provide the following:

a. Full names of all persons living in their household, including maiden names;

b. Social Security Numbers for all persons living in the household;

c. driver licenses or other identification for all persons living in the household, as applicable.

C. Assessment -- Non-custodial Parent

1. The region in which the non-custodial parent resides will conduct an assessment of the non-custodial parent as follows:

a. home inspection that will assess space, accommodations, and safety.

b. interview of the non-custodial parent to determine the following:

i. nature and quality of the relationship between the child and non-custodial parent;

ii. ability and desire to protect the child from further abuse and neglect.

D. The DCFS worker will interview the child (when age appropriate) regarding the child's relationship and comfort level with the non-custodial parent.

E. Deciding between Relatives.

1. If more than one relative requests consideration for temporary or permanent placement of the child, the DCFS worker:

a. Will provide each relative with specific information on the methods and criteria used to assess suitability of a relative's home for the placement of the child;

b. May conduct a child and family team meeting for the purpose of assisting the relatives to come to consensus regarding which relative would be the most appropriate placement for the child;

c. Will determine which relative has the closest existing personal relationship with the child before making the recommendation to the court.

d. Will determine which placement should be made and make a recommendation to the court consistent with that determination.

KEY: child welfare, kinship
2003
62A-4a-209
78-3a-307

▼ ▼

Human Services, Youth Corrections
R547-10
Ex-Offender Policy

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26460
FILED: 07/10/2003, 08:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the five-year review process, it was determined that no person convicted of a felony or with a crime against children should be working for the Division. As such, the changes to the rule bring it into compliance with Division practice. Further, the Division has expanded the scope under which exclusion from employment may be determined.

SUMMARY OF THE RULE OR CHANGE: The Division has clarified and expanded the rule to more closely fit practice as outlined in the Division's Policy and Procedure.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 62A, Chapter 7

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Because the changes are definitional in nature as opposed to substantive, there is no anticipated cost or savings to the Division budget.

❖ LOCAL GOVERNMENTS: Because the changes are definitional in nature as opposed to substantive, there is no anticipated cost or savings to local government.

❖ OTHER PERSONS: Because the changes are definitional in nature as opposed to substantive, there is no anticipated cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance issues outlined in this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because the changes are definitional in nature as opposed to substantive, there is no anticipated fiscal impact to businesses.

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

HUMAN SERVICES
YOUTH CORRECTIONS
Room 419
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Judy Hammer at the above address, by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Blake Chard, Director

R547. Human Services, Youth Corrections.
R547-10. Ex-Offender Policy.
R547-10-1. Ex-Offender Policy.

The Division and its contracted providers shall not employ any ex-offender convicted of a felony or under the supervision of the criminal justice system,[~~. If~~] or any misdemeanor convictions [~~are~~]for crimes against children under the age of 18,[~~, permission to employ must be obtained, in writing, from the Division Director prior to hiring the ex-offender.~~] Potential employees with a documented history of drug or alcohol abuse, domestic violence, or sexual offense may also be excluded from employment with the Division.[~~With all applications, including those ex-offenders noted above, prudent and reasonable judgment should be exercised to ensure safe, positive care in the rehabilitation of youths.~~]

KEY: ex-convicts, juvenile corrections
[~~1987~~]2003
Notice of Continuation October 29, 2002
62A-7

▼ ▼

Money Management Council, Administration

R628-2

Investment of Funds of Member Institutions of the State System of Higher Education and Public Education Foundations established under Section 53A-4-205

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26493
FILED: 07/15/2003, 15:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to bring the investment of endowment funds and public education foundation funds current with the industry norm for these types of permanent funds.

SUMMARY OF THE RULE OR CHANGE: The changes allow for investment in alternative investments for endowment funds. The changes place percentage limitations on how much of the endowment portfolio can be invested in alternative investments based on the size of the portfolio. There is some housecleaning language that removes federal grants and changes the basis on which concentration is measured from a cost basis to a total market basis. The rule also requires that each institution and public education foundation have its investment policies approved by its board of trustees or governing body and requires that the board or governing body receive certification quarterly from public treasurer that the portfolio is in compliance with the Money Management Act (Title 51, Chapter 7) and Rules of the Council and the prudent person rule in Section 51-7-14.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-7-13(2)(d)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This rule affects higher education endowment funds and public education foundations and does not apply to state funds.
❖ LOCAL GOVERNMENTS: Unable to tell at this time as any costs or savings would be driven by changes in the investment markets. The anticipation is that this change will allow institutions to lessen the impact of market changes on their portfolios.
❖ OTHER PERSONS: None--This rule does not affect other persons, only endowment funds and public education foundations. As most of the entities affected by this rule are already investing their funds, this change could be incorporated with little or no change in fees already paid to invest these funds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As most of the entities affected by this rule are already investing their funds, this change could be incorporated with little or no change in fees already paid to invest these funds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule may create revenue opportunities for certified dealers, financial advisers, asset managers, and others who can provide expanded investment services to higher education and to public education foundations. No additional compliance costs, increased fees, or other charges affecting businesses are anticipated as a direct result of the proposed rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
MONEY MANAGEMENT COUNCIL
ADMINISTRATION
Room 215 STATE CAPITOL
350 N STATE ST
SALT LAKE CITY UT 84114-1103, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ann Pedroza at the above address, by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Larry Richardson, Chair

R628. Money Management Council, Administration.
R628-2. Investment of Funds of Member Institutions of the State System of Higher Education and Public Education Foundations established under Section 53A-4-205.
R628-2-1. Authority.

This rule is issued pursuant to Sections 51-7-13(2) and 51-7-18(2)(b).

R628-2-2. Scope of Rule.

This rule relates to all funds of member institutions of the state system of higher education and all funds of public education foundations established under Section 53A-4-205 acquired by gift, devise, or bequest or by [~~federal or~~]private grant and the corpus of funds functioning as endowments. For purposes of this rule, funds functioning as endowments means funds whose corpus is intended to be held in perpetuity by formal institutional designation according to the institution's or public education foundation's policy for designating such funds.

R628-2-3. Investment Directions Contained in Gift or Grant.

If any gift, devise, bequest or grant, whether outright or in trust, is made by a written instrument which contains directions as to investment thereof, the funds embodied within the gift or grant shall be invested in accordance with those directions. Common stock received by donation which is lettered stock, or which is restricted from sale because it is not registered with the Securities and Exchange Commission, may be retained by a member institution and public education foundations and shall be considered to be invested according to the terms of the donation.

R628-2-4. Investment of Funds.

A. Funds within the scope of this rule, except funds described in Section R628-2-3, may be invested in any of the following:

1. in any deposit or investment authorized by Section 51-7-11 or 51-7-5;

2. in professionally managed pooled or commingled investment funds [~~or mutual funds~~]registered with the Securities and Exchange Commission or, if not registered with Securities and Exchange Commission as investment companies under the Investment Company Act of 1940, satisfy the conditions for exemption from registration under Section 3(c) of that Act, which:

a) have assets with a market value of at least $100 million; and

b) which conform with all investment limitations established by the Securities and Exchange Commission applicable to such funds; and

c) which assess no load factor or surrender charges for participation in the fund. Use of funds which assess a charge on the purchase or sale of shares is prohibited[-];and

d) whose advisers are registered as investment advisers with either the Securities and Exchange Commission or the state of Utah.

3. in equity securities, including common and convertible preferred stock and convertible bonds, issued by corporations listed on a major securities exchange or in the NASDAQ National Market System, in accordance with the following criteria applied, on a total market basis, at the time of investment:

a) no more than 20% of all funds[~~, invested under R628-2, determined on a cost basis,~~] may be invested in securities listed in the NASDAQ National Market System;

b) no more than 5% of all funds[~~, invested under R628-2, determined on a cost basis,~~] may be invested in the securities of any one issuer;

c) no more than 25% of all funds[~~, invested under R628-2, determined on a cost basis,~~] may be invested in a particular industry;

d) no more than 5% of all funds [~~invested under R628-2, determined on a cost basis, ~~]may be invested in securities of corporations that have been in continuous operation for less than three years;

e) no more than 5% of the outstanding voting securities of any one corporation may be held; and

f) at least 50% of the corporations in which equity investments are made under R628-2-4.(A)(3) must appear on the Standard and Poor's 500 Composite Stock Price Index or the Dow Jones Industrial Average Index;

4. in fixed-income securities, including bonds, notes, mortgage securities and zero coupon securities, issued by corporations rated A or higher by Moody's Investors Service, Inc. or by Standard and Poor's Corporation in accordance with the following criteria applied, on a total market basis, at the time of investment:

a) no more than 5% of all funds [~~invested under R628-2, determined on a cost basis, ~~]may be invested in the securities of any one issuer;

b) no more than 25% of all funds [~~invested under R628-2, determined on a cost basis, ~~]may be invested in a particular industry;

c) the dollar-weighted average maturity[~~, determined on a cost basis,~~]of fixed-income securities acquired under R628-2-4[-](A)(4) may not exceed ten years; and

5. in fixed-income securities issued by agencies of the United States and United States government-sponsored organizations, including mortgage-backed pass-through certificates, mortgage-backed bonds and collateralized mortgage obligations (CMO's).

6. In alternative investments defined as assets or investment strategies other than those defined under R628-2-4(A)(3), R628-2-4(A)(4) or R628-2-4(A)(5). The following criteria shall apply to institutions at the time of investment:

a) Meet the requirements of Section 3(c)7 of the Investment Company Act of 1940 to be a "qualified purchaser" of these types of investments. The institutional size of all Rule 2 funds must exceed $25 million; or

b) Meet the requirement of Section 3(c)1 of the Investment Company Act of 1940 to be an "accredited investor" of these types of investments. The institutional size of all funds must exceed $5 million.

c) For institutions with funds greater than $50 million, no more than 30% of funds may be invested in alternative investment funds that derive returns primarily from high yield and distressed debt (hedged or non-hedged), private capital (including venture capital, private equity, both domestic and international), natural resources, and private real estate assets or absolute return and long/short hedge funds. No more than 20% of all funds may be invested at any one time in absolute return and long/short hedge funds.

d) For institutions with funds greater than $25 million but not greater than $50 million, no more than 15% of all funds may be invested in alternative investments meeting the requirements established under subsection R628-2-4(A)(2), and that derive returns

primarily from high yield and distressed debt (hedged or non-hedged), private capital (including venture capital, private equity, both domestic and international), natural resources, and private real estate assets or absolute return and long/short hedge funds.

e) For institutions with funds of $25 million or less, no more than 10% of all funds may be invested in alternative investments meeting the requirements established under subsection R628-2-4(A)(2) and that derive returns primarily from high yield and distressed debt (hedged or non-hedged), private capital (including venture capital, private equity, both domestic and international), natural resources, and private real estate assets or absolute return and long/short hedge funds.

B. Investments made under this rule shall observe the following investment percentages on a total market basis as of the most recent quarterly review, for specified subsections;

1. no more than 75% of all funds [~~invested under R628-2, determined on a cost basis,~~]may be invested in equity securities (Subsection R628-2-4(A)(3) investments)[~~at any one time~~].

2. no more than 5% of all funds [~~invested under R628-2, determined on a cost basis,~~]may be invested in collateralized mortgage obligations (CMO's) (Subsection R628-2-4(A)(5) investments)[~~at any one time~~].

C. The selection criteria established in Section 51-7-14 shall apply to investments permitted by this rule.

D. Professional asset managers may be employed to assist in the investment of funds under this rule. Compensation to asset managers may be provided from earnings generated by the funds' investments.

R628-2-5. Disposition of Nonqualifying Investments.

A. If at any time securities do not qualify for investment in accordance with this rule, investments shall be disposed of within a reasonable time. In determining what constitutes reasonable time for the disposition of assets, the following factors, among others, shall be given consideration:

1. the legality of sale under the rules and regulations of the Securities and Exchange Commission and the Utah State Securities Commission;

2. the size of the investment held in relation to the normal trading volume therein, and the effect upon the market price of the sale of the investment; and

3. the wishes of the donor respecting the sale of the investment.

B. If, in the opinion of the custodian or investment manager of the funds, an orderly liquidation of a nonqualifying investment cannot be accomplished within a period of two years, a request may be made to the Council for approval of a specific plan of disposition of nonqualifying investments. Nothing contained in this paragraph shall make an investment nonqualifying, if the retention of the investment is specifically authorized or directed under terms of the gift, devise, bequest or grant, or if the security is restricted from sale as provided in this rule.

R628-2-6. Nonqualifying Investments Held on Effective Date.

Any nonqualifying investments held on July 3, 1995 shall be treated as having been received on the effective date and shall be disposed of as provided in Subsection R628-2-5.

R628-2-7. Multiple Funds.

If an institution or a public education foundation has more than one fund or investment pool in which funds covered by this rule are managed, the following rules apply in determining investment percentages:

A. If the investment of any funds is covered by a direction in the instrument creating a gift, devise, bequest or grant, or if the donation consists of securities restricted from sale, the funds shall be excluded from any computation of permitted investments.

B. All other funds within the scope of this rule shall be consolidated for determining the propriety of investments. Any restrictions as to investment percentages shall be determined as provided for in Subsection R628-2-4(B).

R628-2-8. Investment Policy Approval.

Each member institution of the state system of higher education and each public education foundation, having funds acquired by gift, devise, bequest or grant and funds functioning as endowments shall have their investment policies approved by their respective board of trustees or governing body.

R628-2-[~~8~~]9. Reporting by Institutions and Public Education Foundations.

Each member institution of the state system of higher education and each public education foundation, having funds acquired by gift, devise, bequest or grant and funds functioning as endowments shall file a written report with the Council on or before September 30 and March 31 of each year containing the following information for investments held on June 30 and December 31 respectively:

A. total [~~amount~~]market value of funds held under gifts, devise, bequest or grant and funds functioning as endowments;

B. amount invested under this rule;

C. amounts invested under this rule indicating the carrying value and market value of each category of investment; and

D. a list of all nonqualifying assets held under this rule containing the date acquired, the carrying value and market value of each asset.

E. The board of trustees or governing body shall review the portfolio at least quarterly, and shall receive the certification from the institution's public treasurer that the portfolio complies with the current text of the Money Management Act, Rules of the Money Management Council and the prudent person rule in section 51-7-14 of the Act.

KEY: public investments, higher education, public education
[~~June 1, 1999~~]2003
Notice of Continuation July 10, 2002
51-7-11(4)
51-7-13
51-7-18(2)

Public Safety, Fire Marshal
R710-5
Automatic Fire Sprinkler System Inspecting and Testing

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26491
FILED: 07/15/2003, 15:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Legislature passed House Bill 47 during the 2003 legislative session. This bill modified the Utah Fire Prevention and Safety Act by establishing a certification program for persons who inspect or test automatic fire sprinkler systems. This legislation also directed the Utah Fire Prevention Board to establish rules to prescribe forms and standards for certification qualification, renewal, and revocation. (DAR NOTE: H.B. 47 is found at UT L 2003 Ch 103, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: The Utah Fire Prevention Board met on July 8, 2003, and proposed that a new set of rules be adopted for those that would inspect or test automatic fire sprinkler systems. The Board has spent considerable time in two Board meetings on the creation of this new set of rules. All that would be affected by these rules were invited to the Board meetings to add input and express concerns. The culmination of this new set of rules from the passed legislation completed a lengthy process under the Board's direction beginning in the summer of 2002. The proposed set of rules establishes minimum standards and requirements to satisfy the requirement set forth in the statute. The proposed rule establishes the adoption of incorporated references, requirement and completion of the certificate of registration, service tags, seal of registration, amendments and additions, adjudicative proceedings, and fees.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 1. NFPA, Standard 11A, Standard for Medium and High Expansion Foam, 1999 edition; 2. NFPA, Standard 13, Standard for the installation of Sprinkler Systems, 2002 edition; 3. NFPA, Standard 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, 2002 edition; 4. NFPA, Standard 14, Standard for the Installation of Standpipe, Private Hydrant, and Hose Systems, 2000 edition; 5. NFPA, Standard 15, Standard for Water Spray Fixed Systems for Fire Protection, 2001 edition; 6. NFPA, Standard 16, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems; 7. NFPA, Standard 20, Standard for the Installation of Stationary Pumps for Fire Protection, 1999 edition; 8. NFPA, Standard 24, Standard for the Installation of Private Fire Service Mains and Their Appurtenances, 2002 edition; 9. NFPA, Standard 25, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems, 2002 edition; and, 10. NFPA, Standard 72, National Fire Alarm Code, 2002 edition.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There would be an aggregate anticipated cost to the State budget of $500 to enact this rule. The $500 would be to purchase copies of the incorporated references and some printing costs for those that do not have access to the internet Website.

❖ LOCAL GOVERNMENTS: The is no aggregate anticipated cost to local government because this does not affect local government.

❖ OTHER PERSONS: The aggregate anticipated cost to other persons would depend upon the amount of National Fire Protection Association (NFPA) standards purchased and the testing costs. To purchase all of the adopted NFPA standards would be approximately $330. The testing and certification cost would be $50 per person. The aggregate anticipated cost to other persons is impossible to conclude due to the unknown amount of NFPA standards that would be purchased and the amount of individuals that would test. A company could purchase all the incorporated references for $330 and have a number of employees use these standards to prepare for the certification examinations at $50 per employee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for affected persons would be as follows: A)Governmental entity would be approximately $500; B) Companies or corporations would vary from approximately $330 to $1500 to comply; and, C) Individual compliance cost could be up to $380 per individual to comply.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impacts shown in this document are reasonable for the favorable response this rule and enacted legislation will generate for automatic fire sprinkler systems and the citizens of the State of Utah. The proper functioning of automatic fire sprinkler systems when needed are critical to the early suppression of a building fire. This requirement will establish competent certified individuals to inspect and test these critical public safety systems yearly. The early suppression of building fires will save the public impact felt from fire loss and insure a higher degree of public safety.

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-5. Automatic Fire Sprinkler System Inspecting and Testing.

R710-5-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those who inspect and test Automatic Fire Sprinkler Systems.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 11A, Standard for Medium and High Expansion Foam, 1999 edition, except as amended by provisions listed in R710-5-6, et seq.

1.2 National Fire Protection Association (NFPA), Standard 13, Standard for the Installation of Sprinkler Systems, 2002 edition, except as amended by provisions listed in R710-5-6, et seq.

1.3 National Fire Protection Association (NFPA), Standard 13R, Standard for the Installation of Sprinkler Systems Residential Occupancies up to and Including Four Stories in Height, 2002 edition, except as amended by provisions listed in R710-5-6, et seq.

1.4 National Fire Protection Association (NFPA), Standard 14, Standard for the Installation of Standpipe, Private Hydrant, and Hose Systems, 2000 edition, except as amended by provisions listed in R710-5-6, et seq.

1.5 National Fire Protection Association (NFPA), Standard 15, Standard for Water Spray Fixed Systems for Fire Protection, 2001 edition, except as amended by provisions listed in R710-5-6, et seq.

1.6 National Fire Protection Association (NFPA), Standard 16, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems, 2003 edition, except as amended by provisions listed in R710-5-6, et seq.

1.7 National Fire Protection Association (NFPA), Standard 20, Standard for the Installation of Stationary Pumps for Fire Protection, 1999 edition, except as amended by provisions listed in R710-5-6, et seq.

1.8 National Fire Protection Association (NFPA), Standard 24, Standard for the Installation of Private Fire Service Mains and Their Appurtenances, 2002 edition, except as amended by provisions listed in R710-5-6, et seq.

1.9 National Fire Protection Association (NFPA), Standard 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2002 edition, except as amended by provisions listed in R710-5-6, et seq.

1.10 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, 2002 edition, except as amended by provisions listed in R710-5-6, et seq.

1.11 A copy of the above-mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-5-2. Definitions.

2.1 "Annual" means a period of one year or 365 calendar days.

2.2 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "Fire Pumps" means single or multistage horizontal or vertical shaft design powered by either electric or diesel.

2.6 "NFPA" means National Fire Protection Association.

2.7 "SFM" means State Fire Marshal or authorized deputy.

2.8 "Special Hazard Systems" means Preaction Sprinkler System, Deluge Sprinkler System, Combined Dry Pipe-Preaction Sprinkler System, Foam-Water Sprinkler System, and Water Spray Fixed System.

2.9 "Standpipes" means wet, dry or combination standpipes, private hydrants, and hose systems.

2.10 "UCA" means Utah State Code Annotated 1953 as amended.

2.11 "Wet and Dry Systems" means Wet Pipe Sprinkler System, Dry Pipe Sprinkler System, and Antifreeze Sprinkler System.

R710-5-3. Certificates of Registration.

3.1 Required Certificates of Registration.

No person shall engage in the inspecting and testing of automatic fire sprinkler systems without first receiving a certificate of registration issued by the SFM. The following groups are exempted from the requirements of this part:

3.1.1 The AHJ that is performing the initial installation acceptance testing of the automatic fire sprinkler system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules.

3.1.2 The building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section 6.2 of these rules, to satisfy requirements set by company policy, insurance, or risk management. The person performing these additional inspections shall have developed competence through training and experience.

3.2 Application.

3.2.1 Application for a certificate of registration to inspect and test automatic fire sprinkler systems shall be made in writing to the SFM on forms provided the SFM. The applicant shall sign the application.

3.2.2 The application for a certificate of registration shall be accompanied with proof of public liability insurance from the certificate holder or employing concern. A public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage shall issue the public liability insurance. The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is not longer in effect for any reason.

3.3 Examination.

The SFM shall require all applicants for a certificate of registration to take and pass a written examination to determine the applicant's knowledge to inspect and test automatic fire sprinkler systems. The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

3.4 Types of Initial Examinations:

3.4.1 Wet and Dry Systems

3.4.2 Special Hazard Systems

3.4.3 Standpipes

3.4.4 Fire Pumps

3.5 Initial Examinations

3.5.1 The initial examinations shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The examinations may be taken from the adopted NFPA standards, the statute, and the administrative rules.

3.5.2 To successfully complete the written initial examination the applicant must obtain a minimum of seventy percent (70%) in each examination given. Each examination will be graded separately.

3.5.3 As required in 3.3 and 3.4, those applicants that have successfully completed the requirements of NICET II or NICET III, as written by the National Institute for Certification in Engineering Technologies, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the SFM by the applicant.

3.6 Issuance.

Following receipt of the properly completed application, compliance with the provisions of these rules, and the successful completion of the required examination or NICET certification, the SFM shall issue a certificate of registration.

3.7 Original and Renewal Valid Date.

Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance.

3.8 Renewal Date.

Application for renewal shall be made as directed by the SFM.

3.9 Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every three years, from date of original certificate, to comply with the provisions of Section 3.3 of these rules as follows:

3.9.1 The re-examination to comply with the provisions of Section 3.3 of these rules shall consist of an open book examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date.

3.9.2 The re-examination will consist of questions that focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

3.9.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

3.9.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

3.10 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 7, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 7 of these rules to an applicant for an original certificate of registration, which has been denied by the SFM.

3.11 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.

3.12 Type.

Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified as follows:

3.12.1 Class A: A person who is engaged in the inspection and testing of wet pipe, dry pipe, antifreeze, preaction, deluge, combined dry pipe-preaction, foam water, and water spray fire sprinkler systems. The person is also engaged in the inspection and testing of standpipes and fire pumps.

3.12.2 Class B: A person who is engaged in the inspection and testing of wet pipe, dry pipe, and antifreeze fire sprinkler systems.

3.12.3 Class C: A person who is engaged in the inspection and testing of preaction, deluge, combined dry pipe-preaction, foam-water, and water spray fire sprinkler systems.

3.12.4 Class D: A person who is engaged in the inspection and testing of standpipes.

3.12.5 Class E: A person who is engaged in the inspection and testing of fire pumps.

3.13 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within 30 days of such change.

3.14 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

3.15 Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

3.16 Restrictive Use.

3.16.1 A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

3.16.2 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

3.17 Right to Contest.

3.17.1 Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

3.17.2 Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

3.17.3 The decision as to the action to be taken on the submitted contention shall be made by the SFM, and such decision shall be final.

3.17.4 The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

3.18 Non-Transferable.

Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

3.19 Certificate of Registration Identification.

Every certificate shall be identified by a number, delineated as AFS-(number). Such number shall not be transferred from one person to another.

R710-5-4. Service Tags.

4.1 Size and Color.

4.1.1 Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width.

4.1.2 Tags shall be produced in three colors as follows:

4.1.2.1 Green to indicate the system meets the adopted NFPA standards and the requirements of these rules.

4.1.2.2 Yellow to indicate that only part of the system has been inspected and the inspected part meets the adopted NFPA standards and the requirements of these rules.

4.1.2.3 Red to indicate the system fails to fully comply with the adopted NFPA standards and the requirements of these rules.

After placing the red tag on the system, the certified person shall notify the AHJ and provide the AHJ with a written copy of the noted deficiencies.

4.2 Placement of Tag.

The service tag shall be attached at the sprinkler riser for each system inspected or at other locations as needed to show compliance. The service tag shall be attached to the riser in such a position as to be conveniently inspected by the AHJ.

4.3 Tag Information.

4.3.1 Service tags shall bear the following information:

4.3.1.1 Provisions of Section 4.7.

4.3.1.2 Approved Seal of Registration of the SFM.

4.3.1.3 Certificate of registration "AFS" number of individual who performed or supervised the service or services performed.

4.3.1.4 Signature of individual whose certificate of registration number appears on the tag.

4.3.1.5 Concern's name.

4.3.1.6 Concern's address.

4.3.1.7 Type of service performed.

4.3.1.8 Type of system serviced.

4.3.1.9 Date service is performed.

4.3.2 The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

4.4 Legibility.

4.4.1 The certificate of registration number required in Section 4.3.1.3, and the signature required in Section 4.3.1.4, shall be printed or written distinctly.

4.4.2 All information pertaining to date and type of service shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

4.5 Format.

ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

4.6 New Tag.

A new service tag shall be attached to a system each time a service is performed.

4.7 Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

4.8 Removal.

No person or persons shall remove a service tag except when further service is performed. No person shall deface, modify, or alter any service tag that is required to be attached to the system.

R710-5-5. Seal of Registration.

5.1 Description.

The official seal of registration of the SFM shall consist of the following:

5.1.1 The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

5.1.1.1 The top portion of the outer ring shall have the wording "Utah State".

5.1.1.2 The bottom portion of the outer ring shall have the wording "Fire Marshal".

5.1.2 Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the certification number assigned to the person.

5.2 Use of Seal.

No person shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

5.3 Permissive Use.

Certificate holders or concerns shall use the Seal of Registration on every service tag.

5.4 Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the certificate of registration.

5.5 Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-5-6. Amendments and Additions.

6.1 Service.

At the time of service, all servicing shall be done in accordance with the adopted NFPA standards, adopted statutes, and these rules.

6.2 Frequency

Automatic fire sprinkler systems, standpipes, and fire pumps shall be inspected annually by a person holding a certificate of registration as required in Section 3.1 of these rules.

R710-5-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 The issuance, renewal, or continued validity of a certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant or the person commits any of the following violations:

7.2.1 The person or applicant is not the real person in interest.

7.2.2 Material misrepresentation or false statement in the application.

7.2.3 Refusal to allow inspection by the SFM, or his duly authorized deputies.

7.2.4 The person or applicant for a certificate of registration does not have the proper equipment to conduct the operations for which application is made.

7.2.5 The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination pursuant to Section 3.3 of these rules.

7.2.6 The person or applicant refuses to take the examination required by Section 3.3 of these rules.

7.2.7 The person fails to pay the certification of registration, examination or other required fees as required in Section 8 of these rules.

7.2.8 The person or applicant has been convicted of any of the following:

7.2.8.1 a violation of the provisions of these rules;

7.2.8.2 a crime of violence or theft; or

7.2.8.3 a crime that would indicate that the person or applicant would create a danger to public safety by performing their functions and duties.

7.2.9 The certified person does not maintain adequate equipment or knowledge to conduct operations as required in the adopted NFPA standards, statute, and rules.

7.2.10 The person or applicant is involved in conduct which could be considered criminal, although such conduct did not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden by a preponderance of evidence could be established.

7.3 A person whose certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

7.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a certificate of registration.

7.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the certification process or shall direct that the revocation be continued.

7.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.

R710-1-8. Fees.

8.1 Fee Schedule.

8.1.1 Certificates of Registration (new and renewals):

8.1.1.1 Certificate of registration - $30.00

8.1.1.2 Duplicate - $30.00

8.1.2 Examinations:

8.1.2.1 Initial examination - $20.00

8.1.2.2 Re-examination - $15.00

8.1.2.3 Three-year examination - $20.00

8.2 Payment of Fees.

The required fee shall accompany the application for certificate of registration. Certificate of registration fees will be refunded if the application is denied.

8.3 Late Renewal Fees.

8.3.1 Any certificate of registration not renewed on or before the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

8.3.2 When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time.

KEY: automatic fire sprinklers
September 3, 2003
53-7-204

Public Service Commission, Administration
R746-310
Uniform Rules Governing Electricity Service by Electric Utilities.

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26489
FILED: 07/15/2003, 14:53

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to reflect the current National Electrical Safety Code, the American National Standard for Electric Meters Code for Electricity Metering, the American National Standard for Electrical Power systems and Equipment-Voltage Ratings (60 Hz), to allow for identification of the documents by ISBN, and to update the CFR Reference.

SUMMARY OF THE RULE OR CHANGE: This amendment updates these references in this rule: At Subsection R746-310-1(B), the CFR reference is updated to the 1998 edition; at Subsection R746-310-3(B) the National Electrical Safety Code reference is updated to the 2002 edition; and at Subsection R746-310-4(B) the American National Standards for Electric Meters Code for Electricity Metering is updated to the 1995 (R2001) edition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 54-1-1, 54-4-1, 54-4-7, 54-4-14, and 54-4-23

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 18 CFR Part 101, 18 CFR Part 116, and 18 CFR 125, 1998 edition; National Electrical Safety Code - 2002 edition; American National Standard for Electric Meters Code for Electricity Metering - 2001 edition; and American National Standard for Electrical Power Systems and Equipment-Voltage Ratings (60 Hz) - 1995 (R2001) edition.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no cost or savings changes to the state budget because there will be no change of activity for the State.

❖ LOCAL GOVERNMENTS: There are no cost or savings changes for local government because these updates do not affect local government activity.

❖ OTHER PERSONS: Industry practice is consistent with the updated references so there are no anticipated costs or savings for the other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Industry practice is consistent with the updated references so there are no anticipated costs or savings for electric utilities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Industry practice is consistent with the updated references so there will be no fiscal impact on businesses.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Barbara Stroud or Sandy Mooy at the above address, by phone at 801-530-6714 or 801-530-6708, by FAX at 801-530-6796 or 801-530-6796, or by Internet E-mail at bstroud@utah.gov or smooy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Barbara Stroud, Paralegal

R746. Public Service Commission, Administration.
R746-310. Uniform Rules Governing Electricity Service by Electric Utilities.
R746-310-1. General Provisions.

A. 1. Scope and Applicability -- The following rules apply to the methods and conditions for service employed by utilities furnishing electricity in Utah.

2. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-100-16, Deviation from Rules.

B. Definitions --

1. "Capacity" means load which equipment or electrical system can carry.

2. "CFR" means the Code of Federal Regulations, [~~1991~~]1998 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Contract Demand" means the maximum amount of kilowatt demand that the customer expects to use and for which the customer has contracted with the utility.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with electrical power by an electric utility subject to Commission jurisdiction, at one location and at one point of delivery.

6. "Customer's Installation" means the electrical wiring and apparatus owned by the customer and installed by or for the customer to facilitate electric service and which is located on the customer's side of the point of delivery of electric service.

7. "Customer meter" or "meter" means the device used to measure the electricity transmitted from an electric utility to a customer.

8. "Demand" means the rate in kilowatts at which electric energy is delivered by the utility to the customer at a given instant or averaged over a designated period of time.

9. "Electric service" means the availability of electric power and energy at the customer's point of delivery at the approximate voltage and for the purposes specified in the application for electric service, electric service agreement or contract, irrespective of whether electric power and energy is actually used.

10. "Energy" means electric energy measured in kilowatt-hours--kWh. For billing purposes energy is the customer's total use of electricity measured in kilowatt-hours during any month.

11. "FERC" means the Federal Energy Regulatory Commission.

12. "Month" means the period of approximately 30 days intervening between regular successive meter reading dates.

13. "National Electrical Safety Code" means the [~~1993~~]2002 edition of the[~~- American National Standard~~] National Electrical Safety Code, C2-2002, as approved by the American National Standards Institute, ISBN 0-7381-2778-7, incorporated by reference.

14. "Point of delivery" means the point, unless otherwise specified in the application for electric service, electric service agreement or contract, at which the utility's service wires are connected with the customer's wires or apparatus. If the utility's service wires are connected with the customer's wire or apparatus at more than one point, each connecting point shall be considered a separate point of delivery unless the additional connecting points are made by the utility for its sole convenience in supplying service. Additional service supplied by the utility at a different voltage or phase classification shall also be considered a separate point of delivery. Each point of delivery shall be separately metered and billed.

15. "Power" means electric power measured in kilowatts--kw. For billing purposes, power is the customer's maximum use of electricity shown or computed from the readings of the utility's kilowatt meter for a 15-minute period, unless otherwise specified in the applicable rate schedule; at the option of the utility it may be determined either by periodic tests or by permanent meters.

16. "Power factor" means the percentage determined by dividing customer's average power use in kilowatts, real power, by the average kilovolt-ampere power load, apparent power, imposed upon the utility by the customer.

17. "Premises" means a tract of land with the buildings thereon or a building or part of a building with its appurtenances.

18. "Rated capacity" means load for which equipment or electrical system is rated.

19. "Service line" means electrical conductor which ties customer point of delivery to distribution network.

20. "Transmission line" means high voltage line delivering electrical energy to substations.

21. "Utility" means an electrical corporation as defined in Section 54-2-1.

22. "Year" means the period between the date of commencement of service under the application for electric service, electric service agreement or contract and the same day of the following calendar year.

R746-310-3. Meters and Meter Testing.

A. Reference and Working Standards

1. Reference standards -- Utilities having 500 or more meters in service shall have a high grade reference standard meter which shall be calibrated at least annually by the U.S. Bureau of Standards or a testing agency that regularly calibrates with them. Other utilities with meters in service shall at least have access to another utility's or testing agency's high grade reference standards that are periodically calibrated.

2. Working standards -- Utilities furnishing metered service shall provide for, or have access to, high grade testing instruments, working standards, to test the accuracy of meters or other instruments used to measure electricity consumed by its customers. The error of accuracy of the working standards at both light load and full load shall be less than one percent of 100 percent of rated capacity. This accuracy shall be maintained by periodic calibration against reference standards.

B. Meter Tests -- Unless otherwise directed by the Commission, the requirements contained in the [~~1988~~]2001 edition of the American National Standards[~~Code~~] for Electric Meters Code for Electricity Metering, ANSI C12.1-2001, incorporated by reference, shall be the minimum requirements relative to meter testing.

1. Accuracy limits -- After being tested, meters shall be adjusted to as near zero error as practicable. Meters shall not remain in service with an error over two percent of tested capacity, or if found to register at no load.

2. Before installation -- New meters shall be tested before installation. Removed meters shall be tested before or within 60 days of installation.

3. Periodic -- In-service meters shall be periodically or sample tested.

4. Request -- Upon written request, utilities shall promptly test the accuracy of a customer's meter. If the meter has been tested within 12 months preceding the date of the request, the utility may require the customer to make a deposit. The deposit shall not exceed the estimated cost of performing the test. If the meter is found to have an error of more than two percent of tested capacity, the deposit shall be refunded; otherwise, the deposit may be retained by the utility as a service charge. Customers shall be entitled to observe tests, and utilities shall provide test reports to customers.

5. Referee -- In the event of a dispute, the customer may request a referee test in writing. The Commission may require the deposit of a testing fee. Upon filing of the request and receipt of the deposit, if required, the Commission shall notify the utility to arrange for the test. The utility shall not remove the meter prior to the test without Commission approval. The meter shall be tested in the presence of a Commission representative, and if the meter is found to be inaccurate by more than two percent of rated capacity, the customer's deposit shall be refunded; otherwise, it may be retained.

C. Bill Adjustments for Meter Error --

1. Fast meter -- If a meter tested pursuant to this section is more than two percent fast, the utility shall refund to the customer the overcharge based on the corrected meter readings for the period the meter was in use, not exceeding six months, unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the overcharge shall be computed back to, but not beyond that time.

2. Slow meter -- If a meter tested pursuant to this section is more than two percent slow, the utility may bill the customer for the estimated energy consumed but not covered by the bill for a period not exceeding six months unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the bill shall be computed back to, but not beyond that time.

3. Non-registering meter -- If a meter does not register, the utility may bill the customer for the estimated energy used but not registered for a period not exceeding three months.

D. Meter Records -- Utilities shall maintain records for each meter until retirement. This record shall contain the identification number; manufacturer's name, type and rating; each test, adjustment and repair; date of purchase; and location, date of installation, and removal from service. Utilities shall keep records of the last meter test for every meter. At a minimum, the records shall identify the meter, the date, the location of and reason for the test, the name of the person or organization making the test, and the test results.

R746-310-4. Station Instruments, Voltage and Frequency Restrictions and Station Equipment.

A. Station Instruments -- Utilities shall install the instruments necessary to obtain a record of the load on their systems, showing at least the monthly peak and a monthly record of the output of their plants. Utilities purchasing electrical energy shall install the instruments necessary to furnish information regarding monthly purchases of electrical energy, unless those supplying the energy have already installed instruments from which that information can be obtained.

Utilities shall maintain records indicating the data obtained by station instruments.

B. Voltage and Frequency Restrictions --

1. Unless otherwise directed by the Commission, the requirements contained in the 1995 edition of the American National Standard[~~s Institute Standard~~] for Electrical Power Systems and Equipment-[~~-~~]Voltage Ratings (60 Hz), ANSI C84.1-1995 (R2001),[~~1989 edition,~~] incorporated by this reference, shall be the minimum requirements relative to utility voltages.

2. Utilities shall own or have access to portable indicating voltmeters or other devices necessary to accurately measure, upon complaint or request, the quality of electric service delivered to its customer to verify compliance with the standard established in Subsection R746-310-4(B)(1). Utilities shall make periodic voltage surveys sufficient to indicate the character of the service furnished from each distribution center and to ensure compliance with the voltage requirements of these rules. Utilities having indicating voltmeters shall keep at least one instrument in continuous service.

3. Utilities supplying alternating current shall maintain their frequencies to within one percent above and below 60 cycles per second during normal operations. Variations in frequency in excess of these limits due to emergencies are not violations of these rules.

C. Station Equipment --

1. Utilities shall inspect their poles, towers and other similar structures with reasonable frequency in order to determine the need for replacement, reinforcement or repair.

D. General Requirements -- Unless otherwise ordered by the Commission, the requirements contained in the National Electrical Safety Code, as defined at R746-310-1(B)(13), constitute the minimum requirements relative to the following:

1. the installation and maintenance of electrical supply stations;

2. the installation and maintenance of overhead and underground electrical supply and communication lines;

3. the installation and maintenance of electric utilization equipment;

4. rules to be observed in the operation of electrical equipment and lines;

5. the grounding of electrical circuits.

KEY: public utilities, utility regulation[~~*~~], electric utility industries
[~~September 22, 2000~~]2003
Notice of Continuation December 6, 2002
54-3-1
54-3-7
54-4-1
54-4-8
54-4-14
54-4-23

Transportation, Motor Carrier
R909-19
Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26495
FILED: 07/15/2003, 18:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify definitions and procedures relating to certification and notification requirements. Driver, vehicle, and carrier certification procedures will be extended until July 1, 2004.

SUMMARY OF THE RULE OR CHANGE: This amendment extends certification until July 1, 2004 and clarifies certain definitions and procedures.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 72, Chapter 9, Part 6

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This amendment does not affect the state budget because it does not increase costs or result in savings.
❖ LOCAL GOVERNMENTS: This rule does not affect local governments.
❖ OTHER PERSONS: The rule amendment does not add costs or make savings for others. However, it does clarify that carriers may only charge rates imposed by rule (a requirement already in statute). Therefore, if a carrier has been charging illegally, those rates will have to change, resulting in a savings to consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Except as may be required to remove illegal rates, there are no anticipated compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business, just a straightforward declaration that only the rates allowed by law may be charged.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
MOTOR CARRIER
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5998, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: John R. Njord, Executive Director

R909. Transportation, Motor Carrier.
R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification.
R909-19-1. Authority.

This rule is enacted under the authority of Sections 72-9-601, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6-102, Utah Code.

R909-19-2. Applicability.

[~~(1)~~]All tow trucks motor carriers and employees must comply and observe all rules, regulations, traffic laws and guidelines as prescribed by State Law and 49 CFR Part 350 - 399, hereby incorporated by reference in accordance with Sections 41-6-101, 41-6-102, 41-6-104, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, 72-9-703, and 72-9-703, Utah Code.[

~~(2) Until a driver certification program is established all tow truck drivers will be considered certified until April 1, 2003. All tow truck Motor Carriers and Equipment will be considered certified until July 1, 2002.~~]

(3) The automatic certifications of drivers and Tow Truck Motor Carriers and Equipment expire either when the biannual certification is issued or when the Department issues a notice to the Tow Truck Motor Carrier that it is not eligible for a biannual certification due to violations of any law, any permits issued by the Department, or materials incorporated with those permits.

[~~(4)(a) After July 1, 2002, the Department will begin certifying Tow Truck Motor Carriers and equipment in accordance with established guidelines. The Department realizes that it will not be able to certify all Tow Truck Motor Carriers and equipment by July 1, 2002.~~

~~To address this challenge, the Department may, upon application from the Tow Truck Motor Carrier, issue temporary certifications until the official certification process can be scheduled.~~

~~(b) A temporary certification expires either when a biannual certification is issued or when the Department issues a notice to the Tow Truck Motor Carrier that it is not eligible for a biannual certification due to violations of any law, any permits issued by the Department, or materials incorporated with those permits.~~

~~(c) Neither the automatic nor temporary certifications waive any of the requirements set forth in Title 72, Chapter 9, Part 6, Transportation Code, Tow Truck Provisions, or prevent the Department from enforcing other rules, regulations, federal or state statutes regarding motor carrier safety. Similarly, nothing in this rule is intended to limit the Division's or the Department's power to inspect, investigate, or take action against a Tow Truck Carrier for failure to comply with any of those laws.~~

~~(5) Tow Truck Motor Carriers are encouraged to contact the Department for educational assistance regarding carrier and equipment certification requirements beginning July 1, 2002. This will prepare the carrier for the Department's certification review and facilitate temporary certification.~~

~~(6) The certification granted in this rule does not waive any of the requirements set forth in Title 72, Chapter 9, or other rules, regulations, federal or state statutes regarding motor carrier safety or tow truck regulation. Similarly, nothing in this rule is intended to limit the Department's or Division's power to inspect, investigate, or take action against a Tow Truck Carrier for failure to comply with any of those laws.~~

]

R909-19-3. Definitions.

[~~(1) "Abandoned Vehicle" means a vehicle that is left unattended on a highway for a period in excess of 48 hours; or on any public or private property for a period in excess of seven days without express or implied consent or the owner or person in lawful possession or control of the property.~~

~~(2)~~](1) "Consent Tow" means [~~tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102, after performing~~]any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or it's legal operator's, knowledge and/or approved.

[~~(3)~~](2) [~~"Division" means the Motor Carrier Division~~]"Department" means the Utah Department of Transportation.

[~~(4)~~](3) [~~"Department" means the Utah Department of Transportation~~]"Division" means the Motor Carrier Division.

[~~(5) "Driveaway-Towaway Operation" means any operation in which a motor vehicle constitutes the commodity being transported.~~

~~(6)~~](4) "Gross [~~e~~]Combination [~~w~~]Weight [~~r~~]Rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

[~~(7)~~](5) "Gross [~~v~~]Vehicle [~~w~~]Weight [~~r~~]Rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

[~~(8) "Non Consent Tow " means:~~

~~(a) tow truck service as ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority as defined in Section 72-1-102, or~~

~~(b) any tow truck service performed without the vehicle, vessel, or outboard motor owner's knowledge or permission, and may include tow truck services that are performed on private property.~~](6) "Non-Consent Public Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

[~~(9)~~](7) "Non-consent Private [~~Impoundment~~]Tow" means towing services performed without the prior consent of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

[~~(10) "Non-Consent Police-Generated Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102, after performing a tow truck service that is performed without the vehicle, vessel, or outboard motor owner's knowledge or permission.~~

~~(11) "Personal Property" means articles associated with a person, as property having more or less intimate relation to person, Including clothing, tools, home/family/vocation items, etc. Items that are considered to be the original manufactured equipment, and/or attached property to the vehicle, including tires, rims, vehicle stereos, speakers, or CD changers are not considered personal property and will remain in the vehicle.~~

~~(12) "Rollback/Auto Carrier " means a vehicle constructed, designed, altered, or equipped primarily for the purpose of removing damaged, disabled, abandoned, seized, or impounded vehicles from the highway or other place by means of a tilt bed or roll back deck.~~](8) "Recovery Operation" means a towing service that may require charges in addition to the normal one-truck/one-driver towing service requirements. The additional charges may include charges for manpower, extra equipment, traffic control, and special recovery equipment and supplies.

[~~(13)~~](9) "Tow Truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damages, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place my means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

[~~(14)~~](10) "Tow Truck Certification Program" means a program to authorize and approve tow truck motor carrier owners and operators, and is the process by which the Department, acting under Section 72-9-602, Utah Code, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.[~~, including all terms and conditions of the permit and any materials incorporated into the permit by reference or attachment. This process includes certification for tow truck motor carriers, tow truck owners, drivers, and related equipment. Certificates will be issued for the following categories:~~

~~(a) "Basic Certification" means training applicable to standard tow truck motor carrier operations where the towed vehicle weighs 10,000 lbs or less.~~

~~(b) "Commercial Certification" means training applicable to tow truck motor carrier operations where the towed vehicle weighs 10,001 lbs or more.~~

~~(c) "Hazardous Material Certification" means training applicable to tow truck motor carrier operations where the towed vehicle is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be~~

~~placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.~~

~~(d) "Hazardous Material Certification - Cargo Tank Special Endorsement" means special endorsement training applicable to towing operations limited to the recovery of cargo tanks. Cargo Tank Special Endorsements training and certification requirements are outlined specifically in the Utah Regulations for Towing Operation and Certification Manual.~~]

[~~(15)~~](11) "Tow Truck Motor Carrier" [~~means a for-hire tow truck motor carrier or a private tow truck motor carrier, and includes a tow truck motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories~~]means any company that provides for-hire, private, salvage, or repo towing services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance or equipment and/or accessories.

[~~(16) "Tow Truck Service" means the transportation upon the public streets and highways of the State of damaged, disabled, or abandoned vehicles together with personal effects and/or cargo. The terms wrecker service, tow car service, and garage tow truck service are synonymous and shall be considered as "tow truck service."~~

~~(a) "Class A Tow Truck" means a tow truck, rollback/auto carrier with a minimum manufacturer's GVWR of 10,000 lbs.~~

~~(b) "Class B - Light Duty Tow Truck" means a tow truck with a minimum manufacturer's GVWR equal to 10,001 lbs or less than 18,000 lbs.~~

~~(c) "Class C - Medium Duty Tow Truck" means a tow truck with a minimum manufacturer's GVWR equal to 18,001 lbs or less than 26,001 lbs.~~

~~(d) "Class D - Heavy Duty Tow Truck" means a tow truck with a minimum manufacturer's GVWR of 26,001 lbs or greater.~~

~~(17) "Tow Truck Motor Carrier Steering Committee" means a committee established by the Administrator of the Motor Carrier Division and will include enforcement personnel, industry representatives and, Transportation Commissioner(s) or other persons as considered necessary.~~

~~(18) "Biannual Certification" means the certification established in Utah Code Ann. Section 72-9-602.~~](12) "Tow Truck Service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow Truck Service, with regards to authorized fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Tow Vehicle Classifications will be used when determining authorized fees. Information regarding the (GVWR) to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(1) "Light Duty" means any towed vehicle with a (GVWR) 10,000 pounds or less;

(2) "Medium Duty" means any towed vehicle with a (GVWR) between 10,001 and 26,000 pounds;

(3) "Heavy Duty" means any towed vehicle with a (GVWR) or (GCWR) 26,001 pounds and greater.

(13) "Tow Truck Motor Carrier Steering Committee" means a committee established by the Motor Carrier Division Administrator and will include enforcement personnel, industry representatives and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, Utah Code, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

All tow trucks will be required to carry at least $750,000 of insurance minimum liability plus the MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers. Evidence of required insurance will be maintained at the principal place of business and made available to the Department and/or investigator upon request and prior to tow truck carrier certification.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) issuance of a cease-and-desist order as authorized by section 72-9-303; and

(c) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

(2) The fact of non-compliance will be considered sufficient cause for the Department to revoke tow truck motor carrier, driver, and/or vehicle certification(s).

R909-19-7. Towing Notice Requirements.

(1) A tow truck motor carrier after performing a tow truck service, that was not ordered by a peace officer, or a person acting on behalf of a law enforcement agency or a highway authority, as defined in R909-19-3, without the vehicle, vessel, or outboard motor owner's knowledge shall immediately upon arriving at the place of storage or impound of the vehicle contact by radio or phone, the law enforcement agency having jurisdiction over the area where the vehicle, vessel, or outboard motor was picked up and notify the agency as per requirements set forth in 72-9-603(1).

Pursuant to the requirement to "immediately" ... "contact the law enforcement agency having jurisdiction" as required by Section 72-9-603, Utah Code, a tow-truck motor-carrier operator shall:

(a) Report the removal immediately upon arriving at the place of storage or impound of the vehicle, if removal was completed during posted office hours.

(b) Report the removal within 2 hours of the next business day if the removal occurred after normal posted office hours.

(c) For purposes of Section 72-9-603, the "contact" to the law enforcement agency shall be considered accomplished if made as [~~per Section R909-19-9~~]authorized by 41-6-102.5.

(d) If [~~this~~]reporting is not completed within the time frame, the Tow Truck Motor Carrier or [~~O~~]operator will not be allowed to collect any fees or begin charging storage fees as authorized under Section 72-9-603.[~~ Notification and reporting requirements will be completed in electronic form on the Department's website, www.dot.state.ut.us.~~

~~(2) Any Tow Truck Motor Carrier or its agents who violates notification requirements as outlined or uses a restriction devise or means of disabling the vehicle, and thereby incapacitates a vehicle and makes it unavailable to its owner to the same extent as if it had been towed, may be assessed civil penalties determined by the Department as authorized under Section 72-9-603.~~]

R909-19-8. Requirement for Tow Truck Motor Carriers to input required information for Government and Public Notification.

All Tow Truck Motor Carriers must follow notification procedures as required by 72-9-603 and input required information in electronic form on the Department's website, at [~~www.dot.state.ut.us~~]www.tow.utah.gov.

R909-19-9. Certification.

[~~(1) The Department shall inspect, investigate, and certify tow truck motor carriers, tow trucks, and tow truck drivers at least every two years to ensure compliance as required by Sections 41-6-102.5, 41-6-102.7, Utah Code, and 49 CFR Parts 350 - 399, 170-180 where applicable.~~

~~(2) The Department will charge a biennial fee as authorized by Section 72-9-602(1) to cover costs associated with the inspection, investigation, and certification.~~]There are three (3) required certification requirements required by the Department, they are as follows:

(1) Tow Truck Driver Certification:

(a) Effective July 1, 2004 all tow truck drivers will be tested and certified in accordance with National Driver Certification Procedure (NDCP) standards. These standards of conduct and proficiency may be tested and certified through:

(i) Towing and Recovery Association of America (TRAA) Testing Program;

(ii) Wreckmaster Certification Program;

(iii) AAA Certification Program

(iv) Other driver testing certification programs may be approved by the Department to meet certification requirements however; the Tow Truck Motor Carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4559.

(b) Information on the above mentioned certification programs may be obtained by contacting the Motor Carrier Division at (801) 965-4559.

(c) Tow Truck Motor Carriers shall ensure that all driver's are:

(i) Properly trained to operate tow truck equipment;

(ii) Licensed, as required under UCA 53-3-101, Uniform Driver License Act; and

(iii) Property certified.

(2) Tow Truck Vehicle Certification:

(a) All tow trucks shall be inspected and certified biannually;

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at http://www.udot.utah.gov/poe/laws/safetyequipment.

(c) Upon certification of vehicle a UDOT safety sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT vehicles inspection certification shall be kept in the vehicle file and available upon request by Department personnel.

(3) Tow Truck Motor Carrier Certification:

(a) Tow Truck Motor Carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, and local laws where applicable.

R909-19-10. Certification Fees.

[~~Each separate Tow Truck Motor Carrier is responsible for the cost of vehicle inspections and certification reviews as authorized by this rule. Cost estimates associated with vehicle inspections, investigation and certification are available from the Division.~~]The Department may charge Tow Truck Motor Carrier's a fee biannually as authorized by Section 72-99-603(1) to cover costs associated with driver, vehicle, and carrier certifications.

R909-19-11. Certification from a Qualified Training Facility.

[~~(1)(a) The Department will accept operational training or equivalent certification from a qualified professional training facility that meets minimum operational requirements as approved by the Department; or~~

~~(b) The Tow Truck Motor Carrier ensures that each tow truck driver or operator is qualified as follows:~~

~~(i) Understands the operational functions of equipment, load securement or inspection task to be accomplished and can perform that task; and~~

~~(ii) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing tow truck operations; and~~

~~(iii) Is capable of performing the assigned operational function or inspection by reason of experience, training or both.~~

~~(2) The Tow Truck Motor Carrier must maintain evidence of the tow truck driver/operator qualifications at its principle place of business. The evidence must be maintained for the period during which the driver/operator is employed in that capacity and for one year thereafter.~~]Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

(a) company name;

(b) address;

(c) phone number;

(d) transportation and storage fees charged;

(e) name of company driver;

(f) unit number;

(g) license plate of the towed vehicle;

(h) make, model, and year of the towed unit, and;

(i) start and end time for services provided.

R909-19-12. Maximum Towing Rates. Public Non-Consent Tows.

(1) $110 per hour, per unit, when towing a "Light Duty" vehicle[~~ for the use of Class A and B Tow Truck Service~~];

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(2) $200 per hour, per unit, when towing a "Medium Duty" vehicle[~~for the use of a Class C Tow Truck Service~~];

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transport transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(3) $250 per hour, per unit, when towing a "Heavy Duty" vehicle[~~for the use of a Class D Tow Truck Service~~];

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transport transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

[~~(4) $400 per hour for the use of any tow truck service in the recovery of a hazardous material cargo tank vehicles of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified.~~](4) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck will therefore be in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, which is in question, is attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, which is in question, is attempting to retrieve said vehicle before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) Recovery charges, as defined by R909-19-3, shall be coordinated with the towed vehicle owner prior to initiating the additional charges relating the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the tow vehicle owner and Tow Truck Motor Carrier.

(6) Pursuant to Utah Code Ann. Section 72-9-603(3), it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(7) Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances.

R909-19-13. Maximum Private Non-Consent Impoundment Rates.

[~~(1) Tow Truck Motor Carriers and/or Private Impound Yards may charge~~

~~(a) up to $110 maximum rate for private impoundment of vehicles for the use of Class A and B Tow Truck Service;~~

~~(b) up to $200 maximum for the use of a Class C Tow Truck Service;~~

~~(c) up to $250 maximum for the use of Class D Tow Truck Service.~~

~~(2) Any Tow Truck Motor Carrier or Private Impound Yard charging more than maximum approved rates will be assessed civil penalties determined by the Department as authorized under Section 72-9-603.~~](1) The maximum rate for a "Light Duty" vehicle is $110.

(2) The maximum rate for a "Medium Duty" vehicles is $200.

(3) The maximum rate for a "Heavy Duty" vehicle is $250.

(4) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck will therefore be in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, which is in question, is attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, which is in question, is attempting to retrieve said vehicle before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) Pursuant to Utah Code Ann. Section 72-9-603(3), it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(6) Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances.

R909-19-14. Maximum Storage Rates. Public/Private Non-Consent Tows.

(1) $15 Maximum per day, per unit, for outside storage of [~~cars, pickups, and smaller~~]"Light Duty" vehicles;

(2) $20 Maximum per day, per unit may be charged for inside storage of [~~cars; pickups and smaller~~]"Light Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(3) $35 Maximum per day, per unit for outside storage of [~~semi tractors or trailers~~]"Medium/Heavy Duty" vehicles;

(4) $70 Maximum per day, per unit may be charged for inside storage of [~~semi tractors or trailers~~]"Medium/Heavy Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(5) $100 Maximum per day, per unit for outside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(6) $150 Maximum per day, per unit may be charged for inside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F, only at the owner's request, or at the order of a law enforcement agency or highway authority.

(7) Pursuant to Utah Code Ann. Section 72-9-603(3), it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than

the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(8) For the purpose of calculating storage rates, if the first six (6) hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

R909-19-15. Towing and Storage Rates. Public Consent Tows.

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services rendered and are not regulated by the Department.

R909-19-16. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603(6), a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle.

R909-19-17. Federal Motor Carrier Safety Requirements.

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

R909-19-18. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, the public can call the Motor Carrier Division at (801) 965-4261.

R909-19-19. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a [~~working group on tow truck issues~~]Steering Committee to provide advisory information and input.

[~~(2) The Work Group will meet on a quarterly basis or as needed to review policies and procedures.~~

~~(3)~~](2) The Motor Carrier Advisory Board, established by the Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

R909-19-20. Annual Review of Rates, Fees and Certification Process.

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in August of each year, the board will review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of any rate or fee increase or issued related to procedures regarding the certification process.

(3) All interested parties must notify the Department of these issues by August 1 of each year to ensure placement on the agenda.

(4) An annual report will be issued by the Department regarding any rate, fees, tow truck motor carrier procedures and certification process changes will be made available at the [~~Department's main office~~]Motor Carrier Division office.[~~and on the Motor Carrier Division's website at www.dot.state.ut.us.~~]

R909-19-21. Ability to Petition for Review.

Any Tow Truck Carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code R907-1, Appeal of Departmental Actions.

R909-19-22. Record Retention.

Tow Truck Motor Carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

R909-19-23. Information to be Included on Company's Receipt.

Charges for services provided must be listed and itemized on a receipt and provided t the customer. The information on the receipt must include company name, address, phone number, transportation and storage fees charged, name of driver, unit number of towing vehicle or license plate, description of the vehicle that was towed, and the total breakdown of time and services rendered.

KEY: safety regulations, trucks, towing, certifications
[~~May 21, 2002~~]2003
41-6-101
41-6-102
41-6-104
53-1-106
53-8-105
63-38-3.2
72-9-601
72-9-602
72-9-603
72-9-604
72-9-301
72-9-303
72-9-701
72-9-702
72-9-703

Workforce Services, Employment Development
R986-100
Employment Support Programs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26487
FILED: 07/15/2003, 13:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct errors found since the last time this rule was amended.

SUMMARY OF THE RULE OR CHANGE: We are making changes of a nonsubstantive nature to wording which was incorrect. Statutory citations have been corrected, the overpayment collection process has been corrected to more accurately reflect federal and state law regarding disqualifications. We

are also allowing the Office of Recovery Services (ORS) to remove case files from the office in the event they are needed for child support cases.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 35A-3-101 et seq., and 35A-3-301 et seq.

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There will be no costs or savings to the state budget as the only substantive changes are being made to conform to existing state or federal law.
❖ LOCAL GOVERNMENTS: There will be no costs or savings to local government as these are state programs and do not impact local government.
❖ OTHER PERSONS: There will be no costs or savings to any other persons. The changes in this amended rule are cost neutral. Any costs or savings were contemplated by the legislature in the statutory changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs as a result of this amendment for any person or entity. The changes in this amended rule are cost neutral. Any costs or savings were contemplated by the legislature in the statutory changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on business as these changes are to federally funded programs and have no impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/02/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 09/03/2003

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R986. Workforce Services, Employment Development.
R986-100. Employment Support Programs.
R986-100-110. Release of Information Other Than at the Request of the Client.

(1) Information obtained from or about a client will not be published or open to public inspection in any manner which would reveal the client's identity except:

(a) unless [~~if~~]there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only [~~can~~]provide information available in the public record on the criminal charge; or

(b) if an abstract has been docketed in the district court on an overpayment, the Department can provide information that is a matter of public record in the abstract.

(2) Any information obtained by the Department pursuant to an application for or payment of public assistance may not be used in any court or admitted into evidence in an action or proceeding, except:

(a) in an action or proceeding arising out of the client's receipt of public assistance, including fraudulently obtaining or retaining public assistance, or any attempt to fraudulently obtain public assistance; or

(b) where obtained pursuant to a court order.

(3) If the case file, or any information about a client in the possession of the Department, is subpoenaed by an outside source, legal counsel for the Department will ask the court to quash the subpoena or take such action as legal counsel deems appropriate.

(4) Information obtained by the Department from the client or any other source, except information obtained from an income match, may be disclosed to:

(a) an employee of the Department in the performance of the employee's duties unless prohibited by law;

(b) an employee of a governmental agency that is specifically identified and authorized by federal or State law to receive the information;

(c) an employee of a governmental agency to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against public assistance programs, or the recovery of overpayments of public assistance funds;

(d) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or to aid a felony criminal investigation except no information regarding a client receiving food stamps can be provided under this paragraph;

(e) to a law enforcement officer when the client is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation or when the client has information which will assist a law enforcement officer in locating or apprehending an individual who is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation and the officer is acting in his official capacity. The only information under this paragraph which can be released on a client receiving food stamps is the client's address, SSN and photographic identification;

(f) to a law enforcement official, upon written request, for the purpose of investigating an alleged violation of the Food Stamp Act 7 USCA 2011 or any regulation promulgated pursuant to the Act. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person being investigated. Under this paragraph, the Department can release to the law enforcement official, more than just the client's address, SSN and photo identification;

(g) an educational institution, or other governmental entity engaged in programs providing financial assistance or federal needs-based assistance, job training, child welfare or protective services, foster care or adoption assistance programs, and to individuals or

other agencies or organizations who, at the request of the Department, are coordinating services and evaluating the effectiveness of those services;

(h) to certify receipt of assistance for an employer to get a tax credit; or

(i) information necessary to complete any audit or review of expenditures in connection with a Department public assistance program. Any information provided under this part will be safeguarded by the individual or agency receiving the information and will only be used for the purpose expressed in its release.

(5) Any information released under paragraph (4) above can only be released if the Department receives assurances that:

(a) the information being released will only be used for the purposes stated when authorizing the release; and

(b) the agency making the request has rules for safeguarding the information which are at least as restrictive as the rules followed by the Department and that those rules will be adhered to.

(6) Case records or files will not be removed from the local office except by court order, at the request of authorized Department employees, the Department's Information Disclosure Officer, [~~or~~]the Department's Quality Control office or ORS.

(7) In an emergency, as determined to exist by the Department's Information Disclosure Officer, information may be released to persons other than the client before permission is obtained.

(8) For clients receiving CC, the Department may provide the following information to the child care provider identified by the client as the provider:

(a) the date on which the CC payment was issued by the Department; and

(b) the amount of the check issued by the Department.

(9) Taxpayer requests to view public assistance payrolls will be denied.

R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPVs).

(1) Any person who is at fault in obtaining or attempting to obtain, an overpayment of assistance, as defined in Section [~~35A-1-502~~]35A-3-602 from any of the programs listed in R986-100-102 [~~or 35A-3-602~~]or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

(a) knowingly making false or misleading statements;

(b) misrepresenting, concealing, or withholding facts or information;

(c) posing as someone else;

(d) not reporting the receipt of a public assistance payment the individual knew or should have known they were not eligible to receive;

(e) not reporting a material change within 10 days after the change occurs in accordance with these rules; and

(f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).

(3) When the Department determines or receives notice from a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type for the time period as set forth in statute or federal regulation.

(4) Disqualifications run concurrently[~~consecutively. If an individual is disqualified for a second IPV before the expiration of the one year disqualification for the first IPV, the two year disqualification period does not begin to run on the second IPV until the expiration of the first disqualification period~~].

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.[

~~(6) If a client is disqualified from assistance for an IPV, all other adults living in the household who were or should have been included in the household at the time the fraud was committed and knew or should have known that the fraud was being committed are jointly and severally liable for the overpayment and may be subject to the same disqualification provisions as the client who was actually receiving assistance.~~]

([~~7~~]6) If an individual has been disqualified in another state, the disqualification period for the IPV in that State will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other State count toward determining the length of disqualification in Utah.

([~~8~~]7) The client will be notified that a disqualification period has been determined. The disqualification period begins the month after the disqualification decision has been issued or as soon thereafter as possible and continues in consecutive months until the disqualification period has expired.

([~~9~~]8) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

R986-100-122. Advance Notice of Department Action.

(1) Except as provided in (2) below, clients will be notified in writing when a decision concerning eligibility, amount of assistance payment or action on the part of the Department which affects the client's eligibility or amount of assistance has been made. Notice will be sent prior to the effective date of any action to reduce or terminate assistance payments. The Department will send advance notice of its intent to collect overpayments or to disqualify a household member.

(2) Except for overpayments, a[~~A~~]dvance notice is not required when:

(a) the client requests in writing that the case be closed;

(b) the client has been admitted to an institution under governmental administrative supervision;

(c) the client has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(d) the client's whereabouts are unknown and mail sent to the client has been returned by the Post Office with no forwarding address;

(e) it has been determined the client is receiving public assistance in another State;

(f) a child in the household has been removed from the home by court order or by voluntary relinquishment;

(g) a special allowance provided for a specific period is ended and the client was informed in writing at the time the allowance began that it would terminate at the end of the specified period;

(h) a household member has been disqualified for an IPV in accordance with 7 CFR 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member;

(i) the Department has received factual information confirming the death of a client or payee if there is no other relative able to serve as a new payee;

(j) the client's certification period has expired;

(k) the action to terminate assistance is based on the expiration of the time limits imposed by the program;

(l) the client has provided information to the Department, or the Department has information obtained from another source, that the client is not eligible or that payment should be reduced or terminated; or

(m) the Department determines that the client willfully withheld information.

(3) For food stamp recipients and recipients of assistance under R986-300, no action will be taken until 10 days after notice was sent unless one of the exceptions in (2)(a) through (k) above apply.

(4) Notice is complete if sent to the client's last known address. If notice is sent to the client's last known address and the notice is returned by the Post Office with no forwarding address, the notice will be considered to have been properly served.

R986-100-123. The Right To a Hearing and How to Request a Hearing.

(1) A client has the right to a review of an adverse Department action by requesting a hearing.

(2) [~~A~~]In cases where the Department sends notice of its intent to take action to collect an alleged overpayment but there is no alleged overpayment of food stamps, the client must request a hearing in writing or orally within 30 days of the date of notice of agency action. In all other cases, the client must request a hearing in writing or orally within 90 days of the date of the notice of agency action with which the client disagrees[~~, unless the notice of agency action sets forth a shorter time period~~]. Any oral request for a hearing will be reduced to writing by the Department and the client will be requested to sign the request.

(3) Only a clear expression by the client to the effect that the client wants an opportunity to present his or her case is required.

(4) The request for a hearing can be made at the local office or the Division of Adjudication.

(5) If the client disagrees with the level of food stamp benefits paid or payable, the client can request a hearing within the certification period, even if that is longer than 90 days.

(6) If a request for restoration of lost food stamp benefits is made within one year of the loss of benefits a client may request a hearing within 90 days of the date of the denial of restoration.

(7) In the case of an overpayment and/or IPV the obligor may contact the presiding officer and attempt to resolve the dispute. If the dispute cannot be resolved, the obligor may still request a hearing provided it is filed within the time limit provided in the notice of agency action.

R986-100-130. Default Order for Failure to Participate.

(1) The Department will issue a default order if an obligor in an overpayment and/or IPV case fails to participate in the administrative process. Participation for an obligor means:

(a) signing and returning to the Department an approved stipulation for repayment and making all of the payments as agreed,

(b) requesting and participating in a hearing, or

(c) paying the overpayment in full.

(2) If a hearing has been scheduled at the request of a client or an obligor and the client or obligor fails to appear at or participate in the hearing, either in person or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, issue a default order.

(3) A default order will be based on the record and best evidence available at the time of the order.

R986-100-132. What Constitutes Grounds to Set Aside a Default.

(1) A request to reopen or set aside for failure to participate:

([~~2~~]a) will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;

(b) may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(i) the danger that the party not requesting reopening will be harmed by reopening,

(ii) the length of the delay caused by the party's failure to participate including the length of time to request reopening,

(iii) the reason for the request including whether it was within the reasonable control of the party requesting reopening,

(iv) whether the party requesting reopening acted in good faith, and

(v) whether the party was represented by another at the time of the hearing. Because they are required to know and understand Department rules,[~~A~~] attorneys and professional representatives are held to a higher standard, and

(vi) whether based on the evidence of record and the parties arguments or statements, setting aside the default and taking additional evidence might effect the outcome of the case.

(2) Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

R986-100-134. Payments of Assistance Pending the Hearing.

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate food stamps, RRP, FEPTP, or FEP financial assistance if the client's request for a hearing is received no later than 10 days after the date of the notice of the reduction, or termination. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client is otherwise eligible, Employment Support Child Care (ES CC) can be paid pending an appeal of a decision from ORS that the client is not cooperating in the establishment of paternity. The client's request for a hearing must be received no later than 10 days after the date of the notice of denial or termination. The ES CC assistance will continue until a decision is issued by an ALJ regardless of when the certification period expires.

If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason. If a client files a new application after a decision by an ALJ denying assistance, the new application will be denied and the client will have no right to appeal that denial unless there has been a change in circumstances.

(3) If the client can show good cause for not requesting the hearing within 10 days of the notice, assistance may be continued if the client can show good cause for failing to file in a timely fashion. Good cause in this paragraph means that the delay in filing was due to circumstances beyond the client's control or for circumstances which were compelling and reasonable. Because the Department allows a client to request a hearing by telephone or mail, good cause does not mean illness, lack of transportation or temporary absence.

(4) A client can request that payment of assistance not be continued pending a hearing but the request must be in writing.

(5) If payments are continued pending a hearing, the client is responsible for any overpayment in the event of an adverse decision.

(6) If the decision of the ALJ is adverse to the client, the client is not eligible for continued assistance pending any appeal of that decision.

(7) If a decision favorable to the client is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

(8) Financial assistance payments under GA or WTE, and CC subsidies, except as provided in paragraph (2) above will not continue during the hearing process regardless of when the appeal is filed.

(9) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

(10) Clients receiving financial assistance under the FEPTP program must continue to participate to receive financial assistance during the hearing process.

(11) Financial assistance under the FEPTP program will not extend for longer than the seven-month time limit for that program under any circumstance.

(12) Assistance is not allowed pending a hearing from a denial of an application for assistance.

KEY: employment support procedures
July 1, 2003
35A-3-101 et seq.
35A-3-301 et seq.
35A-3-401 et seq.

End of the Notices of Proposed Rules Section

NOTICES OF
120-DAY (EMERGENCY) RULES

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) (2001)).

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 (2001); and *Utah Administrative Code* Section R15-4-8.

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-504
Nursing Facility Payments

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 26492
FILED: 07/15/2003, 15:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Input from federal regulators regarding the Medicaid state plan amendment that mirrors this rule indicated that language linking payments to appropriations was impermissible. Other changes address language that has proven to be ambiguous as applied. The process for applying for adjusted payments for a sole community provider are added.

SUMMARY OF THE RULE OR CHANGE: Definitions for nursing costs, sole community provider and urban provider are added. Language that called for payments to be matched to appropriations is deleted. Terms and conditions to qualify for a rate adjustment as a sole community provider are added. Language is added to clarify that the urban rural differential applies to nursing costs. The methodology for setting the differential is clarified. (DAR NOTE: A corresponding proposed amendment is under DAR No. 26490 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5, 26-18-2, and 26-18-3

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No change--The clarifications in this rule change will not change the amount of state and federal funds that will be distributed to regulated health care facilities.
❖ LOCAL GOVERNMENTS: Local government operated nursing homes may benefit from the sole community provider adjustment. This rule sets the terms and conditions for qualifying. This could have a positive benefit for local government.
❖ OTHER PERSONS: Except for sole community nursing facilities that may benefit from a rate adjustment, the overall impact on nursing facilities will be budget neutral. Facilities wishing to qualify for the sole community provider adjustment will be required to submit financial information and other data to support that they are in financial distress. Application for the adjustment is voluntary.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Except for sole community nursing facilities that may benefit from a rate adjustment, the overall impact on nursing facilities will be budget neutral. Facilities wishing to qualify for the sole community provider adjustment will be required to submit financial information and other data to support that they are in financial distress. Application for the adjustment is voluntary.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is necessary to keep nursing home reimbursement in harmony with federal interpretation and will have an overall positive impact on regulated facilities. Rod L. Betit

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

Federal participation in the Medicaid program is contingent on an approved state plan. These changes need to be implemented immediately to assure that a state plan amendment will be processed in a timely fashion.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Doug Springmeyer at the above address, by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

THIS RULE IS EFFECTIVE ON: 07/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-1. Introduction.

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System). This system reimburses facilities based on the case mix index of the facility.

(2) This rule is authorized by Utah Code sections 26-1-5, 26-18-2, and 26-18-3.

R414-504-2. Definitions.

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility.

(3) "Facility Case Mix Rate" means the rate the Department issues to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

(4) "FCP" means the Facility Cost Profile cost report filed by the provider on an annual basis.

(5) "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

(6) "Nursing Costs" means the most current property costs from the annual FCP report reported on lines 070-012 Nursing Admin Salaries & Wages; 070-013 Nursing Admin Tax & Benefits; 070-040 Nursing Direct Care Salaries and Wages; and 070-041 Nursing Direct Care Tax and Benefits

(7) "Nursing facility" or "facility" means a[~~ny~~] Medicaid-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

([~~7~~]8) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

([~~8~~]9) "Property costs" means the most current property costs from the annual FCP report reported on lines 230 (Rent and Leases Expense), 240 (Real Estate and Personal Property Taxes), 250 (Depreciation - Building and Improvement), 260 (Depreciation - Transportation Equipment), 270 (Depreciation - Equipment), 280 (Interest - Mortgage, Personal Property Furniture and Equipment - Small Items), 300 (Property Insurance).

([~~9~~]10) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" is assigned a weight based on an assessment of its relative value as measured by resource utilization.

([~~10~~]11) "RUGS score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS is calculated from the information obtained through the submission of the MDS data.

(12) "Sole community provider" means a facility that is the only facility:

(a) within a city, if the facility is located within the incorporated boundaries of a city; or

(b) within the unincorporated area of the county if it is located in an unincorporated area.

(13) "Urban provider" means a facility located in a county of more than 90,000 population.

R414-504-3. Principles of Facility Case Mix Rates and Other Payments.

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patients.

(1) Effective January 1, 2003 approximately 50% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 38% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) The Department calculates each nursing facility's case mix index quarterly based upon the previous 12 month moving average case mix history.

(3)[~~For any fiscal year, the total amount paid to nursing facilities will be matched to available appropriations. The~~

~~Department may adjust rates as needed to reflect changes in appropriations or to match payments to available appropriations.~~

~~(4)~~] A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. The Resident Assessment Section will make the determination as to qualification for any additional payment. The Division of Health Care Financing [~~will~~]shall determine the amount of any add-on[~~, based on available appropriations~~].

([~~5~~]4) Property costs are paid separately from the RUGS rate. Each facility's property payment is as follows:

(a) Each facility's reimbursement rate effective July 1, 2002 includes a property payment between $11.19 per patient day or up to a maximum of $20.00 per patient day. No facility may receive a higher payment attributable to property as a result of this rule. The property payment shall be reduced if the occupancy of the facility is below 75%, by assuming occupancy of 75% and adjusting 2001 FCP allowable property costs accordingly. This adjusted patient day figure is then divided into actual property costs to determine allowable property costs.

(b) The property payment shall be set on January 1, 2003, based on the calculation in (a), above. Property payments shall be phased out by reducing the payment by 25% of the January 1, 2003 amount for each of the succeeding two calendar years, with property payment stopping effective January 1, 2006. The amount reduced from property payments shall be shifted to other components of the rate and distributed to facilities[~~, consistent with R414-504-3(3)~~].

([~~6~~]5) Newly constructed facilities' case mix component of the rate shall be paid at the average rate. This average rate shall remain in place for a new facility for six months, whereupon the provider's case mix index and property payment is established. At this point, the Department shall issue a new case mix adjusted rate. The property payment to the facility is controlled by R414-504-3([~~5~~]4). A newly constructed facilities' property payment may not exceed $20.00 per patient day and shall be reduced if R414-504-3([~~5~~]4)(b) is applicable.

([~~7~~]6) An existing facility acquired by a new owner will continue at the same case mix index and property cost payment established for the facility under the previous ownership for the remainder of the quarter. The new owners property payment may not exceed $20.00 per patient day and shall be reduced if R414-504-3([~~5~~]4)(b) is applicable.

([~~8~~]7)[~~ If the Department determines that a facility is located in an under-served area, or addresses an under-served need, the Department may negotiate a payment rate that is different from the case mix index established rate. This exception may be awarded only after consideration of historical payment levels and need.~~](a) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate.

(b) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) steps taken by the facility to reduce costs and increase occupancy.

(c) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility, and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than 10% of the state share required to fund the proposed adjustment. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(d) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(e) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(f) The Department's determination shall be based on maintaining access to services on and maintaining economy and efficiency in the Medicaid program.

(g) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(h) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(i) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

([~~9~~]8) A provider may challenge the rate set pursuant to this rule using the appeal in R410-14. A provider must exhaust administrative remedies before challenging rates in any other forum.

([~~10~~]9) The Department may [~~increase~~]adjust reimbursement to urban [~~nursing homes~~]providers if it determines that there is a significant difference in industry wide nursing costs as between urban and other providers. Any adjustment shall use[~~, using~~] either:

(1) a wage index adjustment [~~to recognize~~]that reflects local labor market nursing costs relative to the state as a whole[~~,~~]; or

(2) [~~The Department shall use a wage index that reflects nursing home costs~~]a Department analysis of nursing costs reported on FCPs.[~~ This adjustment may cause a decrease in reimbursement to rural nursing homes.~~]

R414-504-4. Transition Reimbursement Principles.

For each quarter of calendar year 2003 and for the first two quarters of calendar year 2004:

(1) The Department shall determine if any facility's total rate is scheduled to be reduced by more than $5.00 per patient day, as compared to the total rate for that facility in effect on December 31, 2002. The total rate amount for the facility determined to be in effect as of December 31, 2002 shall be adjusted by any disallowances or other adjustments;

(2) For all facilities with a drop of more than $5.00 per patient day in their total rate as of the applicable quarterly adjustment, the Department shall adjust up the total rate of all such facilities to a rate where the loss is equal to $5.00 per patient day; and

(3) The total rate for all facilities with a gain in rate or a drop of less than $5.00 per patient day shall be proportionately adjusted down to fund the adjustment in R414-504-4(2).

KEY: Medicaid
July 15, 2003
26-1-5
26-18-2
26-18-3

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Health, Community and Family Health Services, Children with Special Health Care Needs

R398-2

Newborn Hearing Screening

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26444

FILED: 07/03/2003, 12:43

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule was enacted under Utah Code Section 26-10-6 which requires that each newborn infant in Utah be tested for hearing loss. The purpose of this rule is to facilitate early detection, prompt referral, and early habilitation of infants with significant, permanent hearing loss. If hearing impaired children are not identified early, it is difficult, if not impossible, for many of them to acquire the fundamental language, social, and cognitive skills that provide the foundation for later schooling and success in society (from the National Center for Hearing Assessment and Management (NCHAM)). Consequently, the department is authorized to adopt rules on the hearing testing for newborn infants required by Section 26-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Prior to the enactment of this rule, Utah relied on a High Risk Registry to help identify hearing loss in infants. Many children with significant hearing loss went undetected during their most critical language learning months. With this rule, we are currently screening nearly 98% of Utah's live births. The average age of identification of hearing loss (per Hi*Track Data System Reports) has gone from 18.4 months in 1998 (the first year of state-mandated data collection) to 2.9 months in 2002. When early identification and intervention occurs, hearing impaired children make dramatic progress, are more successful in school, and become more productive members of society. The department cannot assure the proper testing and follow-up of every newborn infant in Utah without establishing by rule the definitions, implementation, responsibility, information required for parents and primary care providers, reporting formats, and penalties for testing newborn infants. For these reasons, Rule R398-2 must be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Lyle Odendahl at the above address, by phone at 801-538-6878, by FAX at 801-538-6306, or by Internet E-mail at lyleodendahl@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 07/03/2003

Health, Health Systems Improvement, Child Care Licensing

R430-4

General Certificate Provisions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26447

FILED: 07/07/2003, 14:40

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 39, creates the Utah Child Care Licensing Act. Section 26-39-104 provides that the department may make and enforce rules necessary to implement the chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule became effective August 19, 1998, and has not been amended since. No comments have been received from persons supporting or opposing the rule in the last five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R430-4 establishes minimum standards for obtaining a residential certificate for persons providing care for five to eight children and defines the standards that a residential in-home child care provider must follow to obtain a certificate. The rule is needed to identify the process and steps to obtain the certificate and should be continued.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 07/07/2003

▼ ▼

Health, Health Systems Improvement, Child Care Licensing

R430-50

Residential Certificate Child Care Standards

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 26448
FILED: 07/07/2003, 14:45

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 39, creates the Child Care Licensing Act and requires the Department to make and enforce rules. Section 26-39-105.5 requires that the department make and enforce rules necessary to implement the section and complete an initial and annual inspection of serious sanitation, fire, and health hazards.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In the 1998 Legislative Session, S.B. 26 required the Department to establish rules to effect provisions of the law creating a residential certificate care provider. There have been four changes to the rule. One comment was received suggesting that some rules were redundant and concern that tobacco should be identified as a health risk and prohibited in homes. In January 2002, the rule was amended to match changes in the Rule R430-100. The final rule amendment was February 15, 2002, when the Administrative Rules Review Committee and the Attorney General's Office issued an opinion which requires Child Care providers to comply with the Section 53-5-701 dealing with concealed weapons permit. No written comments were received. (DAR NOTE: S.B. 26 is found at UT L 1998 Ch 158 and was effective May 4, 1998.)

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R430-50 is the rule establishing the minimum health and safety standards for operating a residential certificate home. Continuation of the rule is required to ensure that the public is able to understand the minimum standards to expect in a residential certificate home to provide a safe environment for children. The Department replied to public comments by letter to ensure that the providers and public understand the limits to the authority to regulate providers. In licensing and regulating child care programs, the department shall reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range of licensure, depending upon the needs and different levels and types of child care provided.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 07/07/2003

Health, Health Systems Improvement, Child Care Licensing
R430-60
Hourly Child Care Center

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26449
FILED: 07/07/2003, 14:49

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 39, creates the Child Care Licensing Act and requires the Department to make and enforce rules. Subsection 26-39-104 provides for the following rulemaking: 1) With regard to child care programs licensed pursuant to this chapter, the department may: a) make and enforce rules to implement the provisions of this chapter and, as necessary to protect children's common needs for a safe and healthy environment, to provide for: i) adequate facilities and equipment; and ii) competent caregivers considering the age of the children and the type of program offered by the licensee.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In the 1997 Legislative Session, H.B. 124, created the licensing requirement for hourly "drop-in" child care programs which had previously been exempted. In January 1998, Rule R430-10 was filed as an emergency rule which required providers to file a Notice of Intent to License prior to March 1, 1998, and to obtain a license by June 1, 1998. In September 1998, the licensing standards were established after holding seven public hearings statewide. In 1999, S.B. 167 amended the rule to permit caregivers with their own children age four and older to not count in the ratios, but count in the total licensed capacity. On January 14, 2002, the rules were amended to coordinate standards to match the Child Care Center (Rule R430-100) changes. One comment was received regarding "first aid course completion is not the same as certification." The final rule amendment was February 15, 2002, when the Administrative Rules Review Committee and Attorney General's Office issued an opinion which requires Child Care providers to comply with the Section 53-5-701 dealing with concealed weapons permit. No written comments were received. (DAR NOTES: H.B. 124 is found at UT L 1997 Ch 127 and was effective January 1, 1998. S.B. 167 is found at UT L 1999 Ch 77 and was effective May 3, 1999.)

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R430-60 is the rule establishing the minimum health and safety standards for operating a licensed hourly child care center. Continuation of the rule is required to ensure that the public is able to understand the minimum standards to expect in a hourly child care center to provide a safe environment for children. The Department replied to public comments by letter to ensure that the providers and public understand the limits to the authority to regulate providers. In licensing and regulating child care programs, the department shall reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range of licensure, depending upon the needs and different levels and types of child care provided.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 07/07/2003

Health, Health Systems Improvement, Licensing
R432-35
Background Screening

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26450
FILED: 07/07/2003, 14:56

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, creates the Health Facility Licensing and Inspection Act and Section 26-21-5 requires the health facility committee to make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for the licensing of health-care facilities. Section 26-21-9.5 requires that the Department conduct a screening on each person who provides direct care to a patient for covered health care facilities and establish

reasonable standards for criminal background checks by public and private entities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In August 1998, the rules were established to provide minimum standards through the passage of S.B. 64, Background Check of Health Care Professionals, and S.B. 168, Child Abuse Database Amendments. There have been three amendments since the initial rule was effective. In April 1999, S.B. 194, made minor changes to when a person should be subject to a Federal Bureau of Investigation screening based on their residency in the state of Utah. In May 2001, the rule was amended after the residential heath care facility category was eliminated. An amendment effective March 13, 2003, changed terminology from "substantiated finding" to "supported findings," subsequent to the passage of S.B. 17 in the 2002 General Session. There have not been any written comments from persons supporting or opposing the rule. One comment requested clarification to ensure the certified education programs were exempt from screening. (DAR NOTES: S.B. 64 is found at UT L 1998 Ch 169 and was effective July 1, 1998; S.B. 168 is found at UT L 1998 Ch 196 and was effective May 4, 1998; S.B. 194 is found at UT L 1999 Ch 276 and was effective May 3, 1999; S.B. 17 is found at UT L 2002 Ch 283 and was effective May 6, 2002; and the amendment to R432-35 is found under DAR No. 25866 in the January 15, 2003, issue of the Utah State Bulletin.)

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R432-35 establishes minimum standard for the screening of individuals who provide direct care to patients. It identifies the exclusion criteria, convictions, arrests, and supporting findings which would prohibit an individual from being employed or volunteering in a covered health care facility. Continuation of the rule is required to ensure that consumers are aware of the screening criteria used to ensure individuals with felony convictions, some misdemeanor convictions and adult or child abuse, neglect, or exploitation supported findings are not permitted to provide direct care in the covered health care facilities.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT, LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 07/07/2003

Natural Resources, Oil, Gas and Mining; Coal
R645-102
Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 26452
FILED: 07/08/2003, 14:02

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under the Coal Mining and Reclamation Statute at Section 40-10-6.5.

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 in support of or in opposition to the continuation of this rule have been received during the last five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued so that the State may retain an integral part of its coal regulatory primacy program under the (federal) Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 07/07/2003

Natural Resources, Oil, Gas and Mining; Non-Coal
R647-1
Minerals Regulatory Program

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 26453
FILED: 07/08/2003, 14:04

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by the Utah Minerals Regulatory Program at Section 40-8-6.

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 in support of or in opposition to the continuation of this rule have been received during the last 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 is an integral part of the Utah Minerals Regulatory Program, it is needed to carry out the Legislative direction for the effective regulation of minerals extraction and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; NON-COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 07/08/2003

Natural Resources, Oil, Gas and Mining; Non-Coal
R647-2
Exploration

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 26454
FILED: 07/08/2003, 14:09

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by the Utah Minerals Regulatory statute at Section 40-8-6.

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 in support of or in opposition to the continuation of this rule have been received during the noted time period. Several comments have been received to the effect that latitude in the compliance requirements of the rule should be eliminated. These comments will be considered when a rule amendment exercise is conducted.

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 an integral part of the Utah Minerals Regulatory Program, it is needed to carry out the Legislative direction for the effective regulation of minerals extraction and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; NON-COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 07/08/2003

Natural Resources, Oil, Gas and Mining; Non-Coal
R647-3
Small Mining Operations

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 26455
FILED: 07/08/2003, 14:12

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by the Utah Minerals Regulatory Program at Section 40-8-6.

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 in support of or in opposition to the continuation of this rule have been received during the noted time period. One comment was received which suggested a change to the rule to eliminate the "small miner exemption". Work is underway within the Division to revise the rule in this regard as this exemption was removed by legislation, S.B. 65 of the 2003 General Session of the Utah Legislature. (DAR NOTE: S.B. 65 is found at UT L 2003 Ch 35 and was effective May 5, 2003.)

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 an integral part of the Utah Minerals Regulatory Program, it is needed to carry out the Legislative direction for the effective regulation of minerals extraction and should be continued.

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

NATURAL RESOURCES
OIL, GAS AND MINING; NON-COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 07/08/2003

Natural Resources, Oil, Gas and Mining; Non-Coal

R647-4

Large Mining Operations

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26456
FILED: 07/08/2003, 14:17

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by the Utah Minerals Regulatory Program at Section 40-8-6.

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 in support of or in opposition to the continuation of this rule have been received during the last 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 is an integral part of the Utah Minerals Regulatory Program, it is needed to carry out the Legislative direction for the effective regulation of minerals extraction and should be continued.

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

NATURAL RESOURCES
OIL, GAS AND MINING; NON-COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 07/08/2003

Natural Resources, Oil, Gas and Mining; Non-Coal

R647-5

Administrative Procedures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26457
FILED: 07/08/2003, 14:19

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by the Utah Minerals Regulatory Program statute at Section 40-8-6.

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 in support of or in opposition to the continuation of this rule have been received during the last 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 is an integral part of the Utah Minerals Regulatory Program, it is needed to carry out the Legislative direction for the effective regulation of minerals extraction and should be continued.

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

NATURAL RESOURCES
OIL, GAS AND MINING; NON-COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 07/08/2003

Regents (Board Of), Administration
R765-607
Utah Higher Education Tuition Assistance Program

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 26443
FILED: 07/03/2003, 09:12

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 53B, Chapter 7, established a matching grant program for Utah System of Higher Education community colleges and centers of Utah State University to ensure financial access to higher education for needy students.

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 were received during the past five-year period.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There is an increasing need for financial assistance for needy students attending state-sponsored community colleges in Utah and extension centers of Utah State University. This program provides matching grant funds for qualifying students to assist with tuition payments and should be continued.

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

REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY UT 84101-1284, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ronell Crossley at the above address, by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

AUTHORIZED BY: Chalmers Gail Norris, Associate Commissioner for Student Financial Aid

EFFECTIVE: 07/03/2003

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF EXPIRED RULES

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 (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires. Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63-46a-9 (1996). These rules have expired and have been removed from the *Utah Administrative Code*. The expiration of administrative rules for failure to comply with the five-year review requirement is governed by *Utah Code* Subsection 63-46a-9(8) (1996).

Public Safety

Peace Officer Standards and Training

No. 26445: R728-502. Procedure for POST Instructor Certification.
Enacted or Last Five-Year Review: 03/04/98 (No. 20833, Filed 03/04/98 at 12:30 p.m., Published 04/01/98)
Expired: 07/03/2003

No. 26446 R728-504. Regional Training.
Enacted or Last Five-Year Review: 03/04/98 (No. 20834, Filed 03/04/98 at 12:30 p.m., Published 04/01/98)
Expired: 07/03/2003

End of the Notices of Expired Rules Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Administrative Services
Fleet Operations
No. 26191 (AMD): R27-7. Safety and Loss Prevention of State Vehicles.
Published: May 15, 2003
Effective: July 8, 2003

Commerce
Occupational and Professional Licensing
No. 26284 (AMD): R156-60c. Professional Counselor Licensing Act Rules.
Published: June 1, 2003
Effective: July 3, 2003

Health
Health Care Financing, Coverage and Reimbursement Policy
No. 26264 (AMD): R414-1. Utah Medicaid Program.
Published: June 1, 2003
Effective: July 2, 2003

No. 26246 (AMD): R414-7A-5. Certification of Additional Nursing Facility Programs.
Published: June 1, 2003
Effective: July 14, 2003

No. 26267 (AMD): R414-21. Physical and Occupational Therapy.
Published: June 1, 2003
Effective: July 2, 2003

No. 26265 (AMD): R414-49. Dental Service.
Published: June 1, 2003
Effective: July 2, 2003

No. 26266 (AMD): R414-50. Dental, Oral and Maxillofacial Surgeons.
Published: June 1, 2003
Effective: July 2, 2003

No. 26268 (AMD): R414-305. Resources.
Published: June 1, 2003
Effective: July 2, 2003

Human Services
Administration
No. 26261 (AMD): R495-879. Parental Support for Children in Care.
Published: June 1, 2003
Effective: July 10, 2003

Labor Commission
Industrial Accidents
No. 26286 (AMD): R612-2-5. Regulation of Medical Practitioner Fees.
Published: June 1, 2003
Effective: July 2, 2003

Natural Resources
Wildlife Resources
No. 26273 (AMD): R657-27. License Agent Procedures.
Published: June 1, 2003
Effective: July 2, 2003

No. 26272 (AMD): R657-34. Procedures for Confirmation of Ordinances on Hunting Closures.
Published: June 1, 2003
Effective: July 2, 2003

No. 26271 (AMD): R657-37. Cooperative Wildlife Management Units for Big Game.
Published: June 1, 2003
Effective: July 2, 2003

No. 26277 (AMD): R657-42. Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits.
Published: June 1, 2003
Effective: July 2, 2003

No. 26276 (AMD): R657-44. Big Game Depredation.
Published: June 1, 2003
Effective: July 2, 2003

No. 26279 (AMD): R657-45. Wildlife License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate Forms.
Published: June 1, 2003
Effective: July 2, 2003

Public Safety
Fire Marshal
No. 26281 (AMD): R710-6. Liquefied Petroleum Gas Rules.
Published: June 1, 2003
Effective: July 2, 2003

No. 26269 (AMD): R710-8-3. Day Care Rules.
Published: June 1, 2003
Effective: July 2, 2003

No. 26289 (AMD): R710-9. Rules Pursuant to the Utah Fire Prevention Law.
Published: June 1, 2003
Effective: July 2, 2003

Transportation
Operations, Maintenance
No. 26184 (NEW): R918-4. Using Volunteer Groups for the Adopt-a-Highway Program.
Published: May 15, 2003
Effective: July 10, 2003

End of the Notices of Rule Effective Dates Section

RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2003, including notices of effective date received through July 15, 2003, the effective dates of which are no later than August 1, 2003. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the Bulletin and related publications; we hope to have them resolved as soon as possible. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (http://www.rules.utah.gov/).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
5YR = Five-Year Review
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
* = Text too long to print in *Bulletin*, or repealed text not printed in *Bulletin*

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Administrative Services					
Facilities Construction and Management					
R23-3	Authorization of Programs for Capital Development Projects	25639	R&R	01/02/2003	2002-23/3
R23-3	Planning and Programming for Capital Projects	25989	AMD	03/24/2003	2003-4/4
R23-4	Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts	25964	5YR	01/15/2003	2003-3/62
R23-4	Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts	25783	AMD	02/04/2003	2003-1/3
R23-5	Contingency Funds	25955	5YR	01/15/2003	2003-3/62
R23-6	Value Engineering and Life Cycle Costing of State-Owned Facilities Rules and Regulations	25956	5YR	01/15/2003	2003-3/63
R23-7	Utah State Building Board Policy Statement Master Planning	25770	REP	02/04/2003	2003-1/5

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R23-7	Utah State Building Board Policy Statement Master Planning (5YR EXTENSION)	25984	NSC	02/04/2003	Not Printed
R23-8	Planning Fund Use	25640	REP	01/02/2003	2002-23/5
R23-9	Building Board State/Local Cooperation Policy	25957	5YR	01/15/2003	2003-3/63
R23-9	Building Board State/Local Cooperation Policy	25988	R&R	03/24/2003	2003-4/5
R23-10	Naming of State Buildings	25962	5YR	01/15/2003	2003-3/64
R23-10	Naming of State Buildings	25784	AMD	02/04/2003	2003-1/5
R23-11	Facilities Allocation and Sale Procedures	25771	REP	02/04/2003	2003-1/7
R23-11	Facilities Allocation and Sales Procedures (5YR EXTENSION)	25986	NSC	02/04/2003	Not Printed
R23-13	State of Utah Parking Rules for Facilities Managed by the Division of Facilities Construction and Management	26117	5YR	03/25/2003	2003-8/44
R23-14	Management of Roofs on State Buildings	26115	NEW	05/16/2003	2003-8/7
R23-21	Division of Facilities Construction and Management Lease Procedures	25959	5YR	01/15/2003	2003-3/64
R23-24	Capital Projects Utilizing Non-appropriated Funds	25960	5YR	01/15/2003	2003-3/65
Finance					
R25-6	Relocation Reimbursement	26206	5YR	05/01/2003	2003-10/146
R25-7	Travel-Related Reimbursements for State Employees	26203	5YR	05/01/2003	2003-10/146
R25-7	Travel-Related Reimbursements for State Employees	26204	AMD	07/01/2003	2003-10/4
Fleet Operations					
R27-3	Vehicle Use Standards	25879	AMD	05/15/2003	2003-2/5
R27-7	Safety and Loss Prevention of State Vehicles	26191	AMD	07/08/2003	2003-10/6
Purchasing and General Services					
R33-2-102	Authority to Make Small Purchases	26136	AMD	05/27/2003	2003-8/8
R33-3	Source Selection and Contract Formation	26138	AMD	05/27/2003	2003-8/9
R33-5	Construction and Architect - Engineer Selection	26139	AMD	05/27/2003	2003-8/15
Agriculture and Food					
Marketing and Conservation					
R65-2	Utah Cherry Marketing Order	26383	5YR	06/13/2003	2003-13/62
R65-5	Utah Red Tart and Sour Cherry Marketing Order	26386	5YR	06/13/2003	2003-13/62
R65-7	Horse Racing	26083	AMD	06/09/2003	2003-7/5
Plant Industry					
R68-5	Grain Inspection	26385	5YR	06/13/2003	2003-13/63
R68-9	Utah Noxious Weed Act	26387	5YR	06/13/2003	2003-13/63
R68-14	Quarantine Pertaining to Gypsy Moth - Lymantria Dispar	26388	5YR	06/13/2003	2003-13/64
R68-16	Quarantine Pertaining to Pine Shoot Beetle, Tomicus piniperda	26389	5YR	06/13/2003	2003-13/64
R68-17	Quarantine Pertaining to Necrotic Strain of the Potato Virus Y	26390	5YR	06/13/2003	2003-13/65
Alcoholic Beverage Control					
Administration					
R81-1-17	Advertising	25886	AMD	02/26/2003	2003-2/5
R81-5-5	Advertising	25887	AMD	02/26/2003	2003-2/8
R81-7-3	Guidelines for Issuing Permits for Outdoor or Large-Scale Public Events	25650	AMD	01/24/2003	2002-24/6

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Career Service Review Board					
Administration					
R137-2	Government Records Access and Management Act	26397	5YR	06/18/2003	2003-14/95
Commerce					
Administration					
R151-14	New Automobile Franchise Act Rules	25624	AMD	01/02/2003	2002-23/6
R151-14	New Automobile Franchise Act Rule	26199	AMD	06/17/2003	2003-10/9
R151-33	Pete Suazo Utah Athletic Commission Act Rule	25649	AMD	01/15/2003	2002-24/7
R151-35	Powersport Vehicle Franchise Act Rule	25724	NEW	01/15/2003	2002-24/9
R151-35	Powersport Vehicle Franchise Act Rule	26198	AMD	06/17/2003	2003-10/10
R151-46b	Department of Commerce Administrative Procedures Act Rules	25822	AMD	02/18/2003	2003-1/8
Corporations and Commercial Code					
R154-2	Utah Uniform Commercial Code, Revised Article 9 Rules	25549	AMD	03/14/2003	2002-22/7
R154-10	Utah Digital Signatures Rules	25553	AMD	03/14/2003	2002-22/9
Occupational and Professional Licensing					
R156-3a	Architect Licensing Act Rules	26174	AMD	06/03/2003	2003-9/3
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	25922	5YR	01/13/2003	2003-3/65
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	25763	AMD	04/03/2003	2003-1/10
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	25763	CPR	04/03/2003	2003-5/27
R156-28	Veterinary Practice Act Rules	26150	AMD	06/03/2003	2003-9/3
R156-31b	Nurse Practice Act Rules	26319	5YR	06/02/2003	2003-12/70
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	26192	AMD	06/17/2003	2003-10/12
R156-46a	Hearing Instrument Specialist Licensing Act Rules	25987	AMD	03/18/2003	2003-4/7
R156-47b-202	Massage Therapy Education Peer Committee	26126	AMD	05/19/2003	2003-8/17
R156-47b-302a	Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards - Equivalent Education and Training	25651	AMD	01/16/2003	2002-24/10
R156-53	Landscape Architects Licensing Act Rules	26320	5YR	06/02/2003	2003-12/70
R156-55a	Utah Construction Trades Licensing Act Rules	26175	AMD	06/03/2003	2003-9/6
R156-56	Utah Uniform Building Standard Act Rules	26154	AMD	07/01/2003	2003-9/7
R156-56-707	Statewide Amendments to the IPC	26152	AMD	07/01/2003	2003-9/57
R156-59	Professional Employer Organization Act Rules	25920	5YR	01/09/2003	2003-3/66
R156-59	Professional Employer Organization Act Rules	26116	REP	05/19/2003	2003-8/18
R156-60a	Social Worker Licensing Act Rules	25629	AMD	01/02/2003	2002-23/8
R156-60c	Professional Counselor Licensing Act Rules	26284	AMD	07/03/2003	2003-11/7
R156-68	Utah Osteopathic Medical Practice Act Rules	26321	5YR	06/02/2003	2003-12/71
Real Estate					
R162-6-1	Improper Practices.	26025	AMD	06/05/2003	2003-5/2
R162-8-9	Disclosure Requirements	25663	AMD	01/16/2003	2002-24/11
R162-9	Continuing Education	26118	AMD	05/21/2003	2003-8/19
R162-105	Scope of Authority	26024	AMD	04/23/2003	2003-5/4
R162-106	Professional Conduct	26060	AMD	04/23/2003	2003-6/3

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R162-107	Unprofessional Conduct	25981	5YR	01/21/2003	2003-4/52
Community and Economic Development					
Community Development, History					
R212-1	Adjudicative Proceedings	25630	AMD	01/06/2003	2002-23/10
R212-1	Adjudicative Proceedings	25570	AMD	01/06/2003	2002-22/10
R212-4	Archaeological Permits	25787	AMD	03/11/2003	2003-1/13
Corrections					
Administration					
R251-110	Sex Offender Notification	25991	AMD	03/21/2003	2003-4/9
R251-304	Contract Procedures	25885	AMD	02/19/2003	2003-2/9
R251-304	Contract Procedures	26053	5YR	02/21/2003	2003-6/17
Education					
Administration					
R277-104	USOE ADA Complaint Procedure	26340	5YR	06/04/2003	2003-13/65
R277-108	Annual Assurance of Compliance by School Districts	26190	AMD	06/17/2003	2003-10/22
R277-436	Gang Prevention and Intervention Programs in the Schools	26341	5YR	06/04/2003	2003-13/65
R277-469	Instructional Materials Commission Operating Procedures	26157	5YR	04/04/2003	2003-9/134
R277-470	Charter Schools	25726	AMD	01/15/2003	2002-24/12
R277-483	Persistently Dangerous Schools	25965	NEW	03/07/2003	2003-3/5
R277-484	Data Standards, Deadlines and Procedures	26189	NEW	06/17/2003	2003-10/24
R277-485	Loss of Enrollment	25966	NEW	03/07/2003	2003-3/7
R277-508	Employment of Substitute Teachers (5YR EXTENSION)	26073	NSC	04/25/2003	Not Printed
R277-508	Employment of Substitute Teachers	26188	5YR	04/25/2003	2003-10/147
R277-516	Library Media Certificates and Programs	25925	5YR	01/14/2003	2003-3/67
R277-518	Vocational-Technical Certificates	25926	5YR	01/14/2003	2003-3/67
R277-521	Professional Specialist Licensing	26030	NSC	03/01/2003	Not Printed
R277-600	Student Transportation Standards and Procedures	25928	5YR	01/14/2003	2003-3/68
R277-605	Coaching Standards and Athletic Clinics	25931	5YR	01/14/2003	2003-3/68
R277-610	Released-Time Classes for Religious Instruction	25932	5YR	01/14/2003	2003-3/68
R277-611	Medical Recommendations by School Personnel to Parents	25647	NEW	01/03/2003	2002-23/12
R277-615	Foreign Exchange Students	25933	5YR	01/14/2003	2003-3/69
R277-700	The Elementary and Secondary School Core Curriculum	25935	5YR	01/14/2003	2003-3/69
R277-702	Procedures for the Utah General Educational Development Certificate	25936	5YR	01/14/2003	2003-3/70
R277-705	Secondary School Completion and Diplomas	25648	AMD	01/03/2003	2002-23/13
R277-709	Education Programs Serving Youth in Custody	25937	5YR	01/14/2003	2003-3/70
R277-717	Math, Engineering, Science Achievement (MESA)	26087	AMD	05/02/2003	2003-7/7
R277-718	Utah Career Teaching Scholarship Program	25938	5YR	01/14/2003	2003-3/71
R277-721	Deadline for CACFP Sponsor Participation in Food Distribution Program	25929	5YR	01/14/2003	2003-3/71
R277-722	Withholding Payments and Commodities in the CACFP	25930	5YR	01/14/2003	2003-3/72
R277-730	Alternative High School Curriculum	25939	5YR	01/14/2003	2003-3/72

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R277-746	Driver Education Programs for Utah Schools	26089	5YR	03/12/2003	2003-7/74
R277-747	Private School Student Driver Education	26090	5YR	03/12/2003	2003-7/74
R277-751	Special Education Extended School Year	26091	5YR	03/12/2003	2003-7/75
Applied Technology Education (Board for), Rehabilitation					
R280-200	Rehabilitation	26088	5YR	03/12/2003	2003-7/75
R280-203	Certification Requirements for Interpreters for the Hearing Impaired	25646	AMD	01/03/2003	2002-23/16
Environmental Quality					
Air Quality					
R307-101	General Requirements	26345	5YR	06/05/2003	2003-13/66
R307-102	General Requirements: Broadly Applicable Requirements	26354	5YR	06/11/2003	2003-13/67
R307-107	General Requirements: Unavoidable Breakdown	26367	5YR	06/12/2003	2003-13/67
R307-121	General Requirements: Eligibility of Vehicles That Use Cleaner Burning Fuels or Conversion of Vehicles and Special Fuel Mobile Equipment To Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits.	25495	AMD	01/09/2003	2002-21/6
R307-165	Emission Testing	26359	5YR	06/11/2003	2003-13/68
R307-201	Emission Standards: General Emission Standards	26360	5YR	06/11/2003	2003-13/68
R307-202	Emission Standards: General Burning	26368	5YR	06/12/2003	2003-13/69
R307-203	Emission Standards: Sulfur Content of Fuels	26398	5YR	06/19/2003	2003-14/95
R307-206	Emission Standards: Abrasive Blasting	26400	5YR	06/19/2003	2003-14/96
R307-214-2	National Emission Standards for Hazardous Air Pollutants	25825	AMD	06/17/2003	2003-1/16
R307-214-2	Part 63 Sources	25825	CPR	06/17/2003	2003-10/137
R307-222	Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste	26399	5YR	06/19/2003	2003-14/96
R307-302	Davis, Salt Lake, Utah Counties: Residential Fireplaces and Stoves	26402	5YR	06/19/2003	2003-14/97
R307-305	Davis, Salt Lake and Utah Counties and Ogden City, and Nonattainment Areas for PM10: Particulates	26403	5YR	06/19/2003	2003-14/98
R307-307	Davis, Salt Lake, and Utah Counties: Road Salting and Sanding	26404	5YR	06/19/2003	2003-14/98
R307-840	Lead-Based Paint Accreditation, Certification and Work Practice Standards	26249	5YR	05/05/2003	2003-11/95
Drinking Water					
R309-352	Capacity Development Program	26392	5YR	06/16/2003	2003-13/69
R309-405	Compliance and Enforcement: Administrative Penalty	26171	AMD	06/17/2003	2003-9/64
R309-700	Financial Assistance: State Drinking Water Project Revolving Loan Program	26172	AMD	07/01/2003	2003-9/66
R309-710	Drinking Water Source Protection Funding	25863	REP	03/05/2003	2003-2/10
Environmental Response and Remediation					
R311-207	Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks	25161	CPR	02/04/2003	2003-1/46
Radiation Control					
R313-12-3	Definitions	25785	AMD	03/14/2003	2003-1/22
R313-15	Standards for Protection Against Radiation	25943	5YR	01/14/2003	2003-3/73
R313-19-100	Transportation	26074	AMD	05/09/2003	2003-7/10
R313-25	License Requirements for Land Disposal of Radioactive Waste - General Provisions	26086	AMD	05/09/2003	2003-7/11

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R313-28	Use of X-Rays in the Healing Arts	25786	AMD	03/14/2003	2003-1/27
Solid and Hazardous Waste					
R315-2	General Requirements - Identification and Listing of Hazardous Waste	25910	NSC	03/01/2003	Not Printed
R315-2-2	General Requirements - Identification and Listing of Hazardous Waste	26057	NSC	03/01/2003	Not Printed
R315-3	Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities	25915	NSC	03/01/2003	Not Printed
R315-4	Procedures for Decisionmaking	25912	NSC	03/01/2003	Not Printed
R315-7	Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities	25913	NSC	03/01/2003	Not Printed
R315-8	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	25911	NSC	03/01/2003	Not Printed
R315-8-15	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	26058	NSC	03/01/2003	Not Printed
R315-12	Administrative Procedures	25914	NSC	03/01/2003	Not Printed
R315-14	Standards for the Management of Specific Hazardous Wastes and Specific Types	25918	NSC	03/01/2003	Not Printed
R315-15	Standards for the Management of Used Oil	26064	5YR	03/03/2003	2003-7/76
R315-16	Standards for Universal Waste Management	25916	NSC	03/01/2003	Not Printed
R315-301	Solid Waste Authority, Definitions, and General Requirements	26092	5YR	03/14/2003	2003-7/76
R315-302	Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements	26093	5YR	03/14/2003	2003-7/77
R315-303	Landfilling Standards	26094	5YR	03/14/2003	2003-7/78
R315-305	Class IV and VI Landfill Requirements	26095	5YR	03/14/2003	2003-7/79
R315-306	Energy Recovery and Incinerator Standards	26096	5YR	03/14/2003	2003-7/79
R315-307	Landtreatment Disposal Standards	26097	5YR	03/14/2003	2003-7/80
R315-308	Ground Water Monitoring Requirements	26098	5YR	03/14/2003	2003-7/81
R315-309	Financial Assurance	26100	5YR	03/14/2003	2003-7/81
R315-310	Permit Requirements for Solid Waste Facilities	26099	5YR	03/14/2003	2003-7/82
R315-311	Permit Approval for Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities	26101	5YR	03/14/2003	2003-7/83
R315-312	Recycling and Composting Facility Standards	26102	5YR	03/14/2003	2003-7/84
R315-313	Transfer Stations and Drop Box Facilities	26103	5YR	03/14/2003	2003-7/84
R315-314	Facility Standards for Piles Used for Storage and Treatment	26104	5YR	03/14/2003	2003-7/85
R315-315	Special Waste Requirements	26105	5YR	03/14/2003	2003-7/85
R315-316	Infectious Waste Requirements	26106	5YR	03/14/2003	2003-7/86
R315-317	Other Processes, Variances, and Violations	26107	5YR	03/14/2003	2003-7/87
R315-318	Permit by Rule	26108	5YR	03/14/2003	2003-7/88
Water Quality					
R317-1	Definitions and General Requirements	25636	AMD	01/30/2003	2002-23/17
R317-4-3	Onsite Wastewater Systems General Requirements	25203	AMD	01/10/2003	2002-18/43
R317-4-3	Onsite Wastewater Systems General Requirements	25635	AMD	01/30/2003	2002-23/21
R317-6-6	Implementation	25632	AMD	01/30/2003	2002-23/25
R317-7-13	Public Participation	25631	AMD	01/30/2003	2002-23/32

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R317-8	Utah Pollutant Discharge Elimination System (UPDES)	25634	AMD	01/30/2003	2002-23/33
R317-9	Administrative Procedures	25633	NEW	02/05/2003	2002-23/74
R317-10	Certification of Wastewater Works Operators.	25638	AMD	01/30/2003	2002-23/78
R317-11	Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Percolation and Soil Tests for Underground Wastewater Disposal Systems	25637	AMD	01/30/2003	2002-23/80
R317-101	Utah Wastewater Project Assistance Program	26183	5YR	04/22/2003	2003-10/147
Health					
Administration					
R380-250	HIPAA Privacy Rule Implementation	26161	EMR	04/14/2003	2003-9/130
R380-250	HIPAA Privacy Rule Implementation	26162	NEW	06/09/2003	2003-9/72
Children's Health Insurance Program					
R382-1	Benefits and Administration	26351	5YR	06/09/2003	2003-13/69
R382-10	Eligibility	26352	5YR	06/10/2003	2003-13/70
Epidemiology and Laboratory Services, Epidemiology					
R386-702	Communicable Disease Rule	26290	EMR	05/16/2003	2003-12/66
Community and Family Health Services, Immunization					
R396-100	Immunization Rule for Students	26187	5YR	04/24/2003	2003-10/148
Community and Family Health Services, Children with Special Health Care Needs					
R398-2	Newborn Hearing Screening	26444	5YR	07/03/2003	2003-15/78
Health Care Financing, Coverage and Reimbursement Policy					
R414-1	Utah Medicaid Program	26264	AMD	07/02/2003	2003-11/13
R414-1-5	State Plan	26244	EMR	05/02/2003	2003-11/73
R414-5	Reduction in Outlier Reimbursements	25889	EMR	01/03/2003	2003-2/55
R414-5	Reduction in Hospital Payments	25948	EMR	01/15/2003	2003-3/52
R414-5	Reduction in Hospital Payments	25967	NEW	05/13/2003	2003-3/8
R414-6	Reduction in Certain Targeted Case Management Services	25969	EMR	01/15/2003	2003-3/53
R414-6	Reduction in Certain Targeted Case Management Services	25974	NEW	05/13/2003	2003-3/9
R414-7A-5	Certification of Additional Nursing Facility Programs	26246	AMD	07/14/2003	2003-11/15
R414-10	Physician Services	26010	EMR	02/01/2003	2003-4/45
R414-10	Physician Services	26036	EMR	02/11/2003	2003-5/33
R414-10	Physician Services	26008	AMD	04/07/2003	2003-4/11
R414-13	Psychology Services	25907	5YR	01/03/2003	2003-3/74
R414-13	Psychology Services (5YR EXTENSION)	25192	NSC	01/03/2003	Not Printed
R414-21	Physical Therapy	25968	EMR	01/15/2003	2003-3/54
R414-21	Physical Therapy	25973	AMD	04/07/2003	2003-3/10
R414-21	Physical and Occupational Therapy	26267	AMD	07/02/2003	2003-11/16
R414-27	Medicare Nursing Home Certification	25982	5YR	01/21/2003	2003-4/52
R414-49	Dental Service	26265	AMD	07/02/2003	2003-11/20
R414-50	Dental, Oral and Maxillofacial Surgeons	26266	AMD	07/02/2003	2003-11/21
R414-51	Dental, Orthodontia	26318	5YR	05/30/2003	2003-12/71
R414-52	Optometry Services	25970	EMR	01/15/2003	2003-3/57
R414-52	Optometry Services	25976	AMD	04/09/2003	2003-3/14

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R414-52	Optometry Services	26347	5YR	06/06/2003	2003-13/71
R414-53	Eyeglasses Services	25971	EMR	01/15/2003	2003-3/59
R414-53	Eyeglasses Services	25972	AMD	04/07/2003	2003-3/15
R414-53	Eyeglasses Services	26346	5YR	06/06/2003	2003-13/71
R414-60	Medicaid Policy for Pharmacy Copayment Procedures	26011	EMR	02/01/2003	2003-4/50
R414-60	Medicaid Policy for Pharmacy Copayment Procedures	26009	AMD	04/07/2003	2003-4/16
R414-63	Medicaid Policy for Pharmacy Reimbursement	25898	AMD	04/07/2003	2003-2/12
R414-301	Medicaid General Provisions	26004	5YR	01/31/2003	2003-4/53
R414-302	Eligibility Requirements	26005	5YR	01/31/2003	2003-4/53
R414-303	Coverage Groups	26012	5YR	01/31/2003	2003-4/54
R414-304	Income and Budgeting	26017	5YR	01/31/2003	2003-4/55
R414-304	Income and Budgeting	26202	AMD	07/01/2003	2003-10/55
R414-305	Resources	26018	5YR	01/31/2003	2003-4/55
R414-305	Resources	26268	AMD	07/02/2003	2003-11/23
R414-306	Program Benefits	26019	5YR	01/31/2003	2003-4/56
R414-307	Eligibility Determination and Redetermination	26020	5YR	01/31/2003	2003-4/56
R414-308	Record Management	26021	5YR	01/31/2003	2003-4/57
R414-504	Nursing Facility Payments	25897	AMD	02/17/2003	2003-2/21
R414-504	Nursing Facility Payments	26051	AMD	06/09/2003	2003-6/4
R414-504	Nursing Facility Payments	26492	EMR	07/15/2003	2003-15/74
Health Systems Improvement, Emergency Medical Services					
R426-100	Emergency Medical Services Do Not Resuscitate	25864	AMD	03/14/2003	2003-2/24
Center for Health Data, Health Care Statistics					
R428-11	Health Data Authority Ambulatory Surgical Data Reporting Rule	26080	5YR	03/10/2003	2003-7/88
R428-13	Health Data Authority. Audit and Reporting of HMO Performance Measures	26079	5YR	03/10/2003	2003-7/89
Health Systems Improvement, Child Care Licensing					
R430-4	General Certificate Provisions	26447	5YR	07/07/2003	2003-15/78
R430-6	Criminal Background Screening	25921	5YR	01/10/2003	2003-3/74
R430-6	Criminal Background Screening	25865	AMD	03/13/2003	2003-2/25
R430-50	Residential Certificate Child Care Standards	26448	5YR	07/07/2003	2003-15/79
R430-60	Hourly Child Care Center	26449	5YR	07/07/2003	2003-15/80
R430-100	Child Care Center	25944	5YR	01/15/2003	2003-3/75
Health Systems Improvement, Licensing					
R432-3	General Health Care Facility Rules Inspection and Enforcement	25868	AMD	03/13/2003	2003-2/29
R432-5	Nursing Facility Construction	25452	AMD	01/15/2003	2002-21/92
R432-13	Freestanding Ambulatory Surgical Center Construction	25791	AMD	03/13/2003	2003-1/32
R432-14	Birthing Center Construction	25792	AMD	03/13/2003	2003-1/34
R432-16	Hospice Inpatient Facility Construction	26038	5YR	02/12/2003	2003-5/39
R432-35	Background Screening	25866	AMD	03/13/2003	2003-2/30
R432-35	Background Screening	26450	5YR	07/07/2003	2003-15/80
R432-100-38	Emergency and Disaster Plan	25867	AMD	03/13/2003	2003-2/33

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Epidemiology and Laboratory Services, Laboratory Improvement					
R444-14	Rule for the Certification of Environmental Laboratories	26144	AMD	06/12/2003	2003-9/75
Human Resource Management					
Administration					
R477-1	Definitions	26207	AMD	07/01/2003	2003-10/65
R477-2	Administration	26208	AMD	07/01/2003	2003-10/71
R477-4	Filling Positions	26217	AMD	07/01/2003	2003-10/75
R477-5	Employee Status and Probation	26219	AMD	07/01/2003	2003-10/79
R477-6	Compensation	26220	AMD	07/01/2003	2003-10/80
R477-7	Leave	26221	AMD	07/01/2003	2003-10/80
R477-8	Working Conditions	26222	AMD	07/01/2003	2003-10/91
R477-10	Employee Development	26224	AMD	07/01/2003	2003-10/95
R477-11	Discipline	26225	AMD	07/01/2003	2003-10/97
R477-12	Separations	26227	AMD	07/01/2003	2003-10/99
R477-14	Substance Abuse and Drug-Free Workplace	26229	AMD	07/01/2003	2003-10/101
Human Services					
Administration					
R495-879	Parental Support for Children in Care	26261	AMD	07/10/2003	2003-11/28
R495-881	HIPAA Privacy Rule Implementation	26160	EMR	04/14/2003	2003-9/132
R495-881	Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation	26196	NEW	06/24/2003	2003-10/104
Administration, Administrative Services, Licensing					
R501-1	General Provisions	25652	AMD	01/30/2003	2002-24/15
R501-2	Core Standards	26071	AMD	05/06/2003	2003-7/20
R501-8	Outdoor Youth Programs	25707	AMD	01/17/2003	2002-24/19
R501-8	Outdoor Youth Program	25978	NSC	03/01/2003	Not Printed
R501-11	Social Detoxification Programs	25660	AMD	01/30/2003	2002-24/25
R501-12	Child Foster Care	25644	AMD	01/30/2003	2002-23/82
R501-16	Intermediate Secure Treatment Programs for Minors (5YR EXTENSION)	25703	NSC	02/26/2003	Not Printed
R501-16	Intermediate Secure Treatment Programs for Minors	26055	5YR	02/26/2003	2003-6/17
R501-17	Adult Foster Care	26084	5YR	03/11/2003	2003-7/89
R501-18	Abuse Background Screening	26343	5YR	06/05/2003	2003-13/72
Aging and Adult Services					
R510-100	Funding Formulas	26052	AMD	05/21/2003	2003-6/6
R510-100-2	In-Home Services	26259	EMR	05/15/2003	2003-11/74
R510-105	Out and About Homebound Transportation Assistance Fund Rules	25552	NEW	03/14/2003	2002-22/14
R510-106	Minimum Percentages of Older Americans Act, Title III: Grants for State and Community Programs on Aging Part B: Supportive Services and Senior Centers Funds That an Area Agency on Aging Must Spend on Access, In-home and Legal Assistance	26046	CPR	06/30/2003	2003-10/139

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R510-106	Minimum Percentages of Older Americans Act, Title III: Grants for State and Community Programs on Aging Part B: Supportive Services and Senior Centers Funds That an Area Agency on Aging Must Spend on Access, In-home and Legal Assistance	26046	AMD	06/30/2003	2003-5/6
R510-401	Utah Caregiver Support Program	25557	CPR	04/16/2003	2003-5/28
Child and Family Services					
R512-100	Home Based Services	26258	EMR	05/06/2003	2003-11/76
R512-200	Child Protective Services, Intake Services	26256	EMR	05/06/2003	2003-11/78
R512-201	Child Protective Services, Investigation Services	26255	EMR	05/06/2003	2003-11/80
R512-202	Allegations Categories	26254	EMR	05/06/2003	2003-11/82
R512-300	Out of Home Services	26252	EMR	05/06/2003	2003-11/84
R512-301	Out of Home Services, Responsibilities Pertaining to a Parent or Guardian	26253	EMR	05/06/2003	2003-11/86
R512-302	Out of Home Services, Responsibilities Pertaining to an Out of Home Caregiver	26250	EMR	05/06/2003	2003-11/89
R512-305	Out of Home Services, Independent Living Services	26257	EMR	05/06/2003	2003-11/91
R512-500	Kinship Services	26251	EMR	05/06/2003	2003-11/93
Mental Health, State Hospital					
R525-1	Medical Records	26298	5YR	05/20/2003	2003-12/72
R525-2	Patient Rights	26299	5YR	05/20/2003	2003-12/72
R525-3	Medication Treatment of Patients	26300	5YR	05/20/2003	2003-12/73
R525-4	Visitors	26302	5YR	05/20/2003	2003-12/73
R525-5	Background Checks	26303	5YR	05/20/2003	2003-12/74
R525-7	Complaint/Suggestions/Concerns	26304	5YR	05/20/2003	2003-12/74
Recovery Services					
R527-3	Definitions	25977	AMD	03/19/2003	2003-4/26
R527-39	Applicant/Recipient Cooperation	25979	5YR	01/17/2003	2003-4/57
R527-39	Applicant/Recipient Cooperation	26061	AMD	04/21/2003	2003-6/8
R527-56	In-Kind Support	26075	5YR	03/10/2003	2003-7/90
R527-201	Medical Support Services	25869	AMD	03/05/2003	2003-2/34
R527-305	High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases	26076	5YR	03/10/2003	2003-7/91
R527-430	Administrative Notice of Lien-Levy Procedures	25980	5YR	01/21/2003	2003-4/57
Services for People with Disabilities					
R539-1-5	Graduated Fee Schedule	26440	EMR	07/01/2003	2003-14/91
R539-3	Service Coordination	25975	AMD	05/05/2003	2003-3/16
R539-3-2	The Individual Plan	26062	AMD	05/20/2003	2003-6/13
R539-8-3	Supported Employment	25949	AMD	05/05/2003	2003-3/20
Insurance					
Administration					
R590-76	Health Maintenance Organization and Limited Health Plans	25870	AMD	02/26/2003	2003-2/35
R590-76-9	Quality Assurance	26059	NSC	03/01/2003	Not Printed
R590-85	Filing of Rates for Individual Disability Insurance Forms and Individual and Group Medicare Rates	26129	AMD	06/13/2003	2003-8/26

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R590-94	Rule Permitting Smoker/Nonsmoker Mortality Tables for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits	26182	5YR	04/17/2003	2003-10/148
R590-124	Loss Information Rule	25990	5YR	01/24/2003	2003-4/58
R590-147	Annual Statement Instructions	26132	AMD	06/13/2003	2003-8/30
R590-154	Unfair Marketing Practices Rule	26181	5YR	04/17/2003	2003-10/149
R590-155	Disclosure of Life and Health Guaranty Association Limitations	25993	5YR	01/24/2003	2003-4/59
R590-157	Taxation of Surplus Lines Premiums	26033	5YR	02/10/2003	2003-5/39
R590-160	Administrative Proceedings	25643	AMD	01/09/2003	2002-23/86
R590-172	Notice to Uninsurable Applicants for Health Insurance	25626	AMD	01/09/2003	2002-23/91
R590-183	Title Plant Rule (EXPIRED RULE)	25908	NSC	01/02/2003	Not Printed
R590-192	Unfair Health and Disability Claims Settlement Practices Rule	26159	AMD	06/24/2003	2003-9/84
R590-199	Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans	25628	CPR	03/14/2003	2003-3/50
R590-199	Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans	25628	AMD	03/14/2003	2002-23/92
R590-215	Permissible Arbitration Provisions for Individual and Group Health Insurance	25093	NEW	01/09/2003	2002-15/65
R590-215	Permissible Arbitration Provisions for Individual and Group Health Insurance	25093	CPR	01/09/2003	2002-23/100
R590-215	Permissible Arbitration Provisions for Individual and Group Health Insurance	25919	NSC	03/01/2003	Not Printed
R590-215	Permissible Arbitration Provisions for Individual and Group Health Insurance	26133	AMD	05/20/2003	2003-8/34
R590-215-5	Permissible Arbitration Provisions for Individual and Group Health Insurance	25963	NSC	03/01/2003	Not Printed
R590-218	Permitted Language for Reservation of Discretion Clauses	25670	NEW	03/21/2003	2002-24/28
R590-219	Credit Scoring	25958	CPR	06/13/2003	2003-9/127
R590-219	Credit Scoring	25958	NEW	06/13/2003	2003-3/23
R590-222	Viatical Settlements	26194	NEW	06/24/2003	2003-10/105
R590-223	Rule to Recognize the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits	26158	NEW	06/13/2003	2003-9/89
Labor Commission					
Administration					
R600-1	Declaratory Orders	26313	5YR	05/28/2003	2003-12/75
Industrial Accidents					
R612-2	Workers' Compensation Rules - Health Care Providers	26315	5YR	05/28/2003	2003-12/75
R612-2-5	Regulation of Medical Practitioner Fees	26286	AMD	07/02/2003	2003-11/35
R612-2-22	Medical Records	26405	EMR	06/20/2003	2003-14/92
R612-3	Workers' Compensation Rules - Self-Insurance	26316	5YR	05/28/2003	2003-12/76
R612-5	Employee Leasing Company Workers' Compensation Insurance Policy Endorsements	26317	5YR	05/28/2003	2003-12/76
R612-7	Impairment Ratings for Industrial Injuries and Diseases	26314	5YR	05/28/2003	2003-12/77
Occupational Safety and Health					
R614-1-4	Incorporation of Federal Standards	25940	NSC	03/01/2003	Not Printed
R614-1-4	Incorporation of Federal Standards	25941	AMD	03/04/2003	2003-3/26
R614-1-4	Incorporation of Federal Standards	26149	AMD	06/03/2003	2003-9/91
Safety					
R616-1	Coal Mine Rules	26312	5YR	05/28/2003	2003-12/77

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	26148	AMD	06/03/2003	2003-9/92
R616-3-3	Safety Codes for Elevators	26109	AMD	05/08/2003	2003-7/53
Natural Resources					
Administration					
R634-1	Americans With Disabilities Complaint Procedure	25950	5YR	01/15/2003	2003-3/76
R634-1	Americans With Disabilities Complaint Procedure	25951	AMD	03/04/2003	2003-3/27
Oil, Gas and Mining; Coal					
R645-102	Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction	26452	5YR	07/07/2003	2003-15/81
Oil, Gas and Mining; Non-Coal					
R647-1	Minerals Regulatory Program	26453	5YR	07/08/2003	2003-15/82
R647-2	Exploration	26454	5YR	07/08/2003	2003-15/82
R647-3	Small Mining Operations	26455	5YR	07/08/2003	2003-15/83
R647-4	Large Mining Operations	26456	5YR	07/08/2003	2003-15/83
R647-5	Administrative Procedures	26457	5YR	07/08/2003	2003-15/84
Oil, Gas and Mining; Oil and Gas					
R649-3-1	Bonding	25788	CPR	07/01/2003	2003-10/140
R649-3-1	Bonding	25788	AMD	07/01/2003	2003-1/35
Parks and Recreation					
R651-102	Government Records Access Management Act	26039	5YR	02/13/2003	2003-5/40
R651-102-4	Government Records Access Management Act	26041	NSC	03/01/2003	Not Printed
R651-227	Boating Safety Course Fees	26173	5YR	04/15/2003	2003-9/134
R651-301	State Recreation Fiscal Assistance Programs	26040	5YR	02/13/2003	2003-5/40
R651-301	State Recreation Fiscal Assistance Programs	26127	AMD	05/19/2003	2003-8/36
R651-408	Off-Highway Vehicle Education Curriculum Standards	26026	AMD	04/01/2003	2003-5/7
R651-410	Off-Highway Vehicle Safety Equipment	26028	NEW	04/01/2003	2003-5/8
R651-410	Off-Highway Vehicle Safety Equipment	26128	AMD	05/19/2003	2003-8/38
R651-602	Aircraft and Powerless Flight	26029	AMD	04/01/2003	2003-5/9
R651-611	Fee Schedule	25837	AMD	03/31/2003	2003-2/38
R651-611-2	Day Use Entrance Fees	26170	AMD	06/03/2003	2003-9/93
Water Rights					
R655-5	Maps Submitted to the Division of Water Rights	26195	5YR	04/29/2003	2003-10/149
R655-7	Administrative Procedures for Notifying the State Engineer of Sewage Effluent Use or Change in the Point of Discharge for Sewage Effluent	25550	NEW	02/10/2003	2002-22/39
Wildlife Resources					
R657-3	Collection, Importation, Transportation and Possession of Zoological Animals	26167	5YR	04/15/2003	2003-9/135
R657-3	Collection, Importation, Transportation, and Possession of Zoological Animals	26166	AMD	06/03/2003	2003-9/94
R657-5	Taking Big Game	25720	AMD	01/15/2003	2002-24/29
R657-5	Taking Big Game	26241	AMD	06/17/2003	2003-10/111
R657-5-70	Chronic Wasting Disease - Infected Animals	26165	AMD	06/03/2003	2003-9/103
R657-17	Lifetime Hunting and Fishing License	25721	AMD	01/15/2003	2002-24/46

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R657-23	Process for Providing Proof of Completion of Hunter Education	25890	AMD	02/16/2003	2003-2/41
R657-26-8	Wildlife Board Review - Procedure	26169	AMD	06/03/2003	2003-9/104
R657-27	License Agent Procedures	26273	AMD	07/02/2003	2003-11/36
R657-33	Taking Bear	25892	AMD	02/16/2003	2003-2/43
R657-33-6	Firearms and Archery Permits	26056	AMD	04/15/2003	2003-6/15
R657-34	Procedures for Confirmation of Ordinances on Hunting Closures	26274	5YR	05/14/2003	2003-11/95
R657-34	Procedures for Confirmation of Ordinances on Hunting Closures	26272	AMD	07/02/2003	2003-11/41
R657-37	Cooperative Wildlife Management Units for Big Game	26275	5YR	05/14/2003	2003-11/96
R657-37	Cooperative Wildlife Management Units for Big Game	26271	AMD	07/02/2003	2003-11/42
R657-38	Dedicated Hunter Program	25722	AMD	01/15/2003	2002-24/48
R657-39-3	Memberships -- Terms of Office	26164	AMD	06/03/2003	2003-9/105
R657-42	Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits	25723	AMD	01/15/2003	2002-24/52
R657-42	Accepted Payment of Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits	26278	5YR	05/14/2003	2003-11/97
R657-42	Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits	26277	AMD	07/02/2003	2003-11/45
R657-44	Big Game Depredation	25894	R&R	02/16/2003	2003-2/46
R657-44	Big Game Depredation	26276	AMD	07/02/2003	2003-11/46
R657-45	Wildlife License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate Forms	26280	5YR	05/14/2003	2003-11/97
R657-45	Wildlife License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate Forms	26279	AMD	07/02/2003	2003-11/52
R657-53	Amphibian and Reptile Collection, Importation, Transportation, and Possession	26168	NEW	06/03/2003	2003-9/107
Pardons (Board Of)					
Administration					
R671-102	Americans with Disabilities Act Complaint Procedure Rule	25345	AMD	02/12/2003	2002-20/102
R671-201	Original Parole Grant Hearing Schedule and Notice	26120	AMD	05/16/2003	2003-8/39
R671-202	Notification of Hearings	25350	AMD	02/12/2003	2002-20/104
R671-308	Offender Hearing Assistance	25394	AMD	02/12/2003	2002-20/110
R671-311	Special Attention Hearings and Reviews	25398	AMD	02/12/2003	2002-20/112
R671-403	Restitution	26050	5YR	02/18/2003	2003-6/18
Professional Practices Advisory Commission					
Administration					
R686-100	Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings	26032	5YR	02/07/2003	2003-5/41
Public Safety					
Driver License					
R708-39	Physical and Mental Fitness Testing	25645	NEW	01/24/2003	2002-23/97

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Fire Marshal					
R710-1	Concerns Servicing Portable Fire Extinguishers	25954	AMD	03/06/2003	2003-3/29
R710-4	Buildings Under the Jurisdiction of the State Fire Prevention Board	26006	AMD	03/18/2003	2003-4/28
R710-6	Liquefied Petroleum Gas Rules	26281	AMD	07/02/2003	2003-11/65
R710-7	Concerns Servicing Automatic Fire Suppression Systems	25961	AMD	03/06/2003	2003-3/36
R710-7	Concerns Servicing Automatic Fire Suppression Systems	26001	AMD	03/18/2003	2003-4/32
R710-8-3	Day Care Rules	26269	AMD	07/02/2003	2003-11/68
R710-9	Rules Pursuant to the Utah Fire Prevention Law	26003	AMD	03/18/2003	2003-4/38
R710-9	Rules Pursuant to the Utah Fire Prevention Law	26289	AMD	07/02/2003	2003-11/69
Highway Patrol					
R714-159	Vehicle Safety Inspection Apprenticeship Program Guidelines	26119	NEW	06/26/2003	2003-8/40
R714-220	Standards for Motorcycle Protective Headgear	26121	R&R	06/26/2003	2003-8/41
Criminal Investigations and Technical Services, Criminal Identification					
R722-300	Concealed Firearm Permit Rule (5YR EXTENSION)	25683	NSC	01/28/2003	Not Printed
R722-300	Concealed Firearm Permit Rule	25999	5YR	01/28/2003	2003-4/59
R722-320	Undercover Identification	25998	5YR	01/28/2003	2003-4/60
R722-340	Emergency Vehicles	25996	5YR	01/28/2003	2003-4/60
R722-340	Emergency Vehicles (5YR EXTENSION)	25684	NSC	01/28/2003	Not Printed
Peace Officer Standards and Training					
R728-409	Refusal, Suspension, or Revocation of Peace Officer Certification	26072	EMR	03/07/2003	2003-7/63
R728-409-3	Cause to Evaluate Certification for the Refusal, Suspension, or Revocation of Peace Officer Certification or Authority	26179	AMD	06/26/2003	2003-10/113
R728-411	Guidelines Regarding Administrative Action Taken Against Individuals Functioning as Peace Officers without Peace Officer Certification or Powers	26067	5YR	03/04/2003	2003-7/91
R728-502	Procedure for POST Instructor Certification (EXPIRED RULE)	26445	NSC	07/03/2003	Not Printed
R728-504	Regional Training (EXPIRED RULE)	26446	NSC	07/03/2003	Not Printed
R728-505	Service Dog Program Rules	26337	5YR	06/02/2003	2003-12/78
Public Service Commission					
Administration					
R746-110	Uncontested Matters to be Adjudicated Informally	26420	5YR	06/25/2003	2003-14/99
R746-210	Utility Service Rules Applicable Only to Electric Utilities	26419	5YR	06/25/2003	2003-14/99
R746-240	Telecommunication Service Rules	26421	5YR	06/25/2003	2003-14/100
R746-330	Rules for Water and Sewer Utilities Operating in Utah	26081	5YR	03/10/2003	2003-7/92
R746-331	Exemption of Mutually Owned Water Companies from Commission Regulation	26142	5YR	04/02/2003	2003-9/136
R746-332	Depreciation Rates for Water Utilities	26143	5YR	04/02/2003	2003-9/136
R746-340	Service Quality for Telecommunications Corporations	26418	5YR	06/25/2003	2003-14/100
R746-342	Rule on One-Way Paging	26145	5YR	04/02/2003	2003-9/137
R746-347	Extended Area Service (EAS)	25578	NEW	03/10/2003	2002-22/44
R746-347-5	Customer Survey for New or Expanded EAS	26197	AMD	06/30/2003	2003-10/116

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R746-402	Rules Governing Reports of Accidents by Electric, Gas, Telephone, and Water Utilities	26146	5YR	04/02/2003	2003-9/137
R746-405	Rules Governing the Filing of Tariffs for Gas, Electric, Telephone, Water and Heat Utilities	26147	5YR	04/02/2003	2003-9/138
Regents (Board Of)					
Administration					
R765-136	Language Proficiency in the Utah System of Higher Education (USHE)	26034	NEW	05/29/2003	2003-5/14
R765-171	Postsecondary Proprietary School Act Rules (5YR EXTENSION)	25712	NSC	03/31/2003	Not Printed
R765-171	Postsecondary Proprietary School Act Rules	25704	REP	03/31/2003	2002-24/55
R765-254	Secure Area Hearing Rooms	25906	NEW	05/29/2003	2003-3/42
R765-555	Providing Facilities, Goods and Services in Competition with Private Enterprise	26141	5YR	04/02/2003	2003-9/138
R765-605	Utah Centennial Opportunity Program for Education	26432	5YR	06/30/2003	2003-14/102
R765-606	Utah Leveraging Educational Assistance Partnership Program	26156	NEW	06/30/2003	2003-9/116
R765-607	Utah Higher Education Tuition Assistance Program	26443	5YR	07/03/2003	2003-15/84
R765-660	Utah State Student Incentive Grant Program	26134	5YR	04/01/2003	2003-8/44
R765-660	Utah State Student Incentive Grant Program (5YR EXTENSION)	25713	NSC	04/01/2003	Not Printed
R765-660	Utah State Student Incentive Grant Program	26155	REP	06/30/2003	2003-9/119
R765-685	Utah Educational Savings Plan Trust	26085	AMD	05/20/2003	2003-7/55
School and Institutional Trust Lands					
Administration					
R850-3	Applicant Qualifications, Application Forms, and Application Processing	26176	AMD	06/03/2003	2003-9/122
R850-50	Range Management	26177	AMD	06/03/2003	2003-9/123
R850-120	Beneficiary Use of Institutional Trust Land	25953	AMD	03/04/2003	2003-3/43
Tax Commission					
Administration					
R861-1A-20	Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-401, 59-1-501, 59-2-1007, 59-7-517, 59-10-533, 59-12-114, 59-13-210, and 63-46b-3	25823	AMD	03/11/2003	2003-1/39
Auditing					
R865-9I-26	Petition For Redetermination of a Deficiency Pursuant to Utah Code Ann. Section 59-10-533	25829	AMD	03/11/2003	2003-1/40
R865-9I-27	Redetermination of Tax Deficiency by Tax Commission Pursuant to Utah Code Ann. Section 59-10-525	25828	AMD	03/11/2003	2003-1/41
R865-9I-28	Petition For Redetermination of Tax Commission Action On Claim For Refund Pursuant to Utah Code Ann. Section 59-10-533	25826	AMD	03/11/2003	2003-1/42
R865-9I-29	Action of Tax Commission on Redetermination Claim For Refund Pursuant to Utah Code Ann. Section 59-10-535	25819	AMD	03/11/2003	2003-1/43
R865-9I-39	Subtraction from Federal Taxable Income for a Handicapped Child or Adult Pursuant to Utah Code Ann. Section 59-10-114	26078	AMD	06/10/2003	2003-7/61
R865-19S-61	Meals Furnished Pursuant to Utah Code Ann. Section 59-12-104	25924	AMD	04/23/2003	2003-3/44

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Property Tax					
R884-24P-60	Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1	25917	EMR	01/06/2003	2003-3/60
R884-24P-60	Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1	26044	AMD	04/23/2003	2003-5/15
Transportation					
Administration					
R907-1	Administrative Procedure	26035	AMD	04/23/2003	2003-5/17
Operations, Maintenance					
R918-4	Using Volunteer Groups for the Adopt-a-Highway Program	26184	NEW	07/10/2003	2003-10/117
Operations, Traffic and Safety					
R920-50-11	Fees	26295	EMR	05/16/2003	2003-12/68
Workforce Services					
Employment Development					
R986-100	Employment Support Programs	26232	AMD	07/01/2003	2003-10/118
R986-200	Family Employment Program	26210	AMD	07/01/2003	2003-10/124
R986-400	General Assistance and Working Toward Employment	26216	AMD	07/01/2003	2003-10/127
R986-400-404	Participation Requirements	25827	AMD	02/06/2003	2003-1/43
R986-700	Child Care Assistance	26226	AMD	07/01/2003	2003-10/129
R986-700-703	Client Rights and Responsibilities	26042	AMD	04/01/2003	2003-5/23
R986-700-709	Employment Support (ES) CC	26043	AMD	04/01/2003	2003-5/24
R986-900-902	Options and Waivers	26211	AMD	07/01/2003	2003-10/132
Workforce Information and Payment Services					
R994-201	Definition of Terms in Employment Security Act	26306	5YR	05/23/2003	2003-12/78
R994-202	Employing Units	26309	5YR	05/23/2003	2003-12/79
R994-208	Definition of Wages	26307	5YR	05/23/2003	2003-12/79
R994-303-104	Qualified Employer	26135	AMD	06/05/2003	2003-8/42
R994-306	Charging Benefit Costs to Employers	26355	5YR	06/11/2003	2003-13/72
R994-307	Social Costs -- Relief of Charges	26358	5YR	06/11/2003	2003-13/73
R994-315	Centralized New Hire Registry Reporting	26362	5YR	06/11/2003	2003-13/73
R994-406-311	Reschedule and Adjournment of Hearings	25946	AMD	03/04/2003	2003-3/46
R994-406-315	Finality of Decision	25947	AMD	03/04/2003	2003-3/48
R994-508	Appeal Procedures	26356	5YR	06/11/2003	2003-13/74
R994-600	Dislocated Workers	26308	5YR	05/23/2003	2003-12/80

RULES INDEX - BY KEYWORD (SUBJECT)

ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
5YR = Five-Year Review
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
* = Text too long to print in *Bulletin*, or repealed text not printed in *Bulletin*

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
abrasive blasting					
Environmental Quality, Air Quality	26400	R307-206	5YR	06/19/2003	2003-14/96
accidents					
Administrative Services, Fleet Operations	26191	R27-7	AMD	07/08/2003	2003-10/6
Public Service Commission, Administration	26146	R746-402	5YR	04/02/2003	2003-9/137
accreditation					
Education, Administration	25925	R277-516	5YR	01/14/2003	2003-3/67
adjudicative proceedings					
Community and Economic Development, Community Development, History	25630	R212-1	AMD	01/06/2003	2002-23/10
	25570	R212-1	AMD	01/06/2003	2002-22/10
administrative procedures					
Commerce, Administration	25822	R151-46b	AMD	02/18/2003	2003-1/8
Community and Economic Development, Community Development, History	25630	R212-1	AMD	01/06/2003	2002-23/10
	25570	R212-1	AMD	01/06/2003	2002-22/10
	25787	R212-4	AMD	03/11/2003	2003-1/13
Environmental Quality, Drinking Water	26171	R309-405	AMD	06/17/2003	2003-9/64
Environmental Quality, Water Quality	25633	R317-9	NEW	02/05/2003	2002-23/74
Human Resource Management, Administration	26227	R477-12	AMD	07/01/2003	2003-10/99
	26176	R850-3	AMD	06/03/2003	2003-9/122
	26177	R850-50	AMD	06/03/2003	2003-9/123
	25953	R850-120	AMD	03/04/2003	2003-3/43
	26035	R907-1	AMD	04/23/2003	2003-5/17
administrative responsibility					
Human Resource Management, Administration	26208	R477-2	AMD	07/01/2003	2003-10/71
adopt-a-highway					
Transportation, Operations, Maintenance	26184	R918-4	NEW	07/10/2003	2003-10/117
adult education					
Education, Administration	25936	R277-702	5YR	01/14/2003	2003-3/70
air pollution					
Environmental Quality, Air Quality	26345	R307-101	5YR	06/05/2003	2003-13/66
	26354	R307-102	5YR	06/11/2003	2003-13/67

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	26367	R307-107	5YR	06/12/2003	2003-13/67
	25495	R307-121	AMD	01/09/2003	2002-21/6
	26359	R307-165	5YR	06/11/2003	2003-13/68
	26360	R307-201	5YR	06/11/2003	2003-13/68
	26368	R307-202	5YR	06/12/2003	2003-13/69
	26398	R307-203	5YR	06/19/2003	2003-14/95
	26400	R307-206	5YR	06/19/2003	2003-14/96
	25825	R307-214-2	AMD	06/17/2003	2003-1/16
	25825	R307-214-2	CPR	06/17/2003	2003-10/137
	26399	R307-222	5YR	06/19/2003	2003-14/96
	26402	R307-302	5YR	06/19/2003	2003-14/97
	26403	R307-305	5YR	06/19/2003	2003-14/98
	26404	R307-307	5YR	06/19/2003	2003-14/98
	26249	R307-840	5YR	05/05/2003	2003-11/95
air travel					
Administrative Services, Finance	26203	R25-7	5YR	05/01/2003	2003-10/146
	26204	R25-7	AMD	07/01/2003	2003-10/4
alcoholic beverages					
Alcoholic Beverage Control, Administration	25886	R81-1-17	AMD	02/26/2003	2003-2/5
	25887	R81-5-5	AMD	02/26/2003	2003-2/8
	25650	R81-7-3	AMD	01/24/2003	2002-24/6
alternative onsite wastewater systems					
Environmental Quality, Water Quality	25203	R317-4-3	AMD	01/10/2003	2002-18/43
alternative schools					
Education, Administration	25939	R277-730	5YR	01/14/2003	2003-3/72
amphibians					
Natural Resources, Wildlife Resources	26168	R657-53	NEW	06/03/2003	2003-9/107
animal protection					
Natural Resources, Wildlife Resources	26167	R657-3	5YR	04/15/2003	2003-9/135
	26166	R657-3	AMD	06/03/2003	2003-9/94
appellate procedures					
Workforce Services, Workforce Information and Payment Services	25946	R994-406-311	AMD	03/04/2003	2003-3/46
	25947	R994-406-315	AMD	03/04/2003	2003-3/48
	26356	R994-508	5YR	06/11/2003	2003-13/74
applications					
Natural Resources, Water Rights	26195	R655-5	5YR	04/29/2003	2003-10/149
appraisals					
Tax Commission, Property Tax	25917	R884-24P-60	EMR	01/06/2003	2003-3/60
	26044	R884-24P-60	AMD	04/23/2003	2003-5/15
apprentices					
Public Safety, Highway Patrol	26119	R714-159	NEW	06/26/2003	2003-8/40

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ARC					
Administrative Services, Fleet Operations	26191	R27-7	AMD	07/08/2003	2003-10/6
archaeology					
Community and Economic Development, Community Development, History	25787	R212-4	AMD	03/11/2003	2003-1/13
architects					
Commerce, Occupational and Professional Licensing	26174	R156-3a	AMD	06/03/2003	2003-9/3
assistance					
Natural Resources, Parks and Recreation	26040	R651-301	5YR	02/13/2003	2003-5/40
	26127	R651-301	AMD	05/19/2003	2003-8/36
automobiles					
Commerce, Administration	25624	R151-14	AMD	01/02/2003	2002-23/6
	26199	R151-14	AMD	06/17/2003	2003-10/9
background checks					
Human Services, Mental Health, State Hospital	26303	R525-5	5YR	05/20/2003	2003-12/74
banking					
Commerce, Corporations and Commercial Code	25549	R154-2	AMD	03/14/2003	2002-22/7
beam limitation					
Environmental Quality, Radiation Control	25786	R313-28	AMD	03/14/2003	2003-1/27
bear					
Natural Resources, Wildlife Resources	25892	R657-33	AMD	02/16/2003	2003-2/43
	26056	R657-33-6	AMD	04/15/2003	2003-6/15
beneficiaries					
School and Institutional Trust Lands, Administration	25953	R850-120	AMD	03/04/2003	2003-3/43
benefits					
Health, Health Care Financing, Coverage and Reimbursement Policy	26005	R414-302	5YR	01/31/2003	2003-4/53
Labor Commission, Industrial Accidents	26316	R612-3	5YR	05/28/2003	2003-12/76
bicycles					
Public Safety, Highway Patrol	26121	R714-220	R&R	06/26/2003	2003-8/41
big game					
Natural Resources, Wildlife Resources	25894	R657-44	R&R	02/16/2003	2003-2/46
	26276	R657-44	AMD	07/02/2003	2003-11/46
big game seasons					
Natural Resources, Wildlife Resources	25720	R657-5	AMD	01/15/2003	2002-24/29
	26241	R657-5	AMD	06/17/2003	2003-10/111
	26165	R657-5-70	AMD	06/03/2003	2003-9/103
boating					
Natural Resources, Parks and Recreation	26173	R651-227	5YR	04/15/2003	2003-9/134

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
boilers					
Labor Commission, Safety	26148	R616-2-3	AMD	06/03/2003	2003-9/92
boxing					
Commerce, Administration	25649	R151-33	AMD	01/15/2003	2002-24/7
breakdown					
Environmental Quality, Air Quality	26367	R307-107	5YR	06/12/2003	2003-13/67
breaks					
Human Resource Management, Administration	26222	R477-8	AMD	07/01/2003	2003-10/91
budgeting					
Administrative Services, Facilities Construction and Management	25640	R23-8	REP	01/02/2003	2002-23/5
Health, Health Care Financing, Coverage and Reimbursement Policy	26017	R414-304	5YR	01/31/2003	2003-4/55
	26202	R414-304	AMD	07/01/2003	2003-10/55
budgets					
Administrative Services, Facilities Construction and Management	25960	R23-24	5YR	01/15/2003	2003-3/65
building codes					
Commerce, Occupational and Professional Licensing	26154	R156-56	AMD	07/01/2003	2003-9/7
	26152	R156-56-707	AMD	07/01/2003	2003-9/57
building inspection					
Commerce, Occupational and Professional Licensing	26152	R156-56-707	AMD	07/01/2003	2003-9/57
building inspections					
Commerce, Occupational and Professional Licensing	26154	R156-56	AMD	07/01/2003	2003-9/7
building names					
Administrative Services, Facilities Construction and Management	25962	R23-10	5YR	01/15/2003	2003-3/64
buildings					
Administrative Services, Facilities Construction and Management	25955	R23-5	5YR	01/15/2003	2003-3/62
	25956	R23-6	5YR	01/15/2003	2003-3/63
	25957	R23-9	5YR	01/15/2003	2003-3/63
	25962	R23-10	5YR	01/15/2003	2003-3/64
	25784	R23-10	AMD	02/04/2003	2003-1/5
	25986	R23-11	NSC	02/04/2003	Not Printed
	25771	R23-11	REP	02/04/2003	2003-1/7
	25960	R23-24	5YR	01/15/2003	2003-3/65
capacity development					
Environmental Quality, Drinking Water	26392	R309-352	5YR	06/16/2003	2003-13/69
care receiver					
Human Services, Aging and Adult Services	25557	R510-401	CPR	04/16/2003	2003-5/28

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
career education					
Education, Administration	25938	R277-718	5YR	01/14/2003	2003-3/71
caregiver					
Human Services, Aging and Adult Services	25557	R510-401	CPR	04/16/2003	2003-5/28
case management					
Health, Health Care Financing, Coverage and Reimbursement Policy	25969	R414-6	EMR	01/15/2003	2003-3/53
certificate of registration					
Natural Resources, Wildlife Resources	26280	R657-45	5YR	05/14/2003	2003-11/97
	26279	R657-45	AMD	07/02/2003	2003-11/52
certification					
Education, Applied Technology Education (Board for), Rehabilitation	25646	R280-203	AMD	01/03/2003	2002-23/16
Labor Commission, Safety	26312	R616-1	5YR	05/28/2003	2003-12/77
	26109	R616-3-3	AMD	05/08/2003	2003-7/53
Public Safety, Peace Officer Standards and Training	26072	R728-409	EMR	03/07/2003	2003-7/63
	26179	R728-409-3	AMD	06/26/2003	2003-10/113
certifications					
Labor Commission, Safety	26148	R616-2-3	AMD	06/03/2003	2003-9/92
charities					
Tax Commission, Auditing	25924	R865-19S-61	AMD	04/23/2003	2003-3/44
charter schools					
Education, Administration	25726	R277-470	AMD	01/15/2003	2002-24/12
child abuse					
Human Services, Child and Family Services	26256	R512-200	EMR	05/06/2003	2003-11/78
	26255	R512-201	EMR	05/06/2003	2003-11/80
	26254	R512-202	EMR	05/06/2003	2003-11/82
	26252	R512-300	EMR	05/06/2003	2003-11/84
	26253	R512-301	EMR	05/06/2003	2003-11/86
child care					
Health, Health Systems Improvement, Child Care Licensing	25921	R430-6	5YR	01/10/2003	2003-3/74
	25865	R430-6	AMD	03/13/2003	2003-2/25
	25944	R430-100	5YR	01/15/2003	2003-3/75
Workforce Services, Employment Development	26226	R986-700	AMD	07/01/2003	2003-10/129
	26042	R986-700-703	AMD	04/01/2003	2003-5/23
	26043	R986-700-709	AMD	04/01/2003	2003-5/24
child care facilities					
Health, Health Systems Improvement, Child Care Licensing	26447	R430-4	5YR	07/07/2003	2003-15/78
	26448	R430-50	5YR	07/07/2003	2003-15/79
	26449	R430-60	5YR	07/07/2003	2003-15/80

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
child support					
Human Services, Administration	26261	R495-879	AMD	07/10/2003	2003-11/28
Human Services, Recovery Services	25977	R527-3	AMD	03/19/2003	2003-4/26
	25979	R527-39	5YR	01/17/2003	2003-4/57
	26061	R527-39	AMD	04/21/2003	2003-6/8
	26075	R527-56	5YR	03/10/2003	2003-7/90
	25869	R527-201	AMD	03/05/2003	2003-2/34
	26076	R527-305	5YR	03/10/2003	2003-7/91
	25980	R527-430	5YR	01/21/2003	2003-4/57
child welfare					
Human Services, Child and Family Services	26258	R512-100	EMR	05/06/2003	2003-11/76
	26256	R512-200	EMR	05/06/2003	2003-11/78
	26255	R512-201	EMR	05/06/2003	2003-11/80
	26254	R512-202	EMR	05/06/2003	2003-11/82
	26252	R512-300	EMR	05/06/2003	2003-11/84
	26253	R512-301	EMR	05/06/2003	2003-11/86
	26250	R512-302	EMR	05/06/2003	2003-11/89
	26257	R512-305	EMR	05/06/2003	2003-11/91
	26251	R512-500	EMR	05/06/2003	2003-11/93
children's health benefits					
Health, Children's Health Insurance Program	26351	R382-1	5YR	06/09/2003	2003-13/69
	26352	R382-10	5YR	06/10/2003	2003-13/70
civil rights					
Natural Resources, Administration	25950	R634-1	5YR	01/15/2003	2003-3/76
	25951	R634-1	AMD	03/04/2003	2003-3/27
client rights					
Health, Health Care Financing, Coverage and Reimbursement Policy	26004	R414-301	5YR	01/31/2003	2003-4/53
coal mines					
Natural Resources, Oil, Gas and Mining; Coal	26452	R645-102	5YR	07/07/2003	2003-15/81
commerce					
Commerce, Corporations and Commercial Code	25553	R154-10	AMD	03/14/2003	2002-22/9
communicable diseases					
Health, Epidemiology and Laboratory Services, Epidemiology	26290	R386-702	EMR	05/16/2003	2003-12/66
competition with private enterprise					
Regents (Board Of), Administration	26141	R765-555	5YR	04/02/2003	2003-9/138
complaints					
Education, Administration	26340	R277-104	5YR	06/04/2003	2003-13/65
Human Services, Mental Health, State Hospital	26304	R525-7	5YR	05/20/2003	2003-12/74

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
compliance					
Education, Administration	26190	R277-108	AMD	06/17/2003	2003-10/22
concealed firearm permits					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	25683	R722-300	NSC	01/28/2003	Not Printed
	25999	R722-300	5YR	01/28/2003	2003-4/59
concerns					
Human Services, Mental Health, State Hospital	26304	R525-7	5YR	05/20/2003	2003-12/74
conduct					
Commerce, Real Estate	26060	R162-106	AMD	04/23/2003	2003-6/3
Professional Practices Advisory Commission, Administration	26032	R686-100	5YR	02/07/2003	2003-5/41
confidentiality of information					
Environmental Quality, Air Quality	26354	R307-102	5YR	06/11/2003	2003-13/67
Human Resource Management, Administration	26208	R477-2	AMD	07/01/2003	2003-10/71
construction					
Administrative Services, Facilities Construction and Management	25964	R23-4	5YR	01/15/2003	2003-3/62
	25783	R23-4	AMD	02/04/2003	2003-1/3
	25988	R23-9	R&R	03/24/2003	2003-4/5
construction costs					
Administrative Services, Facilities Construction and Management	25956	R23-6	5YR	01/15/2003	2003-3/63
construction disputes					
Administrative Services, Facilities Construction and Management	25964	R23-4	5YR	01/15/2003	2003-3/62
	25783	R23-4	AMD	02/04/2003	2003-1/3
contamination					
Environmental Quality, Radiation Control	25943	R313-15	5YR	01/14/2003	2003-3/73
contests					
Commerce, Administration	25649	R151-33	AMD	01/15/2003	2002-24/7
contingency					
Administrative Services, Facilities Construction and Management	25955	R23-5	5YR	01/15/2003	2003-3/62
continuing education					
Commerce, Real Estate	26118	R162-9	AMD	05/21/2003	2003-8/19
contractors					
Commerce, Occupational and Professional Licensing	26192	R156-38	AMD	06/17/2003	2003-10/12
	26175	R156-55a	AMD	06/03/2003	2003-9/6
	26154	R156-56	AMD	07/01/2003	2003-9/7
	26152	R156-56-707	AMD	07/01/2003	2003-9/57
contracts					
Administrative Services, Facilities Construction and Management	25964	R23-4	5YR	01/15/2003	2003-3/62

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	25783	R23-4	AMD	02/04/2003	2003-1/3
Corrections, Administration	25885	R251-304	AMD	02/19/2003	2003-2/9
	26053	R251-304	5YR	02/21/2003	2003-6/17
cooperative wildlife management unit					
Natural Resources, Wildlife Resources	26275	R657-37	5YR	05/14/2003	2003-11/96
	26271	R657-37	AMD	07/02/2003	2003-11/42
corrections					
Corrections, Administration	25885	R251-304	AMD	02/19/2003	2003-2/9
	26053	R251-304	5YR	02/21/2003	2003-6/17
costs					
Administrative Services, Finance	26206	R25-6	5YR	05/01/2003	2003-10/146
counselors					
Commerce, Occupational and Professional Licensing	26284	R156-60c	AMD	07/03/2003	2003-11/7
course					
Natural Resources, Parks and Recreation	26173	R651-227	5YR	04/15/2003	2003-9/134
coverage groups					
Health, Health Care Financing, Coverage and Reimbursement Policy	26012	R414-303	5YR	01/31/2003	2003-4/54
credit enhancements					
Environmental Quality, Drinking Water	26172	R309-700	AMD	07/01/2003	2003-9/66
credit scoring					
Insurance, Administration	25958	R590-219	NEW	06/13/2003	2003-3/23
	25958	R590-219	CPR	06/13/2003	2003-9/127
criminal investigation					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	25998	R722-320	5YR	01/28/2003	2003-4/60
curricula					
Education, Administration	25935	R277-700	5YR	01/14/2003	2003-3/69
	25648	R277-705	AMD	01/03/2003	2002-23/13
custody of children					
Human Services, Administration	26261	R495-879	AMD	07/10/2003	2003-11/28
data standards					
Education, Administration	26189	R277-484	NEW	06/17/2003	2003-10/24
day care					
Public Safety, Fire Marshal	26269	R710-8-3	AMD	07/02/2003	2003-11/68
deadlines					
Education, Administration	26189	R277-484	NEW	06/17/2003	2003-10/24
declaratory orders					
Labor Commission, Administration	26313	R600-1	5YR	05/28/2003	2003-12/75
definitions					
Environmental Quality, Air Quality	26345	R307-101	5YR	06/05/2003	2003-13/66

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Environmental Quality, Radiation Control	25785	R313-12-3	AMD	03/14/2003	2003-1/22
Human Resource Management, Administration	26207	R477-1	AMD	07/01/2003	2003-10/65
Workforce Services, Workforce Information and Payment Services	26306	R994-201	5YR	05/23/2003	2003-12/78
dental					
Environmental Quality, Radiation Control	25786	R313-28	AMD	03/14/2003	2003-1/27
depreciation					
Public Service Commission, Administration	26143	R746-332	5YR	04/02/2003	2003-9/136
depredation					
Natural Resources, Wildlife Resources	25894	R657-44	R&R	02/16/2003	2003-2/46
	26276	R657-44	AMD	07/02/2003	2003-11/46
design					
Administrative Services, Facilities Construction and Management	25639	R23-3	R&R	01/02/2003	2002-23/3
	25989	R23-3	AMD	03/24/2003	2003-4/4
developmentally disabled					
Tax Commission, Administration	25823	R861-1A-20	AMD	03/11/2003	2003-1/39
digital signature					
Commerce, Corporations and Commercial Code	25553	R154-10	AMD	03/14/2003	2002-22/9
dirt bikes					
Commerce, Administration	25724	R151-35	NEW	01/15/2003	2002-24/9
	26198	R151-35	AMD	06/17/2003	2003-10/10
disabilities					
Pardons (Board Of), Administration	25345	R671-102	AMD	02/12/2003	2002-20/102
disabled					
Human Services, Aging and Adult Services	25552	R510-105	NEW	03/14/2003	2002-22/14
disabled persons					
Education, Administration	26340	R277-104	5YR	06/04/2003	2003-13/65
Human Services, Services for People with Disabilities	26440	R539-1-5	EMR	07/01/2003	2003-14/91
	25975	R539-3	AMD	05/05/2003	2003-3/16
	26062	R539-3-2	AMD	05/20/2003	2003-6/13
	25949	R539-8-3	AMD	05/05/2003	2003-3/20
discharge permits					
Environmental Quality, Water Quality	25634	R317-8	AMD	01/30/2003	2002-23/33
disciplinary problems					
Education, Administration	26341	R277-436	5YR	06/04/2003	2003-13/65
discipline of employees					
Human Resource Management, Administration	26225	R477-11	AMD	07/01/2003	2003-10/97
	26229	R477-14	AMD	07/01/2003	2003-10/101

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
disclosure requirements					
Tax Commission, Administration	25823	R861-1A-20	AMD	03/11/2003	2003-1/39
discretion clauses					
Insurance, Administration	25670	R590-218	NEW	03/21/2003	2002-24/28
dismissal of employees					
Human Resource Management, Administration	26225	R477-11	AMD	07/01/2003	2003-10/97
do not resuscitate					
Health, Health Systems Improvement, Emergency Medical Services	25864	R426-100	AMD	03/14/2003	2003-2/24
domestic violence					
Human Services, Child and Family Services	26256	R512-200	EMR	05/06/2003	2003-11/78
	26255	R512-201	EMR	05/06/2003	2003-11/80
	26254	R512-202	EMR	05/06/2003	2003-11/82
	26252	R512-300	EMR	05/06/2003	2003-11/84
	26253	R512-301	EMR	05/06/2003	2003-11/86
drinking water					
Environmental Quality, Drinking Water	26392	R309-352	5YR	06/16/2003	2003-13/69
	26171	R309-405	AMD	06/17/2003	2003-9/64
	25863	R309-710	REP	03/05/2003	2003-2/10
driver education					
Education, Administration	26089	R277-746	5YR	03/12/2003	2003-7/74
	26090	R277-747	5YR	03/12/2003	2003-7/74
drug abuse					
Human Resource Management, Administration	26229	R477-14	AMD	07/01/2003	2003-10/101
drug/alcohol education					
Human Resource Management, Administration	26229	R477-14	AMD	07/01/2003	2003-10/101
dual employment					
Human Resource Management, Administration	26222	R477-8	AMD	07/01/2003	2003-10/91
education					
Education, Administration	25726	R277-470	AMD	01/15/2003	2002-24/12
	26030	R277-521	NSC	03/01/2003	Not Printed
	25937	R277-709	5YR	01/14/2003	2003-3/70
	25938	R277-718	5YR	01/14/2003	2003-3/71
	25939	R277-730	5YR	01/14/2003	2003-3/72
	25712	R765-171	NSC	03/31/2003	Not Printed
	25704	R765-171	REP	03/31/2003	2002-24/55
educational savings trust					
Regents (Board Of), Administration	26085	R765-685	AMD	05/20/2003	2003-7/55
educational testing					
Education, Administration	25936	R277-702	5YR	01/14/2003	2003-3/70

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
educational tuition Human Resource Management, Administration	26224	R477-10	AMD	07/01/2003	2003-10/95
effluent standards Environmental Quality, Water Quality	25636	R317-1	AMD	01/30/2003	2002-23/17
elderly Human Services, Aging and Adult Services	26052	R510-100	AMD	05/21/2003	2003-6/6
	26259	R510-100-2	EMR	05/15/2003	2003-11/74
	26046	R510-106	AMD	06/30/2003	2003-5/6
	26046	R510-106	CPR	06/30/2003	2003-10/139
	25557	R510-401	CPR	04/16/2003	2003-5/28
electric utility industries Public Service Commission, Administration	26419	R746-210	5YR	06/25/2003	2003-14/99
electronic commerce Commerce, Corporations and Commercial Code	25553	R154-10	AMD	03/14/2003	2002-22/9
electronic communication Commerce, Corporations and Commercial Code	25553	R154-10	AMD	03/14/2003	2002-22/9
elevators Labor Commission, Safety	26109	R616-3-3	AMD	05/08/2003	2003-7/53
eligibility Health, Health Care Financing, Coverage and Reimbursement Policy	26020	R414-307	5YR	01/31/2003	2003-4/56
emergency medical services Health, Health Systems Improvement, Emergency Medical Services	25864	R426-100	AMD	03/14/2003	2003-2/24
emergency vehicle Public Safety, Criminal Investigations and Technical Services, Criminal Identification	25684	R722-340	NSC	01/28/2003	Not Printed
emergency vehicles Public Safety, Criminal Investigations and Technical Services, Criminal Identification	25996	R722-340	5YR	01/28/2003	2003-4/60
emission testing Environmental Quality, Air Quality	26359	R307-165	5YR	06/11/2003	2003-13/68
employee benefit plans Human Resource Management, Administration	26220	R477-6	AMD	07/01/2003	2003-10/80
employee performance evaluation Human Resource Management, Administration	26224	R477-10	AMD	07/01/2003	2003-10/95
employee productivity Human Resource Management, Administration	26224	R477-10	AMD	07/01/2003	2003-10/95
employee rights Human Resource Management, Administration	26227	R477-12	AMD	07/01/2003	2003-10/99

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
employer					
Labor Commission, Industrial Accidents	26317	R612-5	5YR	05/28/2003	2003-12/76
employment					
Human Resource Management, Administration	26217	R477-4	AMD	07/01/2003	2003-10/75
	26219	R477-5	AMD	07/01/2003	2003-10/79
Workforce Services, Workforce Information and Payment Services	26309	R994-202	5YR	05/23/2003	2003-12/79
	26308	R994-600	5YR	05/23/2003	2003-12/80
employment support procedures					
Workforce Services, Employment Development	26232	R986-100	AMD	07/01/2003	2003-10/118
enforcement (administrative)					
Transportation, Administration	26035	R907-1	AMD	04/23/2003	2003-5/17
engineering					
Education, Administration	26087	R277-717	AMD	05/02/2003	2003-7/7
engineers					
Commerce, Occupational and Professional Licensing	25922	R156-22	5YR	01/13/2003	2003-3/65
	25763	R156-22	CPR	04/03/2003	2003-5/27
	25763	R156-22	AMD	04/03/2003	2003-1/10
English proficiency					
Regents (Board Of), Administration	26034	R765-136	NEW	05/29/2003	2003-5/14
enrollment					
Education, Administration	25966	R277-485	NEW	03/07/2003	2003-3/7
enterprise					
Tax Commission, Auditing	25829	R865-9I-26	AMD	03/11/2003	2003-1/40
	25828	R865-9I-27	AMD	03/11/2003	2003-1/41
	25819	R865-9I-29	AMD	03/11/2003	2003-1/43
	26078	R865-9I-39	AMD	06/10/2003	2003-7/61
environmental health					
Environmental Quality, Drinking Water	25863	R309-710	REP	03/05/2003	2003-2/10
environmental protection					
Environmental Quality, Drinking Water	26171	R309-405	AMD	06/17/2003	2003-9/64
equipment leasing					
Commerce, Corporations and Commercial Code	25549	R154-2	AMD	03/14/2003	2002-22/7
exceptional children					
Education, Administration	26091	R277-751	5YR	03/12/2003	2003-7/75
excess emissions					
Environmental Quality, Air Quality	26367	R307-107	5YR	06/12/2003	2003-13/67
exemptions					
Environmental Quality, Radiation Control	25785	R313-12-3	AMD	03/14/2003	2003-1/22

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	26074	R313-19-100	AMD	05/09/2003	2003-7/10
expelled					
Education, Administration	25965	R277-483	NEW	03/07/2003	2003-3/5
extended area service					
Public Service Commission, Administration	25578	R746-347	NEW	03/10/2003	2002-22/44
	26197	R746-347-5	AMD	06/30/2003	2003-10/116
extinguishers					
Public Safety, Fire Marshal	25954	R710-1	AMD	03/06/2003	2003-3/29
extracurricular activities					
Education, Administration	25931	R277-605	5YR	01/14/2003	2003-3/68
fair employment practices					
Human Resource Management, Administration	26208	R477-2	AMD	07/01/2003	2003-10/71
	26217	R477-4	AMD	07/01/2003	2003-10/75
family employment program					
Workforce Services, Employment Development	26210	R986-200	AMD	07/01/2003	2003-10/124
fees					
Labor Commission, Industrial Accidents	26315	R612-2	5YR	05/28/2003	2003-12/75
	26286	R612-2-5	AMD	07/02/2003	2003-11/35
	26405	R612-2-22	EMR	06/20/2003	2003-14/92
Natural Resources, Parks and Recreation	26173	R651-227	5YR	04/15/2003	2003-9/134
	25837	R651-611	AMD	03/31/2003	2003-2/38
	26170	R651-611-2	AMD	06/03/2003	2003-9/93
filing documents					
Commerce, Corporations and Commercial Code	25549	R154-2	AMD	03/14/2003	2002-22/7
finance					
Administrative Services, Finance	26206	R25-6	5YR	05/01/2003	2003-10/146
financial aid					
Regents (Board Of), Administration	26432	R765-605	5YR	06/30/2003	2003-14/102
	26443	R765-607	5YR	07/03/2003	2003-15/84
	26134	R765-660	5YR	04/01/2003	2003-8/44
	25713	R765-660	NSC	04/01/2003	Not Printed
financial disclosure					
Health, Health Care Financing, Coverage and Reimbursement Policy	26202	R414-304	AMD	07/01/2003	2003-10/55
financial disclosures					
Health, Health Care Financing, Coverage and Reimbursement Policy	26017	R414-304	5YR	01/31/2003	2003-4/55
financial responsibility					
Environmental Quality, Environmental Response and Remediation	25161	R311-207	CPR	02/04/2003	2003-1/46

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
fire marshal					
Environmental Quality, Air Quality	26368	R307-202	5YR	06/12/2003	2003-13/69
fire prevention					
Public Safety, Fire Marshal	25954	R710-1	AMD	03/06/2003	2003-3/29
	26006	R710-4	AMD	03/18/2003	2003-4/28
	25961	R710-7	AMD	03/06/2003	2003-3/36
	26001	R710-7	AMD	03/18/2003	2003-4/32
	26269	R710-8-3	AMD	07/02/2003	2003-11/68
	26003	R710-9	AMD	03/18/2003	2003-4/38
	26289	R710-9	AMD	07/02/2003	2003-11/69
fireplace					
Environmental Quality, Air Quality	26360	R307-201	5YR	06/11/2003	2003-13/68
fireplaces					
Environmental Quality, Air Quality	26402	R307-302	5YR	06/19/2003	2003-14/97
fiscal					
Natural Resources, Parks and Recreation	26040	R651-301	5YR	02/13/2003	2003-5/40
	26127	R651-301	AMD	05/19/2003	2003-8/36
food aid programs					
Education, Administration	25929	R277-721	5YR	01/14/2003	2003-3/71
	25930	R277-722	5YR	01/14/2003	2003-3/72
food stamps					
Workforce Services, Employment Development	26211	R986-900-902	AMD	07/01/2003	2003-10/132
foreign students					
Education, Administration	25933	R277-615	5YR	01/14/2003	2003-3/69
foster care					
Human Services, Administration, Administrative Services, Licensing	25644	R501-12	AMD	01/30/2003	2002-23/82
Human Services, Child and Family Services	26253	R512-301	EMR	05/06/2003	2003-11/86
	26257	R512-305	EMR	05/06/2003	2003-11/91
franchises					
Commerce, Administration	25624	R151-14	AMD	01/02/2003	2002-23/6
	26199	R151-14	AMD	06/17/2003	2003-10/9
	25724	R151-35	NEW	01/15/2003	2002-24/9
	26198	R151-35	AMD	06/17/2003	2003-10/10
franchises historic preservation					
Tax Commission, Auditing	25826	R865-9I-28	AMD	03/11/2003	2003-1/42
freedom of information					
Natural Resources, Parks and Recreation	26041	R651-102-4	NSC	03/01/2003	Not Printed
fuel composition					
Environmental Quality, Air Quality	26398	R307-203	5YR	06/19/2003	2003-14/95

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
fuel oils					
Environmental Quality, Air Quality	26398	R307-203	5YR	06/19/2003	2003-14/95
funding					
Administrative Services, Facilities Construction and Management	25960	R23-24	5YR	01/15/2003	2003-3/65
Environmental Quality, Drinking Water	26392	R309-352	5YR	06/16/2003	2003-13/69
funding formula					
Human Services, Aging and Adult Services	26052	R510-100	AMD	05/21/2003	2003-6/6
	26259	R510-100-2	EMR	05/15/2003	2003-11/74
game laws					
Natural Resources, Wildlife Resources	25720	R657-5	AMD	01/15/2003	2002-24/29
	26241	R657-5	AMD	06/17/2003	2003-10/111
	26165	R657-5-70	AMD	06/03/2003	2003-9/103
	25721	R657-17	AMD	01/15/2003	2002-24/46
	25890	R657-23	AMD	02/16/2003	2003-2/41
	25892	R657-33	AMD	02/16/2003	2003-2/43
	26056	R657-33-6	AMD	04/15/2003	2003-6/15
	26274	R657-34	5YR	05/14/2003	2003-11/95
	26272	R657-34	AMD	07/02/2003	2003-11/41
gangs					
Education, Administration	26341	R277-436	5YR	06/04/2003	2003-13/65
general assistance					
Workforce Services, Employment Development	26216	R986-400	AMD	07/01/2003	2003-10/127
	25827	R986-400-404	AMD	02/06/2003	2003-1/43
government documents					
Natural Resources, Parks and Recreation	26041	R651-102-4	NSC	03/01/2003	Not Printed
government hearings					
Commerce, Administration	25822	R151-46b	AMD	02/18/2003	2003-1/8
	26225	R477-11	AMD	07/01/2003	2003-10/97
	26050	R671-403	5YR	02/18/2003	2003-6/18
government purchasing					
Administrative Services, Purchasing and General Services	26136	R33-2-102	AMD	05/27/2003	2003-8/8
	26138	R33-3	AMD	05/27/2003	2003-8/9
	26139	R33-5	AMD	05/27/2003	2003-8/15
grievance procedures					
Tax Commission, Administration	25823	R861-1A-20	AMD	03/11/2003	2003-1/39
grievances					
Human Resource Management, Administration	26225	R477-11	AMD	07/01/2003	2003-10/97
	26227	R477-12	AMD	07/01/2003	2003-10/99
ground water					
Environmental Quality, Water Quality	25632	R317-6-6	AMD	01/30/2003	2002-23/25

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
hardship grants					
Environmental Quality, Drinking Water	26172	R309-700	AMD	07/01/2003	2003-9/66
hazardous air pollutant					
Environmental Quality, Air Quality	25825	R307-214-2	CPR	06/17/2003	2003-10/137
	25825	R307-214-2	AMD	06/17/2003	2003-1/16
hazardous waste					
Environmental Quality, Solid and Hazardous Waste	25910	R315-2	NSC	03/01/2003	Not Printed
	26057	R315-2-2	NSC	03/01/2003	Not Printed
	25915	R315-3	NSC	03/01/2003	Not Printed
	25912	R315-4	NSC	03/01/2003	Not Printed
	25913	R315-7	NSC	03/01/2003	Not Printed
	25911	R315-8	NSC	03/01/2003	Not Printed
	26058	R315-8-15	NSC	03/01/2003	Not Printed
	25914	R315-12	NSC	03/01/2003	Not Printed
	25918	R315-14	NSC	03/01/2003	Not Printed
	26064	R315-15	5YR	03/03/2003	2003-7/76
	25916	R315-16	NSC	03/01/2003	Not Printed
headgear					
Public Safety, Highway Patrol	26121	R714-220	R&R	06/26/2003	2003-8/41
health					
Health, Center for Health Data, Health Care Statistics	26080	R428-11	5YR	03/10/2003	2003-7/88
	26079	R428-13	5YR	03/10/2003	2003-7/89
health care facilities					
Health, Health Systems Improvement, Licensing	26450	R432-35	5YR	07/07/2003	2003-15/80
health facilities					
Health, Health Systems Improvement, Licensing	25868	R432-3	AMD	03/13/2003	2003-2/29
	25452	R432-5	AMD	01/15/2003	2002-21/92
	25791	R432-13	AMD	03/13/2003	2003-1/32
	25792	R432-14	AMD	03/13/2003	2003-1/34
	26038	R432-16	5YR	02/12/2003	2003-5/39
	25866	R432-35	AMD	03/13/2003	2003-2/30
	25867	R432-100-38	AMD	03/13/2003	2003-2/33
health information					
Human Services, Administration	26196	R495-881	NEW	06/24/2003	2003-10/104
health insurance					
Human Services, Recovery Services	25869	R527-201	AMD	03/05/2003	2003-2/34
Insurance, Administration	25628	R590-199	CPR	03/14/2003	2003-3/50
health insurance arbitration					
Insurance, Administration	25093	R590-215	NEW	01/09/2003	2002-15/65
	25093	R590-215	CPR	01/09/2003	2002-23/100

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	25919	R590-215	NSC	03/01/2003	Not Printed
	26133	R590-215	AMD	05/20/2003	2003-8/34
	25963	R590-215-5	NSC	03/01/2003	Not Printed
health planning					
Health, Center for Health Data, Health Care Statistics	26080	R428-11	5YR	03/10/2003	2003-7/88
	26079	R428-13	5YR	03/10/2003	2003-7/89
health policy					
Health, Center for Health Data, Health Care Statistics	26079	R428-13	5YR	03/10/2003	2003-7/89
hearing aids					
Commerce, Occupational and Professional Licensing	25987	R156-46a	AMD	03/18/2003	2003-4/7
hearings					
Environmental Quality, Water Quality	25633	R317-9	NEW	02/05/2003	2002-23/74
Professional Practices Advisory Commission, Administration	26032	R686-100	5YR	02/07/2003	2003-5/41
higher education					
Regents (Board Of), Administration	26034	R765-136	NEW	05/29/2003	2003-5/14
	26432	R765-605	5YR	06/30/2003	2003-14/102
	26443	R765-607	5YR	07/03/2003	2003-15/84
	26134	R765-660	5YR	04/01/2003	2003-8/44
	25713	R765-660	NSC	04/01/2003	Not Printed
	26085	R765-685	AMD	05/20/2003	2003-7/55
highways					
Transportation, Operations, Maintenance	26184	R918-4	NEW	07/10/2003	2003-10/117
HIPAA					
Health, Administration	26161	R380-250	EMR	04/14/2003	2003-9/130
	26162	R380-250	NEW	06/09/2003	2003-9/72
	26160	R495-881	EMR	04/14/2003	2003-9/132
	26196	R495-881	NEW	06/24/2003	2003-10/104
hiring practices					
Human Resource Management, Administration	26217	R477-4	AMD	07/01/2003	2003-10/75
historic preservation					
Tax Commission, Auditing	25829	R865-9I-26	AMD	03/11/2003	2003-1/40
	25828	R865-9I-27	AMD	03/11/2003	2003-1/41
	25819	R865-9I-29	AMD	03/11/2003	2003-1/43
	26078	R865-9I-39	AMD	06/10/2003	2003-7/61
HMO insurance					
Insurance, Administration	26059	R590-76-9	NSC	03/01/2003	Not Printed
HMO insurance					
Insurance, Administration	25870	R590-76	AMD	02/26/2003	2003-2/35

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
holidays					
Human Resource Management, Administration	26221	R477-7	AMD	07/01/2003	2003-10/80
horses					
Agriculture and Food, Marketing and Conservation	26083	R65-7	AMD	06/09/2003	2003-7/5
hospital					
Health, Health Care Financing, Coverage and Reimbursement Policy	25889	R414-5	EMR	01/03/2003	2003-2/55
	25948	R414-5	EMR	01/15/2003	2003-3/52
hospital policy					
Health, Center for Health Data, Health Care Statistics	26080	R428-11	5YR	03/10/2003	2003-7/88
hospitals					
Environmental Quality, Air Quality	26399	R307-222	5YR	06/19/2003	2003-14/96
Health, Health Care Financing, Coverage and Reimbursement Policy	25967	R414-5	NEW	05/13/2003	2003-3/8
human services					
Human Services, Administration, Administrative Services, Licensing	25652	R501-1	AMD	01/30/2003	2002-24/15
	26071	R501-2	AMD	05/06/2003	2003-7/20
	25707	R501-8	AMD	01/17/2003	2002-24/19
	25978	R501-8	NSC	03/01/2003	Not Printed
	25660	R501-11	AMD	01/30/2003	2002-24/25
	25644	R501-12	AMD	01/30/2003	2002-23/82
	26055	R501-16	5YR	02/26/2003	2003-6/17
	25703	R501-16	NSC	02/26/2003	Not Printed
	26084	R501-17	5YR	03/11/2003	2003-7/89
	26343	R501-18	5YR	06/05/2003	2003-13/72
hunter education					
Natural Resources, Wildlife Resources	25890	R657-23	AMD	02/16/2003	2003-2/41
hunting					
Natural Resources, Wildlife Resources	25722	R657-38	AMD	01/15/2003	2002-24/48
hunting and fishing licenses					
Natural Resources, Wildlife Resources	25721	R657-17	AMD	01/15/2003	2002-24/46
hunting closures					
Natural Resources, Wildlife Resources	26274	R657-34	5YR	05/14/2003	2003-11/95
	26272	R657-34	AMD	07/02/2003	2003-11/41
immunization					
Health, Community and Family Health Services, Immunization	26187	R396-100	5YR	04/24/2003	2003-10/148
impairment ratings					
Labor Commission, Industrial Accidents	26314	R612-7	5YR	05/28/2003	2003-12/77
import restrictions					
Natural Resources, Wildlife Resources	26167	R657-3	5YR	04/15/2003	2003-9/135

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	26166	R657-3	AMD	06/03/2003	2003-9/94
	26168	R657-53	NEW	06/03/2003	2003-9/107
in-service training					
Public Safety, Peace Officer Standards and Training	26445	R728-502	NSC	07/03/2003	Not Printed
	26446	R728-504	NSC	07/03/2003	Not Printed
income					
Health, Health Care Financing, Coverage and Reimbursement Policy	26005	R414-302	5YR	01/31/2003	2003-4/53
	26012	R414-303	5YR	01/31/2003	2003-4/54
	26017	R414-304	5YR	01/31/2003	2003-4/55
	26202	R414-304	AMD	07/01/2003	2003-10/55
income tax					
Tax Commission, Auditing	25829	R865-9I-26	AMD	03/11/2003	2003-1/40
	25828	R865-9I-27	AMD	03/11/2003	2003-1/41
	25819	R865-9I-29	AMD	03/11/2003	2003-1/43
	26078	R865-9I-39	AMD	06/10/2003	2003-7/61
industrial waste					
Environmental Quality, Water Quality	25636	R317-1	AMD	01/30/2003	2002-23/17
infectious waste					
Environmental Quality, Air Quality	26399	R307-222	5YR	06/19/2003	2003-14/96
inmates					
Pardons (Board Of), Administration	26120	R671-201	AMD	05/16/2003	2003-8/39
	25350	R671-202	AMD	02/12/2003	2002-20/104
	25394	R671-308	AMD	02/12/2003	2002-20/110
	25398	R671-311	AMD	02/12/2003	2002-20/112
inspection					
Administrative Services, Facilities Construction and Management	25957	R23-9	5YR	01/15/2003	2003-3/63
inspections					
Agriculture and Food, Plant Industry	26385	R68-5	5YR	06/13/2003	2003-13/63
Environmental Quality, Radiation Control	25785	R313-12-3	AMD	03/14/2003	2003-1/22
instructional materials					
Education, Administration	26157	R277-469	5YR	04/04/2003	2003-9/134
instructor certification					
Public Safety, Peace Officer Standards and Training	26445	R728-502	NSC	07/03/2003	Not Printed
	26446	R728-504	NSC	07/03/2003	Not Printed
insurance					
Human Resource Management, Administration	26220	R477-6	AMD	07/01/2003	2003-10/80
	26132	R590-147	AMD	06/13/2003	2003-8/30
	26181	R590-154	5YR	04/17/2003	2003-10/149
	25993	R590-155	5YR	01/24/2003	2003-4/59
	26033	R590-157	5YR	02/10/2003	2003-5/39

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	25643	R590-160	AMD	01/09/2003	2002-23/86
	25626	R590-172	AMD	01/09/2003	2002-23/91
	25908	R590-183	NSC	01/02/2003	Not Printed
	25628	R590-199	AMD	03/14/2003	2002-23/92
	25670	R590-218	NEW	03/21/2003	2002-24/28
	25958	R590-219	NEW	06/13/2003	2003-3/23
	25958	R590-219	CPR	06/13/2003	2003-9/127
	26194	R590-222	NEW	06/24/2003	2003-10/105
Labor Commission, Industrial Accidents	26317	R612-5	5YR	05/28/2003	2003-12/76
insurance companies Insurance, Administration	25990	R590-124	5YR	01/24/2003	2003-4/58
insurance law Insurance, Administration	26129	R590-85	AMD	06/13/2003	2003-8/26
	26182	R590-94	5YR	04/17/2003	2003-10/148
	26159	R590-192	AMD	06/24/2003	2003-9/84
insurance reserves and nonforfeitures Insurance, Administration	26158	R590-223	NEW	06/13/2003	2003-9/89
interest buy-downs Environmental Quality, Drinking Water	26172	R309-700	AMD	07/01/2003	2003-9/66
interpreters Education, Applied Technology Education (Board for), Rehabilitation	25646	R280-203	AMD	01/03/2003	2002-23/16
interstate Human Services, Recovery Services	26076	R527-305	5YR	03/10/2003	2003-7/91
investigations Public Safety, Peace Officer Standards and Training	26072	R728-409	EMR	03/07/2003	2003-7/63
	26179	R728-409-3	AMD	06/26/2003	2003-10/113
jurisdiction Workforce Services, Workforce Information and Payment Services	25946	R994-406-311	AMD	03/04/2003	2003-3/46
	25947	R994-406-315	AMD	03/04/2003	2003-3/48
juvenile courts Education, Administration	25937	R277-709	5YR	01/14/2003	2003-3/70
K-9 training Public Safety, Peace Officer Standards and Training	26337	R728-505	5YR	06/02/2003	2003-12/78
kinship Human Services, Child and Family Services	26251	R512-500	EMR	05/06/2003	2003-11/93
labor Labor Commission, Safety	26312	R616-1	5YR	05/28/2003	2003-12/77
labor commission Labor Commission, Administration	26313	R600-1	5YR	05/28/2003	2003-12/75

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
laboratories					
Health, Epidemiology and Laboratory Services, Laboratory Improvement	26144	R444-14	AMD	06/12/2003	2003-9/75
land use					
School and Institutional Trust Lands, Administration	25953	R850-120	AMD	03/04/2003	2003-3/43
landscape architects					
Commerce, Occupational and Professional Licensing	26320	R156-53	5YR	06/02/2003	2003-12/70
language proficiency					
Regents (Board Of), Administration	26034	R765-136	NEW	05/29/2003	2003-5/14
law					
Public Safety, Fire Marshal	26003	R710-9	AMD	03/18/2003	2003-4/38
	26289	R710-9	AMD	07/02/2003	2003-11/69
law enforcement					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	25998	R722-320	5YR	01/28/2003	2003-4/60
law enforcement officers					
Public Safety, Peace Officer Standards and Training	26072	R728-409	EMR	03/07/2003	2003-7/63
	26179	R728-409-3	AMD	06/26/2003	2003-10/113
	26445	R728-502	NSC	07/03/2003	Not Printed
	26446	R728-504	NSC	07/03/2003	Not Printed
lead-based paint					
Environmental Quality, Air Quality	26249	R307-840	5YR	05/05/2003	2003-11/95
leasing					
Administrative Services, Facilities Construction and Management	25959	R23-21	5YR	01/15/2003	2003-3/64
leave benefits					
Human Resource Management, Administration	26221	R477-7	AMD	07/01/2003	2003-10/80
leveraging educational assistance program					
Regents (Board Of), Administration	26156	R765-606	NEW	06/30/2003	2003-9/116
liberties					
Natural Resources, Administration	25950	R634-1	5YR	01/15/2003	2003-3/76
	25951	R634-1	AMD	03/04/2003	2003-3/27
libraries					
Education, Administration	25925	R277-516	5YR	01/14/2003	2003-3/67
license					
Education, Administration	26030	R277-521	NSC	03/01/2003	Not Printed
Environmental Quality, Radiation Control	26074	R313-19-100	AMD	05/09/2003	2003-7/10
Natural Resources, Wildlife Resources	26280	R657-45	5YR	05/14/2003	2003-11/97
	26279	R657-45	AMD	07/02/2003	2003-11/52
licensing					
Commerce, Administration	25649	R151-33	AMD	01/15/2003	2002-24/7

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Commerce, Occupational and Professional Licensing	26174	R156-3a	AMD	06/03/2003	2003-9/3
	26150	R156-28	AMD	06/03/2003	2003-9/3
	26319	R156-31b	5YR	06/02/2003	2003-12/70
	26192	R156-38	AMD	06/17/2003	2003-10/12
	25987	R156-46a	AMD	03/18/2003	2003-4/7
	26126	R156-47b-202	AMD	05/19/2003	2003-8/17
	25651	R156-47b-302a	AMD	01/16/2003	2002-24/10
	26320	R156-53	5YR	06/02/2003	2003-12/70
	26175	R156-55a	AMD	06/03/2003	2003-9/6
	26154	R156-56	AMD	07/01/2003	2003-9/7
	26152	R156-56-707	AMD	07/01/2003	2003-9/57
	25920	R156-59	5YR	01/09/2003	2003-3/66
	26116	R156-59	REP	05/19/2003	2003-8/18
	25629	R156-60a	AMD	01/02/2003	2002-23/8
	26284	R156-60c	AMD	07/03/2003	2003-11/7
	26321	R156-68	5YR	06/02/2003	2003-12/71
Human Services, Administration, Administrative Services, Licensing	25652	R501-1	AMD	01/30/2003	2002-24/15
	26071	R501-2	AMD	05/06/2003	2003-7/20
	25707	R501-8	AMD	01/17/2003	2002-24/19
	25978	R501-8	NSC	03/01/2003	Not Printed
	25660	R501-11	AMD	01/30/2003	2002-24/25
	25644	R501-12	AMD	01/30/2003	2002-23/82
	26055	R501-16	5YR	02/26/2003	2003-6/17
	25703	R501-16	NSC	02/26/2003	Not Printed
	26084	R501-17	5YR	03/11/2003	2003-7/89
	26343	R501-18	5YR	06/05/2003	2003-13/72
Natural Resources, Wildlife Resources	26273	R657-27	AMD	07/02/2003	2003-11/36
liens					
Commerce, Occupational and Professional Licensing	26192	R156-38	AMD	06/17/2003	2003-10/12
liquefied petroleum gas					
Public Safety, Fire Marshal	26281	R710-6	AMD	07/02/2003	2003-11/65
loans					
Environmental Quality, Drinking Water	26172	R309-700	AMD	07/01/2003	2003-9/66
Environmental Quality, Water Quality	26183	R317-101	5YR	04/22/2003	2003-10/147
local school boards					
Education, Administration	26190	R277-108	AMD	06/17/2003	2003-10/22
long-term care ombudsman					
Human Services, Aging and Adult Services	26052	R510-100	AMD	05/21/2003	2003-6/6
	26259	R510-100-2	EMR	05/15/2003	2003-11/74
loss of driving privileges					
Administrative Services, Fleet Operations	26191	R27-7	AMD	07/08/2003	2003-10/6

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
MACT					
Environmental Quality, Air Quality	25825	R307-214-2	AMD	06/17/2003	2003-1/16
	25825	R307-214-2	CPR	06/17/2003	2003-10/137
mammography					
Environmental Quality, Radiation Control	25786	R313-28	AMD	03/14/2003	2003-1/27
maps					
Natural Resources, Water Rights	26195	R655-5	5YR	04/29/2003	2003-10/149
massage therapy					
Commerce, Occupational and Professional Licensing	26126	R156-47b-202	AMD	05/19/2003	2003-8/17
	25651	R156-47b-302a	AMD	01/16/2003	2002-24/10
mathematics					
Education, Administration	26087	R277-717	AMD	05/02/2003	2003-7/7
Medicaid					
Health, Health Care Financing, Coverage and Reimbursement Policy	26264	R414-1	AMD	07/02/2003	2003-11/13
	26244	R414-1-5	EMR	05/02/2003	2003-11/73
	25889	R414-5	EMR	01/03/2003	2003-2/55
	25948	R414-5	EMR	01/15/2003	2003-3/52
	25967	R414-5	NEW	05/13/2003	2003-3/8
	25969	R414-6	EMR	01/15/2003	2003-3/53
	25974	R414-6	NEW	05/13/2003	2003-3/9
	26246	R414-7A-5	AMD	07/14/2003	2003-11/15
	26010	R414-10	EMR	02/01/2003	2003-4/45
	26036	R414-10	EMR	02/11/2003	2003-5/33
	26008	R414-10	AMD	04/07/2003	2003-4/11
	25907	R414-13	5YR	01/03/2003	2003-3/74
	25192	R414-13	NSC	01/03/2003	Not Printed
	25968	R414-21	EMR	01/15/2003	2003-3/54
	25973	R414-21	AMD	04/07/2003	2003-3/10
	26267	R414-21	AMD	07/02/2003	2003-11/16
	25982	R414-27	5YR	01/21/2003	2003-4/52
	26265	R414-49	AMD	07/02/2003	2003-11/20
	26266	R414-50	AMD	07/02/2003	2003-11/21
	26318	R414-51	5YR	05/30/2003	2003-12/71
	25970	R414-52	EMR	01/15/2003	2003-3/57
	25976	R414-52	AMD	04/09/2003	2003-3/14
	26347	R414-52	5YR	06/06/2003	2003-13/71
	25971	R414-53	EMR	01/15/2003	2003-3/59
	25972	R414-53	AMD	04/07/2003	2003-3/15
	26346	R414-53	5YR	06/06/2003	2003-13/71
	26011	R414-60	EMR	02/01/2003	2003-4/50
	26009	R414-60	AMD	04/07/2003	2003-4/16
	25898	R414-63	AMD	04/07/2003	2003-2/12
	26004	R414-301	5YR	01/31/2003	2003-4/53

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	26018	R414-305	5YR	01/31/2003	2003-4/55
	26268	R414-305	AMD	07/02/2003	2003-11/23
	25897	R414-504	AMD	02/17/2003	2003-2/21
	26051	R414-504	AMD	06/09/2003	2003-6/4
	26492	R414-504	EMR	07/15/2003	2003-15/74
Human Services, Recovery Services	25869	R527-201	AMD	03/05/2003	2003-2/34
medical incinerator					
Environmental Quality, Air Quality	26399	R307-222	5YR	06/19/2003	2003-14/96
medical practitioner					
Labor Commission, Industrial Accidents	26315	R612-2	5YR	05/28/2003	2003-12/75
	26286	R612-2-5	AMD	07/02/2003	2003-11/35
medical practitioners					
Labor Commission, Industrial Accidents	26405	R612-2-22	EMR	06/20/2003	2003-14/92
medical recommendations					
Education, Administration	25647	R277-611	NEW	01/03/2003	2002-23/12
medical records					
Human Services, Mental Health, State Hospital	26298	R525-1	5YR	05/20/2003	2003-12/72
medication treatment					
Human Services, Mental Health, State Hospital	26300	R525-3	5YR	05/20/2003	2003-12/73
mental health					
Commerce, Occupational and Professional Licensing	26284	R156-60c	AMD	07/03/2003	2003-11/7
minerals reclamation					
Natural Resources, Oil, Gas and Mining; Non-Coal	26453	R647-1	5YR	07/08/2003	2003-15/82
	26454	R647-2	5YR	07/08/2003	2003-15/82
	26455	R647-3	5YR	07/08/2003	2003-15/83
	26456	R647-4	5YR	07/08/2003	2003-15/83
	26457	R647-5	5YR	07/08/2003	2003-15/84
mining					
Labor Commission, Safety	26312	R616-1	5YR	05/28/2003	2003-12/77
minority education					
Education, Administration	26087	R277-717	AMD	05/02/2003	2003-7/7
motor vehicles					
Commerce, Administration	25624	R151-14	AMD	01/02/2003	2002-23/6
	26199	R151-14	AMD	06/17/2003	2003-10/9
Environmental Quality, Air Quality	25495	R307-121	AMD	01/09/2003	2002-21/6
Public Safety, Highway Patrol	26119	R714-159	NEW	06/26/2003	2003-8/40
motorcycles					
Commerce, Administration	25724	R151-35	NEW	01/15/2003	2002-24/9
	26198	R151-35	AMD	06/17/2003	2003-10/10
Public Safety, Highway Patrol	26121	R714-220	R&R	06/26/2003	2003-8/41

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
mutual water corporations					
Public Service Commission, Administration	26142	R746-331	5YR	04/02/2003	2003-9/136
naming process					
Administrative Services, Facilities Construction and Management	25784	R23-10	AMD	02/04/2003	2003-1/5
new hire registry					
Workforce Services, Workforce Information and Payment Services	26362	R994-315	5YR	06/11/2003	2003-13/73
newborn screening					
Health, Community and Family Health Services, Children with Special Health Care Needs	26444	R398-2	5YR	07/03/2003	2003-15/78
notification					
Corrections, Administration	25991	R251-110	AMD	03/21/2003	2003-4/9
nurses					
Commerce, Occupational and Professional Licensing	26319	R156-31b	5YR	06/02/2003	2003-12/70
occupational licensing					
Commerce, Occupational and Professional Licensing	26175	R156-55a	AMD	06/03/2003	2003-9/6
Environmental Quality, Water Quality	25637	R317-11	AMD	01/30/2003	2002-23/80
off road vehicles					
Commerce, Administration	25724	R151-35	NEW	01/15/2003	2002-24/9
	26198	R151-35	AMD	06/17/2003	2003-10/10
off-highway vehicles					
Natural Resources, Parks and Recreation	26026	R651-408	AMD	04/01/2003	2003-5/7
	26028	R651-410	NEW	04/01/2003	2003-5/8
	26128	R651-410	AMD	05/19/2003	2003-8/38
oil and gas law					
Natural Resources, Oil, Gas and Mining; Oil and Gas	25788	R649-3-1	CPR	07/01/2003	2003-10/140
	25788	R649-3-1	AMD	07/01/2003	2003-1/35
onsite wastewater systems					
Environmental Quality, Water Quality	25203	R317-4-3	AMD	01/10/2003	2002-18/43
	25635	R317-4-3	AMD	01/30/2003	2002-23/21
open burning					
Environmental Quality, Air Quality	26368	R307-202	5YR	06/12/2003	2003-13/69
operator certification					
Environmental Quality, Water Quality	25638	R317-10	AMD	01/30/2003	2002-23/78
osteopathic physician					
Commerce, Occupational and Professional Licensing	26321	R156-68	5YR	06/02/2003	2003-12/71
osteopaths					
Commerce, Occupational and Professional Licensing	26321	R156-68	5YR	06/02/2003	2003-12/71

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
overpayments					
Workforce Services, Workforce Information and Payment Services	25946	R994-406-311	AMD	03/04/2003	2003-3/46
	25947	R994-406-315	AMD	03/04/2003	2003-3/48
overtime					
Human Resource Management, Administration	26222	R477-8	AMD	07/01/2003	2003-10/91
paint					
Environmental Quality, Air Quality	26249	R307-840	5YR	05/05/2003	2003-11/95
parking facilities					
Administrative Services, Facilities Construction and Management	26117	R23-13	5YR	03/25/2003	2003-8/44
parks					
Natural Resources, Parks and Recreation	26039	R651-102	5YR	02/13/2003	2003-5/40
	26028	R651-410	NEW	04/01/2003	2003-5/8
	26128	R651-410	AMD	05/19/2003	2003-8/38
	26029	R651-602	AMD	04/01/2003	2003-5/9
	25837	R651-611	AMD	03/31/2003	2003-2/38
	26170	R651-611-2	AMD	06/03/2003	2003-9/93
parole					
Pardons (Board Of), Administration	26120	R671-201	AMD	05/16/2003	2003-8/39
	25350	R671-202	AMD	02/12/2003	2002-20/104
	25394	R671-308	AMD	02/12/2003	2002-20/110
	25398	R671-311	AMD	02/12/2003	2002-20/112
	26050	R671-403	5YR	02/18/2003	2003-6/18
particulate matter					
Environmental Quality, Air Quality	26403	R307-305	5YR	06/19/2003	2003-14/98
particulates					
Environmental Quality, Air Quality	26404	R307-307	5YR	06/19/2003	2003-14/98
patient rights					
Human Services, Mental Health, State Hospital	26299	R525-2	5YR	05/20/2003	2003-12/72
paying standards					
Public Service Commission, Administration	26145	R746-342	5YR	04/02/2003	2003-9/137
penalties					
Environmental Quality, Drinking Water	26171	R309-405	AMD	06/17/2003	2003-9/64
per diem allowance					
Administrative Services, Finance	26203	R25-7	5YR	05/01/2003	2003-10/146
	26204	R25-7	AMD	07/01/2003	2003-10/4
permit					
Natural Resources, Wildlife Resources	26280	R657-45	5YR	05/14/2003	2003-11/97
	26279	R657-45	AMD	07/02/2003	2003-11/52

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
permits					
Community and Economic Development, Community Development, History	25787	R212-4	AMD	03/11/2003	2003-1/13
Natural Resources, Wildlife Resources	25723	R657-42	AMD	01/15/2003	2002-24/52
	26278	R657-42	5YR	05/14/2003	2003-11/97
	26277	R657-42	AMD	07/02/2003	2003-11/45
persistently dangerous schools					
Education, Administration	25965	R277-483	NEW	03/07/2003	2003-3/5
personal property					
Tax Commission, Property Tax	25917	R884-24P-60	EMR	01/06/2003	2003-3/60
	26044	R884-24P-60	AMD	04/23/2003	2003-5/15
personnel management					
Human Resource Management, Administration	26207	R477-1	AMD	07/01/2003	2003-10/65
	26219	R477-5	AMD	07/01/2003	2003-10/79
	26220	R477-6	AMD	07/01/2003	2003-10/80
	26229	R477-14	AMD	07/01/2003	2003-10/101
petroleum					
Environmental Quality, Environmental Response and Remediation	25161	R311-207	CPR	02/04/2003	2003-1/46
physical and mental fitness testing					
Public Safety, Driver License	25645	R708-39	NEW	01/24/2003	2002-23/97
planning					
Administrative Services, Facilities Construction and Management	25639	R23-3	R&R	01/02/2003	2002-23/3
	25989	R23-3	AMD	03/24/2003	2003-4/4
	25984	R23-7	NSC	02/04/2003	Not Printed
	25988	R23-9	R&R	03/24/2003	2003-4/5
planning-programming-budgeting					
Administrative Services, Facilities Construction and Management	25984	R23-7	NSC	02/04/2003	Not Printed
	25770	R23-7	REP	02/04/2003	2003-1/5
	25640	R23-8	REP	01/02/2003	2002-23/5
PM10					
Environmental Quality, Air Quality	26403	R307-305	5YR	06/19/2003	2003-14/98
police dog training rules					
Public Safety, Peace Officer Standards and Training	26337	R728-505	5YR	06/02/2003	2003-12/78
police training					
Public Safety, Peace Officer Standards and Training	26067	R728-411	5YR	03/04/2003	2003-7/91
postsecondary proprietary school					
Regents (Board Of), Administration	25704	R765-171	REP	03/31/2003	2002-24/55
	25712	R765-171	NSC	03/31/2003	Not Printed

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
prescriptions					
Health, Health Care Financing, Coverage and Reimbursement Policy	25898	R414-63	AMD	04/07/2003	2003-2/12
privacy					
Health, Administration	26161	R380-250	EMR	04/14/2003	2003-9/130
	26162	R380-250	NEW	06/09/2003	2003-9/72
	26160	R495-881	EMR	04/14/2003	2003-9/132
	26196	R495-881	NEW	06/24/2003	2003-10/104
private schools					
Education, Administration	26090	R277-747	5YR	03/12/2003	2003-7/74
procedures					
Public Service Commission, Administration	26418	R746-340	5YR	06/25/2003	2003-14/100
procurement					
Administrative Services, Facilities Construction and Management	25639	R23-3	R&R	01/02/2003	2002-23/3
	25989	R23-3	AMD	03/24/2003	2003-4/4
	25959	R23-21	5YR	01/15/2003	2003-3/64
professional competency					
Education, Administration	26073	R277-508	NSC	04/25/2003	Not Printed
	26188	R277-508	5YR	04/25/2003	2003-10/147
	25925	R277-516	5YR	01/14/2003	2003-3/67
Public Safety, Peace Officer Standards and Training	26067	R728-411	5YR	03/04/2003	2003-7/91
professional counselors					
Commerce, Occupational and Professional Licensing	26284	R156-60c	AMD	07/03/2003	2003-11/7
professional education					
Education, Administration	25926	R277-518	5YR	01/14/2003	2003-3/67
professional employer organization					
Commerce, Occupational and Professional Licensing	26116	R156-59	REP	05/19/2003	2003-8/18
professional employer organizations					
Commerce, Occupational and Professional Licensing	25920	R156-59	5YR	01/09/2003	2003-3/66
professional engineers					
Commerce, Occupational and Professional Licensing	25922	R156-22	5YR	01/13/2003	2003-3/65
	25763	R156-22	AMD	04/03/2003	2003-1/10
	25763	R156-22	CPR	04/03/2003	2003-5/27
professional land surveyors					
Commerce, Occupational and Professional Licensing	25922	R156-22	5YR	01/13/2003	2003-3/65
	25763	R156-22	CPR	04/03/2003	2003-5/27
	25763	R156-22	AMD	04/03/2003	2003-1/10
program benefits					
Health, Health Care Financing, Coverage and Reimbursement Policy	26019	R414-306	5YR	01/31/2003	2003-4/56

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
promotions					
Agriculture and Food, Marketing and Conservation	26383	R65-2	5YR	06/13/2003	2003-13/62
	26386	R65-5	5YR	06/13/2003	2003-13/62
proof					
Natural Resources, Water Rights	26195	R655-5	5YR	04/29/2003	2003-10/149
property tax					
Tax Commission, Property Tax	25917	R884-24P-60	EMR	01/06/2003	2003-3/60
	26044	R884-24P-60	AMD	04/23/2003	2003-5/15
public assistance					
Workforce Services, Employment Development	26211	R986-900-902	AMD	07/01/2003	2003-10/132
public assistance programs					
Health, Health Care Financing, Coverage and Reimbursement Policy	26020	R414-307	5YR	01/31/2003	2003-4/56
	26021	R414-308	5YR	01/31/2003	2003-4/57
public buildings					
Administrative Services, Facilities Construction and Management	25639	R23-3	R&R	01/02/2003	2002-23/3
	25989	R23-3	AMD	03/24/2003	2003-4/4
	25955	R23-5	5YR	01/15/2003	2003-3/62
	25956	R23-6	5YR	01/15/2003	2003-3/63
	25984	R23-7	NSC	02/04/2003	Not Printed
	25770	R23-7	REP	02/04/2003	2003-1/5
	25640	R23-8	REP	01/02/2003	2002-23/5
	25957	R23-9	5YR	01/15/2003	2003-3/63
	25962	R23-10	5YR	01/15/2003	2003-3/64
	26115	R23-14	NEW	05/16/2003	2003-8/7
	25959	R23-21	5YR	01/15/2003	2003-3/64
	25960	R23-24	5YR	01/15/2003	2003-3/65
Public Safety, Fire Marshal	26006	R710-4	AMD	03/18/2003	2003-4/28
public information					
Human Resource Management, Administration	26208	R477-2	AMD	07/01/2003	2003-10/71
public meetings					
Natural Resources, Wildlife Resources	26164	R657-39-3	AMD	06/03/2003	2003-9/105
public records					
Career Service Review Board, Administration	26397	R137-2	5YR	06/18/2003	2003-14/95
Natural Resources, Parks and Recreation	26041	R651-102-4	NSC	03/01/2003	Not Printed
public schools					
Education, Administration	26341	R277-436	5YR	06/04/2003	2003-13/65
public utilities					
Public Service Commission, Administration	26420	R746-110	5YR	06/25/2003	2003-14/99
	26081	R746-330	5YR	03/10/2003	2003-7/92

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	26142	R746-331	5YR	04/02/2003	2003-9/136
	26143	R746-332	5YR	04/02/2003	2003-9/136
	26145	R746-342	5YR	04/02/2003	2003-9/137
	25578	R746-347	NEW	03/10/2003	2002-22/44
	26197	R746-347-5	AMD	06/30/2003	2003-10/116
	26146	R746-402	5YR	04/02/2003	2003-9/137
	26147	R746-405	5YR	04/02/2003	2003-9/138
quarantine					
Agriculture and Food, Plant Industry	26388	R68-14	5YR	06/13/2003	2003-13/64
	26389	R68-16	5YR	06/13/2003	2003-13/64
	26390	R68-17	5YR	06/13/2003	2003-13/65
radiation					
Environmental Quality, Radiation Control	26086	R313-25	AMD	05/09/2003	2003-7/11
radioactive material					
Environmental Quality, Radiation Control	25943	R313-15	5YR	01/14/2003	2003-3/73
radioactive waste disposal					
Environmental Quality, Radiation Control	26086	R313-25	AMD	05/09/2003	2003-7/11
range management					
School and Institutional Trust Lands, Administration	26177	R850-50	AMD	06/03/2003	2003-9/123
rates					
Workforce Services, Workforce Information and Payment Services	26135	R994-303-104	AMD	06/05/2003	2003-8/42
	26355	R994-306	5YR	06/11/2003	2003-13/72
	26358	R994-307	5YR	06/11/2003	2003-13/73
real estate appraisal					
Commerce, Real Estate	26024	R162-105	AMD	04/23/2003	2003-5/4
real estate appraisals					
Commerce, Real Estate	26060	R162-106	AMD	04/23/2003	2003-6/3
	25981	R162-107	5YR	01/21/2003	2003-4/52
real estate business					
Commerce, Real Estate	26025	R162-6-1	AMD	06/05/2003	2003-5/2
	25663	R162-8-9	AMD	01/16/2003	2002-24/11
reciprocity					
Environmental Quality, Radiation Control	26074	R313-19-100	AMD	05/09/2003	2003-7/10
reclamation					
Natural Resources, Oil, Gas and Mining; Coal	26452	R645-102	5YR	07/07/2003	2003-15/81
records					
Health, Health Care Financing, Coverage and Reimbursement Policy	26021	R414-308	5YR	01/31/2003	2003-4/57
Human Services, Administration	26160	R495-881	EMR	04/14/2003	2003-9/132

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
records access					
Career Service Review Board, Administration	26397	R137-2	5YR	06/18/2003	2003-14/95
recreation					
Natural Resources, Parks and Recreation	26040	R651-301	5YR	02/13/2003	2003-5/40
	26127	R651-301	AMD	05/19/2003	2003-8/36
Natural Resources, Wildlife Resources	25722	R657-38	AMD	01/15/2003	2002-24/48
recreational vehicles					
Commerce, Administration	25624	R151-14	AMD	01/02/2003	2002-23/6
	26199	R151-14	AMD	06/17/2003	2003-10/9
regional advisory councils					
Natural Resources, Wildlife Resources	26164	R657-39-3	AMD	06/03/2003	2003-9/105
regionalization					
Environmental Quality, Drinking Water	26392	R309-352	5YR	06/16/2003	2003-13/69
registration					
Regents (Board Of), Administration	25704	R765-171	REP	03/31/2003	2002-24/55
	25712	R765-171	NSC	03/31/2003	Not Printed
rehabilitation					
Education, Applied Technology Education (Board for), Rehabilitation	26088	R280-200	5YR	03/12/2003	2003-7/75
reimbursements					
Administrative Services, Finance	26206	R25-6	5YR	05/01/2003	2003-10/146
religious activities					
Tax Commission, Auditing	25924	R865-19S-61	AMD	04/23/2003	2003-3/44
religious education					
Education, Administration	25932	R277-610	5YR	01/14/2003	2003-3/68
relocation benefits					
Administrative Services, Finance	26206	R25-6	5YR	05/01/2003	2003-10/146
reports					
Education, Administration	26189	R277-484	NEW	06/17/2003	2003-10/24
reptiles					
Natural Resources, Wildlife Resources	26168	R657-53	NEW	06/03/2003	2003-9/107
residency requirements					
School and Institutional Trust Lands, Administration	26176	R850-3	AMD	06/03/2003	2003-9/122
respite					
Human Services, Aging and Adult Services	25557	R510-401	CPR	04/16/2003	2003-5/28
restitution					
Pardons (Board Of), Administration	26050	R671-403	5YR	02/18/2003	2003-6/18
retirement					
Human Resource Management, Administration	26227	R477-12	AMD	07/01/2003	2003-10/99

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
roads					
Environmental Quality, Air Quality	26404	R307-307	5YR	06/19/2003	2003-14/98
roofs					
Administrative Services, Facilities Construction and Management	26115	R23-14	NEW	05/16/2003	2003-8/7
ropeways					
Transportation, Operations, Traffic and Safety	26295	R920-50-11	EMR	05/16/2003	2003-12/68
rules and procedures					
Health, Epidemiology and Laboratory Services, Epidemiology	26290	R386-702	EMR	05/16/2003	2003-12/66
Health, Community and Family Health Services, Immunization	26187	R396-100	5YR	04/24/2003	2003-10/148
Human Resource Management, Administration	26207	R477-1	AMD	07/01/2003	2003-10/65
Natural Resources, Wildlife Resources	26273	R657-27	AMD	07/02/2003	2003-11/36
Public Safety, Peace Officer Standards and Training	26072	R728-409	EMR	03/07/2003	2003-7/63
	26179	R728-409-3	AMD	06/26/2003	2003-10/113
Public Service Commission, Administration	26420	R746-110	5YR	06/25/2003	2003-14/99
	26419	R746-210	5YR	06/25/2003	2003-14/99
	26421	R746-240	5YR	06/25/2003	2003-14/100
	26143	R746-332	5YR	04/02/2003	2003-9/136
	26145	R746-342	5YR	04/02/2003	2003-9/137
	26146	R746-402	5YR	04/02/2003	2003-9/137
	26147	R746-405	5YR	04/02/2003	2003-9/138
safety					
Environmental Quality, Radiation Control	25943	R313-15	5YR	01/14/2003	2003-3/73
Labor Commission, Occupational Safety and Health	25940	R614-1-4	NSC	03/01/2003	Not Printed
	25941	R614-1-4	AMD	03/04/2003	2003-3/26
	26149	R614-1-4	AMD	06/03/2003	2003-9/91
Labor Commission, Safety	26148	R616-2-3	AMD	06/03/2003	2003-9/92
	26109	R616-3-3	AMD	05/08/2003	2003-7/53
Natural Resources, Parks and Recreation	26173	R651-227	5YR	04/15/2003	2003-9/134
safety inspections					
Public Safety, Highway Patrol	26119	R714-159	NEW	06/26/2003	2003-8/40
salaries					
Human Resource Management, Administration	26220	R477-6	AMD	07/01/2003	2003-10/80
sales tax					
Tax Commission, Auditing	25924	R865-19S-61	AMD	04/23/2003	2003-3/44
school buses					
Education, Administration	25928	R277-600	5YR	01/14/2003	2003-3/68
school choice					
Education, Administration	25965	R277-483	NEW	03/07/2003	2003-3/5

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
school personnel					
Education, Administration	26188	R277-508	5YR	04/25/2003	2003-10/147
	26073	R277-508	NSC	04/25/2003	Not Printed
	25925	R277-516	5YR	01/14/2003	2003-3/67
school transportation					
Education, Administration	25928	R277-600	5YR	01/14/2003	2003-3/68
school year					
Education, Administration	26091	R277-751	5YR	03/12/2003	2003-7/75
science					
Education, Administration	26087	R277-717	AMD	05/02/2003	2003-7/7
secure area hearing rooms					
Regents (Board Of), Administration	25906	R765-254	NEW	05/29/2003	2003-3/42
security					
Administrative Services, Facilities Construction and Management	26115	R23-14	NEW	05/16/2003	2003-8/7
self insurance plans					
Labor Commission, Industrial Accidents	26316	R612-3	5YR	05/28/2003	2003-12/76
seniors					
Human Services, Aging and Adult Services	25552	R510-105	NEW	03/14/2003	2002-22/14
septic tanks					
Environmental Quality, Water Quality	25203	R317-4-3	AMD	01/10/2003	2002-18/43
	25635	R317-4-3	AMD	01/30/2003	2002-23/21
sewage effluent use					
Natural Resources, Water Rights	25550	R655-7	NEW	02/10/2003	2002-22/39
sewage treatment					
Environmental Quality, Water Quality	26183	R317-101	5YR	04/22/2003	2003-10/147
sewerage					
Public Service Commission, Administration	26081	R746-330	5YR	03/10/2003	2003-7/92
sex crimes					
Corrections, Administration	25991	R251-110	AMD	03/21/2003	2003-4/9
social services					
Human Services, Child and Family Services	26256	R512-200	EMR	05/06/2003	2003-11/78
	26255	R512-201	EMR	05/06/2003	2003-11/80
	26254	R512-202	EMR	05/06/2003	2003-11/82
	26252	R512-300	EMR	05/06/2003	2003-11/84
	26257	R512-305	EMR	05/06/2003	2003-11/91
Human Services, Services for People with Disabilities	26440	R539-1-5	EMR	07/01/2003	2003-14/91
	25975	R539-3	AMD	05/05/2003	2003-3/16
	26062	R539-3-2	AMD	05/20/2003	2003-6/13
	25949	R539-8-3	AMD	05/05/2003	2003-3/20

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
social workers					
Commerce, Occupational and Professional Licensing	25629	R156-60a	AMD	01/02/2003	2002-23/8
solid waste management					
Environmental Quality, Solid and Hazardous Waste	26092	R315-301	5YR	03/14/2003	2003-7/76
	26093	R315-302	5YR	03/14/2003	2003-7/77
	26094	R315-303	5YR	03/14/2003	2003-7/78
	26095	R315-305	5YR	03/14/2003	2003-7/79
	26096	R315-306	5YR	03/14/2003	2003-7/79
	26097	R315-307	5YR	03/14/2003	2003-7/80
	26098	R315-308	5YR	03/14/2003	2003-7/81
	26100	R315-309	5YR	03/14/2003	2003-7/81
	26099	R315-310	5YR	03/14/2003	2003-7/82
	26101	R315-311	5YR	03/14/2003	2003-7/83
	26102	R315-312	5YR	03/14/2003	2003-7/84
	26103	R315-313	5YR	03/14/2003	2003-7/84
	26104	R315-314	5YR	03/14/2003	2003-7/85
	26105	R315-315	5YR	03/14/2003	2003-7/85
	26106	R315-316	5YR	03/14/2003	2003-7/86
	26107	R315-317	5YR	03/14/2003	2003-7/87
	26108	R315-318	5YR	03/14/2003	2003-7/88
space utilization					
Administrative Services, Facilities Construction and Management	25771	R23-11	REP	02/04/2003	2003-1/7
	25986	R23-11	NSC	02/04/2003	Not Printed
state employees					
Administrative Services, Finance	26203	R25-7	5YR	05/01/2003	2003-10/146
	26204	R25-7	AMD	07/01/2003	2003-10/4
Human Resource Management, Administration	26219	R477-5	AMD	07/01/2003	2003-10/79
state office buildings					
Administrative Services, Facilities Construction and Management	25984	R23-7	NSC	02/04/2003	Not Printed
	25770	R23-7	REP	02/04/2003	2003-1/5
state planning					
Administrative Services, Facilities Construction and Management	25770	R23-7	REP	02/04/2003	2003-1/5
state student incentive grants					
Regents (Board Of), Administration	26155	R765-660	REP	06/30/2003	2003-9/119
state vehicle use					
Administrative Services, Fleet Operations	25879	R27-3	AMD	05/15/2003	2003-2/5
stove					
Environmental Quality, Air Quality	26360	R307-201	5YR	06/11/2003	2003-13/68
stoves					
Environmental Quality, Air Quality	26402	R307-302	5YR	06/19/2003	2003-14/97

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
student competency					
Education, Administration	25936	R277-702	5YR	01/14/2003	2003-3/70
student financial aid					
Education, Administration	25938	R277-718	5YR	01/14/2003	2003-3/71
students					
Education, Administration	25966	R277-485	NEW	03/07/2003	2003-3/7
	25647	R277-611	NEW	01/03/2003	2002-23/12
	25937	R277-709	5YR	01/14/2003	2003-3/70
students at risk					
Education, Administration	26341	R277-436	5YR	06/04/2003	2003-13/65
substance abuse					
Human Services, Administration, Administrative Services, Licensing	25660	R501-11	AMD	01/30/2003	2002-24/25
suggestions					
Human Services, Mental Health, State Hospital	26304	R525-7	5YR	05/20/2003	2003-12/74
surveyors					
Commerce, Occupational and Professional Licensing	25922	R156-22	5YR	01/13/2003	2003-3/65
	25763	R156-22	CPR	04/03/2003	2003-5/27
	25763	R156-22	AMD	04/03/2003	2003-1/10
suspensions					
Natural Resources, Wildlife Resources	26169	R657-26-8	AMD	06/03/2003	2003-9/104
system					
Public Safety, Fire Marshal	25961	R710-7	AMD	03/06/2003	2003-3/36
systems					
Public Safety, Fire Marshal	26001	R710-7	AMD	03/18/2003	2003-4/32
tariffs					
Public Service Commission, Administration	26147	R746-405	5YR	04/02/2003	2003-9/138
tax exemption					
Environmental Quality, Air Quality	25495	R307-121	AMD	01/09/2003	2002-21/6
tax exemptions					
Tax Commission, Auditing	25924	R865-19S-61	AMD	04/23/2003	2003-3/44
tax returns					
Tax Commission, Auditing	25829	R865-9I-26	AMD	03/11/2003	2003-1/40
	25828	R865-9I-27	AMD	03/11/2003	2003-1/41
	25819	R865-9I-29	AMD	03/11/2003	2003-1/43
	26078	R865-9I-39	AMD	06/10/2003	2003-7/61
taxation					
Tax Commission, Administration	25823	R861-1A-20	AMD	03/11/2003	2003-1/39
Tax Commission, Auditing	25826	R865-9I-28	AMD	03/11/2003	2003-1/42
Tax Commission, Property Tax	25917	R884-24P-60	EMR	01/06/2003	2003-3/60

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	26044	R884-24P-60	AMD	04/23/2003	2003-5/15
teacher certification					
Education, Administration	25926	R277-518	5YR	01/14/2003	2003-3/67
	26032	R686-100	5YR	02/07/2003	2003-5/41
teachers					
Education, Administration	26073	R277-508	NSC	04/25/2003	Not Printed
	26188	R277-508	5YR	04/25/2003	2003-10/147
telecommunications					
Public Service Commission, Administration	26421	R746-240	5YR	06/25/2003	2003-14/100
	26418	R746-340	5YR	06/25/2003	2003-14/100
	26145	R746-342	5YR	04/02/2003	2003-9/137
	25578	R746-347	NEW	03/10/2003	2002-22/44
	26197	R746-347-5	AMD	06/30/2003	2003-10/116
telecommuting					
Human Resource Management, Administration	26222	R477-8	AMD	07/01/2003	2003-10/91
telephone utility regulation					
Public Service Commission, Administration	26418	R746-340	5YR	06/25/2003	2003-14/100
telephones					
Public Service Commission, Administration	26421	R746-240	5YR	06/25/2003	2003-14/100
terms of office					
Natural Resources, Wildlife Resources	26164	R657-39-3	AMD	06/03/2003	2003-9/105
training programs					
Human Resource Management, Administration	26224	R477-10	AMD	07/01/2003	2003-10/95
Workforce Services, Workforce Information and Payment Services	26308	R994-600	5YR	05/23/2003	2003-12/80
tramway permits					
Transportation, Operations, Traffic and Safety	26295	R920-50-11	EMR	05/16/2003	2003-12/68
tramways					
Transportation, Operations, Traffic and Safety	26295	R920-50-11	EMR	05/16/2003	2003-12/68
transportation					
Administrative Services, Finance	26203	R25-7	5YR	05/01/2003	2003-10/146
	26204	R25-7	AMD	07/01/2003	2003-10/4
Environmental Quality, Radiation Control	26074	R313-19-100	AMD	05/09/2003	2003-7/10
Human Services, Aging and Adult Services	25552	R510-105	NEW	03/14/2003	2002-22/14
Transportation, Operations, Maintenance	26184	R918-4	NEW	07/10/2003	2003-10/117
transportation law					
Administrative Services, Facilities Construction and Management	26117	R23-13	5YR	03/25/2003	2003-8/44
transportation safety					
Transportation, Operations, Traffic and Safety	26295	R920-50-11	EMR	05/16/2003	2003-12/68

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
trucking industries Tax Commission, Auditing	25826	R865-9I-28	AMD	03/11/2003	2003-1/42
undercover identification Public Safety, Criminal Investigations and Technical Services, Criminal Identification	25998	R722-320	5YR	01/28/2003	2003-4/60
underground injection control Environmental Quality, Water Quality	25631	R317-7-13	AMD	01/30/2003	2002-23/32
underground storage tanks Environmental Quality, Environmental Response and Remediation	25161	R311-207	CPR	02/04/2003	2003-1/46
unemployed workers Workforce Services, Workforce Information and Payment Services	26308	R994-600	5YR	05/23/2003	2003-12/80
unemployment Workforce Services, Workforce Information and Payment Services	26308	R994-600	5YR	05/23/2003	2003-12/80
unemployment compensation Workforce Services, Workforce Information and Payment Services	26306	R994-201	5YR	05/23/2003	2003-12/78
	26309	R994-202	5YR	05/23/2003	2003-12/79
	26307	R994-208	5YR	05/23/2003	2003-12/79
	26135	R994-303-104	AMD	06/05/2003	2003-8/42
	26355	R994-306	5YR	06/11/2003	2003-13/72
	26358	R994-307	5YR	06/11/2003	2003-13/73
	25946	R994-406-311	AMD	03/04/2003	2003-3/46
	25947	R994-406-315	AMD	03/04/2003	2003-3/48
	26356	R994-508	5YR	06/11/2003	2003-13/74
units Environmental Quality, Radiation Control	25785	R313-12-3	AMD	03/14/2003	2003-1/22
used oil Environmental Quality, Solid and Hazardous Waste	26064	R315-15	5YR	03/03/2003	2003-7/76
utility regulation Public Service Commission, Administration	26147	R746-405	5YR	04/02/2003	2003-9/138
vacation Human Resource Management, Administration	26221	R477-7	AMD	07/01/2003	2003-10/80
variances Environmental Quality, Air Quality	26354	R307-102	5YR	06/11/2003	2003-13/67
veterinary medicine Commerce, Occupational and Professional Licensing	26150	R156-28	AMD	06/03/2003	2003-9/3
viatical Insurance, Administration	26194	R590-222	NEW	06/24/2003	2003-10/105

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
violations					
Natural Resources, Wildlife Resources	26169	R657-26-8	AMD	06/03/2003	2003-9/104
visitors					
Human Services, Mental Health, State Hospital	26302	R525-4	5YR	05/20/2003	2003-12/73
vocational education					
Education, Administration	25926	R277-518	5YR	01/14/2003	2003-3/67
Education, Applied Technology Education (Board for), Rehabilitation	26088	R280-200	5YR	03/12/2003	2003-7/75
wages					
Workforce Services, Workforce Information and Payment Services	26307	R994-208	5YR	05/23/2003	2003-12/79
waste disposal					
Environmental Quality, Radiation Control	25943	R313-15	5YR	01/14/2003	2003-3/73
Environmental Quality, Solid and Hazardous Waste	26092	R315-301	5YR	03/14/2003	2003-7/76
	26094	R315-303	5YR	03/14/2003	2003-7/78
	26095	R315-305	5YR	03/14/2003	2003-7/79
	26096	R315-306	5YR	03/14/2003	2003-7/79
	26097	R315-307	5YR	03/14/2003	2003-7/80
	26098	R315-308	5YR	03/14/2003	2003-7/81
	26100	R315-309	5YR	03/14/2003	2003-7/81
	26099	R315-310	5YR	03/14/2003	2003-7/82
	26101	R315-311	5YR	03/14/2003	2003-7/83
	26102	R315-312	5YR	03/14/2003	2003-7/84
	26104	R315-314	5YR	03/14/2003	2003-7/85
	26105	R315-315	5YR	03/14/2003	2003-7/85
	26106	R315-316	5YR	03/14/2003	2003-7/86
	26107	R315-317	5YR	03/14/2003	2003-7/87
	26108	R315-318	5YR	03/14/2003	2003-7/88
Environmental Quality, Water Quality	25636	R317-1	AMD	01/30/2003	2002-23/17
waste management					
Environmental Quality, Solid and Hazardous Waste	26093	R315-302	5YR	03/14/2003	2003-7/77
waste water					
Environmental Quality, Water Quality	25203	R317-4-3	AMD	01/10/2003	2002-18/43
	25635	R317-4-3	AMD	01/30/2003	2002-23/21
	25637	R317-11	AMD	01/30/2003	2002-23/80
wastewater					
Environmental Quality, Water Quality	26183	R317-101	5YR	04/22/2003	2003-10/147
wastewater treatment					
Environmental Quality, Water Quality	25638	R317-10	AMD	01/30/2003	2002-23/78
water					
Public Service Commission, Administration	26081	R746-330	5YR	03/10/2003	2003-7/92
	26142	R746-331	5YR	04/02/2003	2003-9/136

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	26143	R746-332	5YR	04/02/2003	2003-9/136
water pollution					
Environmental Quality, Water Quality	25636	R317-1	AMD	01/30/2003	2002-23/17
	25634	R317-8	AMD	01/30/2003	2002-23/33
	25633	R317-9	NEW	02/05/2003	2002-23/74
	25638	R317-10	AMD	01/30/2003	2002-23/78
water quality					
Environmental Quality, Water Quality	25632	R317-6-6	AMD	01/30/2003	2002-23/25
	25631	R317-7-13	AMD	01/30/2003	2002-23/32
	26183	R317-101	5YR	04/22/2003	2003-10/147
Public Service Commission, Administration	26081	R746-330	5YR	03/10/2003	2003-7/92
water rights					
Natural Resources, Water Rights	26195	R655-5	5YR	04/29/2003	2003-10/149
weed control					
Agriculture and Food, Plant Industry	26387	R68-9	5YR	06/13/2003	2003-13/63
welfare					
Human Services, Recovery Services	25977	R527-3	AMD	03/19/2003	2003-4/26
wildlife					
Natural Resources, Wildlife Resources	26167	R657-3	5YR	04/15/2003	2003-9/135
	26166	R657-3	AMD	06/03/2003	2003-9/94
	25720	R657-5	AMD	01/15/2003	2002-24/29
	26241	R657-5	AMD	06/17/2003	2003-10/111
	26165	R657-5-70	AMD	06/03/2003	2003-9/103
	25721	R657-17	AMD	01/15/2003	2002-24/46
	25890	R657-23	AMD	02/16/2003	2003-2/41
	26169	R657-26-8	AMD	06/03/2003	2003-9/104
	26273	R657-27	AMD	07/02/2003	2003-11/36
	25892	R657-33	AMD	02/16/2003	2003-2/43
	26056	R657-33-6	AMD	04/15/2003	2003-6/15
	26274	R657-34	5YR	05/14/2003	2003-11/95
	26272	R657-34	AMD	07/02/2003	2003-11/41
	26275	R657-37	5YR	05/14/2003	2003-11/96
	26271	R657-37	AMD	07/02/2003	2003-11/42
	25722	R657-38	AMD	01/15/2003	2002-24/48
	25723	R657-42	AMD	01/15/2003	2002-24/52
	26278	R657-42	5YR	05/14/2003	2003-11/97
	26277	R657-42	AMD	07/02/2003	2003-11/45
	25894	R657-44	R&R	02/16/2003	2003-2/46
	26276	R657-44	AMD	07/02/2003	2003-11/46
	26168	R657-53	NEW	06/03/2003	2003-9/107
wildlife conservation					
Natural Resources, Wildlife Resources	25722	R657-38	AMD	01/15/2003	2002-24/48

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
wildlife law					
Natural Resources, Wildlife Resources	26273	R657-27	AMD	07/02/2003	2003-11/36
woodburning					
Environmental Quality, Air Quality	26360	R307-201	5YR	06/11/2003	2003-13/68
	26402	R307-302	5YR	06/19/2003	2003-14/97
workers' compensation					
Labor Commission, Industrial Accidents	26315	R612-2	5YR	05/28/2003	2003-12/75
	26286	R612-2-5	AMD	07/02/2003	2003-11/35
	26405	R612-2-22	EMR	06/20/2003	2003-14/92
	26316	R612-3	5YR	05/28/2003	2003-12/76
	26317	R612-5	5YR	05/28/2003	2003-12/76
	26314	R612-7	5YR	05/28/2003	2003-12/77
working toward employment					
Workforce Services, Employment Development	26216	R986-400	AMD	07/01/2003	2003-10/127
	25827	R986-400-404	AMD	02/06/2003	2003-1/43
x-ray					
Environmental Quality, Radiation Control	25786	R313-28	AMD	03/14/2003	2003-1/27
youth					
Human Services, Administration, Administrative Services, Licensing	25707	R501-8	AMD	01/17/2003	2002-24/19
	25978	R501-8	NSC	03/01/2003	Not Printed
	25703	R501-16	NSC	02/26/2003	Not Printed
	26055	R501-16	5YR	02/26/2003	2003-6/17
zoning					
Administrative Services, Facilities Construction and Management	25957	R23-9	5YR	01/15/2003	2003-3/63
	25988	R23-9	R&R	03/24/2003	2003-4/5
zoological animals					
Natural Resources, Wildlife Resources	26167	R657-3	5YR	04/15/2003	2003-9/135
	26166	R657-3	AMD	06/03/2003	2003-9/94