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, 4120 State Office Building, Salt Lake City, Utah 84114, 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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SPECIAL NOTICES

Governor's Executive Order 2004-0005: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

WHEREAS, the danger from wildland fires is extremely high throughout the state of Utah;

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;

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

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;

NOW, THEREFORE, I, Olene S. Walker, 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 June 10, 2004, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah. Done in Salt Lake City, Utah, this 10th day of June, 2004.

(State Seal)

OLENE S. WALKER
Governor

ATTEST:

GAYLE F. MCKEACHNIE
Lieutenant Governor

2004/0005

Natural Resources
Wildlife Resources

Public Notice of Emergency Changes to the 2004 Utah Fishing Regulations Established by the Wildlife Board for Taking Fish and Crayfish

I, Kevin Conway, by authority granted in Section 23-14-8 of the Wildlife Resources Code of Utah, declare an emergency amendment to the 2004 Utah Fishing Regulations. The following has been amended:

MINERSVILLE RESERVOIR (Beaver County):

Trout limit 8, no size restrictions and bait allowed

LOWER ENTERPRISE RESERVOIR (Washington County):

Trout limit 8

These changes would remain in effect through September 30, 2004. Regulations established by the Wildlife Board for the 2004 Fishing Proclamation would take effect again October 1, 2004, when normal fall stocking would begin to replace the lost fisheries.

Fishing and harvest regulations are being relaxed on these two reservoirs because the reservoirs will likely be drained or drawn down to very low levels by late summer due to the drought.

Except for other emergency changes made since January 1, 2004, all other rules established in the 2004 Utah Fishing Regulations remain in effect.

UTAH DIVISION OF WILDLIFE RESOURCES
By: Miles Moretti, Acting Director

Subscribed and sworn to before me this 15th day of June 2004.
Rebecca Johnson, Notary Public
My commission expires: April 7, 2007

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 June 2, 2004, 12:00 a.m., and June 15, 2004, 11:59 p.m. are included in this, the July 1, 2004, 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 August 2, 2004. 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 October 29, 2004, 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.

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-1B

Prohibition of Payment for Certain Abortion Services

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 27227
FILED: 06/11/2004, 13:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 68, which passed during the 2004 Legislative session, prohibits the direct or indirect funding of certain abortions with public funds. Medicaid providers requested clarification of certain aspects of the law. (DAR NOTE: S.B. 68 (2004) is found at UT L 2004 Ch 271, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: This rule implements the law by a) creating a standardized mechanism for Medicaid providers to certify compliance with the law and b) establishing accounting methodologies that providers can consider to justify their certification. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 27222 in this issue and was effective 06/09/2004.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-46a-7, 26-1-5, and 26-18-3

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The Department will experience minimal costs to produce the certification form and track filing of the form. This can be handled within existing budgets.
❖ LOCAL GOVERNMENTS: The Department does not believe that local governments will be providing services impacted by S.B. 68. No costs are anticipated for local government.
❖ OTHER PERSONS: Health care providers that perform services such as pregnancy terminations for grave fetal defects will be required, upon submitting a claim for reimbursement to a Department program, to certify compliance with S.B. 68. This rule should save providers significant expense by setting forth a basis to support that certification. Exact costs are impossible to determine and will vary by provider type.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Each provider billing Department programs for services covered by S.B. 68 will be required to file a one time certification with the law. The cost of this filing, along with the necessary accounting practices to support that certification will vary by provider type and are impossible to determine.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Several hospitals approached the Department in mid-May and requested this rulemaking to help them with compliance with S.B. 68. This rule is the result of that request and reflects input from many sources. This rule will allow Utah hospitals and doctors to resume services related to grave fetal defects, if they choose. Costs should be reduced by the rule as a result of creating a standard which providers may choose to adopt for supporting their certification. Scott D. Williams, MD

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 08/02/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/19/2004 at 4:30 PM, Department of Health, Children with Special Health Care Clinic, 44 North Medical Drive, Conference Room A-B-C, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement.
R414-1B. Prohibition of Payment for Certain Abortion Services.
R414-1B-1. Introduction and Authority.
This rule is to assure compliance with the prohibition on using public funds for certain abortion services as provided in Utah Code Section 76-7-326. It is authorized by Utah Code Sections 26-1-5 and 26-18-3.

R414-1B-2. Definitions.
(1) "Abortion billing code" means the following codes:
(a) 59840, 59841, 59850, 59851, 59852, 59855, 59856 and 59857 as shown in the Current Procedural Terminology (CPT) manual of the American Medical Association, 2003 edition; and
(b) 69.01, 69.51, 74.91 and 75.0 as shown in the International Classification of Diseases, 9th Edition, Volumes 1 and 2, Clinical Modification, Volume 3 Procedures.
(2) "Certification" or "Certify" means submitting to the Division of Health Care Financing, Utah Department of Health, a Department-approved document signed by one authorized to act on behalf of a Medicaid provider.
(3) "Public funds" means money provided by the state, its institutions or its political subdivisions. "Public funds" does not include (i) clinical revenue generated from nongovernmental

payors,; (ii) gift or donor provided funds; (iii) investment income; or (iv) federal funds appropriated by the legislature.

R414-1B-3. Certification.

(1) Each Medicaid provider that bills the Utah Department of Health for services related to an abortion billing code at any time after May 3, 2004 must certify that funds it receives from the Department are not used to pay or otherwise reimburse, either directly or indirectly, any person, agency, or facility for the performance of any induced abortion services unless:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life;

(b) the pregnancy is the result of rape or incest reported to law enforcement agencies, unless the woman was unable to report the crime for physical reasons or fear of retaliation; or

(c) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to prevent permanent, irreparable and grave damage to a major bodily function of the pregnant women provided that a caesarian procedure or other medical procedure that could also save the life of the child is not a viable option.

(2) The certification shall be ongoing and apply to all future claims unless the provider notifies the Department in writing of a change in its certification status.

(3) Nothing in this rule shall increase Medicaid coverage for abortion services beyond what is required under federal law.

R414-1B-4. Standards for Certification.

(1) Each provider who submits a certification is responsible to be informed of the abortion funding restrictions found in Utah Code section 76-7-326 and to assess whether it receives public funds for any abortion that is not excepted in subsections (a), (b), or (c) of Utah Code subsection 76-7-326(2).

(2) A provider meets the requirements of this rule if it certifies that it is able to demonstrate that:

(a) it uses non-public funds to make up any difference between the reimbursement it receives from all payors for services identified by abortion billing codes, other than those services identified in R414-1B-3(1), and the costs incurred by the provider for those procedures; or

(b) it has adopted another method, based on generally accepted accounting principles, that provides a good faith basis for supporting the certification.

(3) Each provider that submits a certification meeting the requirements of this rule shall maintain records to support the certification and make those records available to the Department on request consistent with participation as a Medicaid provider.

KEY: Medicaid, abortion, physicians, hospitals
2004
26-1-5
26-18-3

▼ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-71

Medical Supplies - Parenteral, Enteral, and IV Therapy

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 27231
FILED: 06/14/2004, 13:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to comply with H.B. 126, 2003 General Session, which requires that previously implemented policy and reimbursement methodologies be put into rule. (DAR NOTE: H.B. 126 is found under UT L 2003 Ch 324, and was effective 05/05/2004.)

SUMMARY OF THE RULE OR CHANGE: This is a new rule for Parenteral, Enteral, and IV Therapy Supplies which was previously implemented by policy.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3; and 42 CFR 440.70 and 42 CFR 441.15

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no impact to the state budget associated with this rulemaking because the program was previously implemented by policy and now needs to be implemented by rule pursuant to recent changes in the State Medicaid statute.

❖ LOCAL GOVERNMENTS: There is no budget impact to local governments as a result of this rulemaking because the program was previously implemented by policy and now needs to be implemented by rule pursuant to recent changes in the State Medicaid statute.

❖ OTHER PERSONS: There is no budget impact to other persons as a result of this rulemaking because the program was previously implemented by policy and now needs to be implemented by rule pursuant to recent changes in the State Medicaid statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because the program was previously implemented by policy and now needs to be implemented by rule pursuant to recent changes in the State Medicaid statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This is a new rule for Parenteral, Enteral, and IV Therapy Supplies which was previously set forth by policy. There will be no new fiscal impact on businesses. Scott D. Williams, MD

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

R414-71. Medical Supplies -- Parenteral, Enteral, and IV Therapy.

R414-71-1. Introduction and Authority.

(1) Eligible Medicaid recipients with chronic physical illnesses, trauma, or terminal disease, who are able to live at home or in a long term care facility but who cannot be sustained with oral feeding, and, therefore rely on total parenteral nutrition (TPN) or enteral nutrition (EN) to sustain life, are covered under this program.

(2) The IV therapy program provides medications, solutions, blood factors, chemicals, or nutrients by injection or infusion for eligible Medicaid recipients who reside at home or in a nursing facility.

(3) The provision of services and supplies is under the authority of 42 CFR 440.70 and 42 CFR 441.15, Oct. 2003 ed.

R414-71-2. Definitions.

(1) Total Parenteral Nutrition (TPN) means total nutrition administered by intravenous, subcutaneous or mucosal infusion.

(2) Enteral Nutrition (EN) means by nasogastric, jejunostomy or gastrostomy tube into the stomach or intestines to supply nutrition when a non-functioning gastrointestinal tract is present due to pathology or structure.

(3) Nutrients means those products with specific formulas used to supply the total nutritional intake of the patient by gastrostomy, jejunostomy or nasogastric tube.

(4) Nutritional Supplements means products, such as Ensure, that are used occasionally to supplement a regular but possibly inadequate diet.

(5) Cassettes mean prepackaged containers or envelopes of semi-disposable needles and tubing which provide a pathway for the TPN or IV medication to pass from container to vein.

(6) WIC is the federal nutritional program for women, infants and children.

R414-71-3. Client Eligibility Requirements.

TPN, EN and IV services are provided to categorically and medically needy eligible individuals.

R414-71-4. Program Access Requirements.

(1) TPN and EN is available to individuals with a:

(a) missing digestive organ;

(b) long term or permanently non-functioning gastrointestinal tract; or

(c) short term non-functioning gastrointestinal tract which may occur following a surgical procedure.

(2) IV therapies require a physician's order or prescription and require prior authorization.

(3) TPN, EN or other related nutritional products require a physician's order or prescription which must specify the kilo calories necessary per day. Parenteral infusions are identified and reimbursed per daily Kcal requirements.

(4) EN products must be given by gastrostomy, jejunostomy or nasogastric tube to qualify for coverage under the EN Program.

R414 -71-5. Service Coverage.

(1) TPN and EN systems, related supplies, equipment, and nutrients are covered as prosthetic devices if they replace normal nutritional function of the esophagus, stomach or bowel.

(2) TPN or EN therapy is a covered benefit for clients residing at home or in a long term care facility.

(3) Parenteral solutions and IV therapy provided by infusion or enteral therapy are benefits for clients residing in a long term care facility.

(4) The following services are allowed for clients residing at home or in a long term care facility:

(a) parenteral solutions;

(b) a monthly parenteral nutrition administration kit which includes all catheters, pump filters, tubing, connectors, and syringes relating to the parenteral infusions;

(c) enteral solutions for total enteral therapy;

(d) IV medications, blood factors, and solutions;

(e) enteral administration kits; and

(f) heparin flush and heparin.

(5) Medicaid may approve nutritional supplements for covered infants and children ages 0 to 5 who live at home and are in the WIC program, for quantities which exceed 8 ounces per day and time which exceeds 60 days if the:

(a) target weight of a child cannot be attained with expected oral feedings;

(b) oral feedings are present but too extended due to weakness, illness, or disease to the infant; or

(c) child is concurrently using a ventilator or oxygen, or has a tracheostomy.

(6) IV Therapy and treatment which may include injections or infusions are a covered service. IV therapy may include:

(a) pain medication therapy;

(b) antibiotics and antimicrobials;

(c) fluids such as glucose and fluid replacement;

(d) electrolytes;

(e) blood products;
(f) IV supply kit for patients residing at home;
(g) extension tubing set for peripheral or midline catheter; or
(h) solutions used to cleanse or irrigate the catheter for which a national drug code (NDC) code exists.

(7) Administration supplies, syringes, bags, pumps, tubes, and administration kits for providing TPN, EN and IV therapies are covered with reasonable limitations as to amounts and length of administration as medically indicated and according to current standard medical practices.

(8) All TPN and EN solutions, equipment, and nutritional products and most IV supplies require prior authorization. There must be a reasonable medical expectation that an improved quality of life will result from the TPN, EN, or IV therapy. A copy of the physician's prescription must be on file with the provider as part of the prior authorization request.

(a) The attending physician must justify through diagnosis and applicable history the need for a pump for metered dosage, continuous infusion, extremely small doses which cannot be measured accurately without a pump for metered dosage, continuous infusion, extremely small doses which cannot be measured accurately without a pump, or other special medical needs requiring a pump. For nutritional pumps, the medical need determination must establish that syringe feeding or gravity feeding is not satisfactory due to aspiration, diarrhea, or dumping syndrome, or other unique medical manifestations. The simplest form of feeding by syringe must be ruled out prior to authorizing a nutritional pump.

(b) For TPN or EN a new prior authorization shall be obtained every two months to renew the type of feeding or therapy in use for home health patients. Extended use of TPN or EN without home health intervention may be approved for a longer period of time.

(c) The home health agency and the pharmacy shall make separate prior authorization requests for their respective services and supplies.

(d) IV products, including IV catheters, require prior authorization. Gravity flow supplies and equipment do not require prior authorization.

(e) Nutritional supplements require prior authorization. Documentation must include:
(i) medical condition of the patient;
(ii) weight loss or expected gain to a specific level;
(iii) expected duration of supplementation, including quantity and frequency of administration.

R414-71-6. Limitations for TPN or EN Therapy.

The specific limitations for TPN or EN therapy are as follows:

(1) Cassettes shall be supplied with the parenteral administration kits and not as separate items.

(2) Enteral nutrients, IV diluents, injectable medications, and solutions are available
as allowed in the pharmacy program with the limitations stipulated therein.

(3) Baby foods such as Similac, Enfamil and Mull-Soy are breast milk substitutes and are not covered by Medicaid.

(4) Kits, bags and pumps are not covered benefits with nutritional supplements.

(5) A monthly supply and administration kit containing all supplies except the catheter is a Medicaid benefit only for patients residing at home. Bags can not be reimbursed separately if a kit is supplied.

(6) Total nutrition is not available for persons with nutritional need resulting from psychological problems or a failure to thrive.

(7) Equipment such as IV poles, disposable swabs, antiseptic solutions and dressings for the catheter are not reimbursable by Medicaid for nursing home patients, but are provided by the nursing home under a per diem rate.

(8) General nutrition is included in the per diem rate paid by Medicaid under a contract with a long term care facility and is not separately reimbursable for its patients.

(9) Nutritional supplements are not covered for patients residing at home or in a long term care facility. Only total nutrition for patients residing at home is covered with the exception of children who are covered under the WIC program, as stated in R414-71-5(5).

(10) Pharmacy providers may be reimbursed for TPN or EN supplies, nutrients and medications. There is no additional reimbursement to the pharmacist for preparing the medication, such as filling syringes, mixing solutions, or adding drugs to an infusion solution. Pharmacists bill Medicaid using National Drug Codes. Heparin for flushing the infusion catheter is billed through the pharmacy point of sale system using the NDC for heparin.

(11) To begin an infusion, intravenous catheters may be placed by a home health agency nurse who has been trained for IV catheter placement, a physician, or a physician's assistant whose training and protocols allow for this service.

R414-71-7. Reimbursement.

(1) HCPCs coding is used for reimbursement. Reimbursement fees are established by discounting historical charges, by discounting Medicare fees for HCPCs codes for the geographic region, and by professional judgment to encourage efficient, effective and economical services. Adjustments to the fee schedule are made in accordance with appropriations and to produce efficient and effective services to be in accordance with the provisions of 4.19-B of the State Plan.

(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

(3) Providers must accept the Medicare assignment for clients eligible for both Medicare and Medicaid benefits. All third party payors, including Medicare, must be billed prior to billing Medicaid.

KEY: Medicaid
2004
26-18-3
26-1-5

▼ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-303
Coverage Groups

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27230
FILED: 06/14/2004, 13:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking removes language about the Qualifying Individuals (QI) Group 2 program because Group 2 of the program ended as required by federal statute.
It also adds rules as required by H.B. 126, Medicaid Benefits Administration, passed in the 2003 Utah Legislative session, such as: a) requirements for doing eligibility determinations under the "Baby Your Baby" program for pregnant women, the eligibility criteria, and the length of that eligibility period; b) certain requirements and clarifications about the disability determination process, and that a disability reconsideration may be conducted as part of a fair hearing request from the client; c) clarifications about what constitutes a temporary absence, and that absence due to military service does not meet the deprivation of support criteria for Family Medicaid; d) language about Medicaid not being continued when deprivation of support no longer exists has been clarified; e) the requirements for who can evaluate whether an individual is incapacitated has been expanded; and f) a clarification that a child who is 18 but not yet 19 cannot be disqualified from the Newborn Plus Medicaid program (the poverty-related Medicaid for children) because of deemed income or assets from parents. This rulemaking also adds extensions to the QI Group 1 program and to the 12-month Transitional Medicaid program as authorized by Congress under Pub. L. No. 108-89 signed into law on October 1, 2003, and for a further extension of QI-1 as authorized by Congress under Pub. L. No. 108-173 signed into law on December 8, 2003. Other changes: 1) make clarifications about the eligibility for women under the Breast and Cervical Cancer program; 2)add clarifications that the Department of Human Services determines eligibility for Foster Care and Subsidized Adoption Medicaid; 3) add clarifications about income that is excluded under federal laws other than the Social Security Act; and 4) updates, adds, or specifies citations. (DAR NOTE: H.B. 126 is found at UT L 2003 Ch 324, and was effective 05/05/2003.)

SUMMARY OF THE RULE OR CHANGE: Rules about making disability determinations are changed to clarify: a) when the Department can determine disability; b) how long the Department must follow a Social Security denial of disability; c) requirements for applicants and recipients to cooperate with the disability determination or redetermination process; d) when a person may receive Medicaid eligibility for past months if a denial of disability is later reversed; and e) the process for requesting a reconsideration of a disability decision when the individual has requested a fair hearing. These are required by H.B. 126. Language is modified in Section R414-303-1 to eliminate reference to the QI Group 2 program to extend the QI Group 1 program as required by Pub. L. No. 108-89 passed by Congress and signed into law October 1, 2003, and as required by Pub. L. No. 108-173 passed by Congress and signed into law December 8, 2003. Citations are added to Section R414-303-2 to define some coverage groups required by federal statute. The state has been covering these groups, but the added citation is required by H.B. 126. In Subsection R414-303-4(9), language about temporary absences and deprivation of support has been modified. In Subsection R414-303-4(13), the definition of what qualifies as incapacity has been clarified, and the requirement about who can certify that a person is incapacitated is expanded to include more medical professionals. Language is added in Section R414-303-3 to extend the 12-month transitional Medicaid program as required by Pub. L. No. 108-89 passed by Congress and signed into law October 1, 2003. Language is added in Section R414-303-9 to define criteria for the "Baby Your Baby" program, which includes a presumptive determination of eligibility for pregnant women, who can do a presumptive determination, criteria to be eligible, and when benefits end. Also, language is added to clarify that when a child is 18 years of age, the child cannot be made ineligible for poverty-related Medicaid coverage for children due to deeming parent's income or assets. These are not changes to the coverage provided by the Department, but an addition of this language to rules is required by H.B. 126, Medicaid Benefits Administration, passed by the 2003 Utah Legislature. Sections R414-303-5 and R414-303-6 have language added that states the Department of Human Services is responsible for determining eligibility for foster care and subsidized adoption Medicaid. Language is added to Section R414-303-16 to define a coverage limitation of three months, the initial month plus two additional months, for women diagnosed with a precancerous condition, and that the need for continued treatment of women diagnosed with breast or cervical cancer must be determined at each eligibility review. Coverage under this program ends when the woman is no longer in need of treatment. It also clarifies that a woman who cannot receive coverage until the pre-existing condition period ends is considered not to have insurance coverage until the pre-existing condition period ends. Minor clarifications and some citations have been updated, changed, or added in other parts of the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3, and Pub. L. No. 108-89 and Pub. L. No. 108-173

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 42 CFR 435.115(f),(g) and (h); 42 CFR 435.115(e)(1) and (2), (f), (g), and (h); 42 CFR 435.120, 42 CFR 435.122, 42 CFR 435.130 through 435.135, 42 CFR 435.137, 42 CFR 435.138, 42 CFR 435.139, 42 CFR 435.211, 42 CFR 435.301, 42 CFR 435.320, 42 CFR 435.322, 42 CFR 435.324, 42 CFR 435.340, 42 CFR 435.350 and 42 CFR 435.541, 2001 ed; 42 CFR 435.116(a), 42 CFR 435.301(a) and (b), (1), (i), and (iv); 45 CFR 233.90, 2001 ed; 45 CFR 233.39, 45 CFR 233.90, and 45 CFR 233.100, 2001 ed; 45 CFR 400.90 through 400.107 as modified by the Federal Register (60 FR 33584, published Wednesday, June 28, 1995), and 45 CFR 401, 2001 ed; 20 CFR 416.901 through 1094, 2002 ed; Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 2001; Section 1611(b)(1) of the Social Security Act; Sections 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II); 1902(a)(10)(A)(ii)(X), Sections 1902(a)(10)(E)(i) through (iv)(I), 902(a)(10)(A)(ii)(XIII),

Sections 1902(a)(10)(A)(i)(II), 1902(a) (10)(A)(ii)(IX), 1902(a)(10)(A)(ii)(X); Sections 1902(a)(10)(A)(ii)(XVIII), 1925, 1931(a), (b), (c) and (g); Sections 1902(a)(10)(A)(i)(IV), (VI), (VII), 1902(a)(47), 1902(l); Sections 1902(a)(10)(A)(i)(III), 1902(a)(10)(E)(iv)(I) as required by Pub L. 108-89 effective October 1, 2003; Sections 1902(a)(10)(A)(ii)(XVIII), 1902(e)(1), (4), (5), (6), (7) and 1915(c) of Title XIX of the Social Security Act in effect January 1, 2001; Section 1902(a)(47) and 1902(l); Section 1902(l)(1)(D); Section 1902(k) in effect January 1, 1993; Section 1920(b)(2); Sections 1925 and 1931(c)(2); Sections 1925 and 1931(c)(2) as required by Pub L. 108-89 effective October 1, 2003; Section 1931 of the Act; Sections 1931(a) and (b); Sections 1931(a), (b), and (g); Section 1931(c)(1); Section 1933 of Title IX of the Social Security Act; Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and renewed effective July 1, 2003 through June 30, 2008; DD/MR Home and Community Based Waiver found in R414-303-11; Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act; Health Information Portability and Accountability Act (HIPAA) of Section 2701(c) of the Public Health Service Act

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is no impact to the state budget associated with this rulemaking because it does not add any new programs or benefits.
❖ LOCAL GOVERNMENTS: There is no budget impact to local governments associated with this rulemaking because this rule only applies to groups that are eligible for Medicaid.
❖ OTHER PERSONS: The group of individuals who are eligible for the QI Group 1 program will continue to save about $35,000 per month on their Medicare Part B premiums.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because this rulemaking does not set any new requirements or provide any new benefits for Medicaid clients. Furthermore, no benefits are eliminated as a result of this rulemaking.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Various rule changes are proposed to bring the rule in line with established Medicaid policies on eligibility groups and related eligibility issues. There should be no fiscal impact resulting from these changes. Scott D. Williams MD

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.
R414-303-1. [~~A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups~~]Authority and Purpose.

This rule is authorized by Utah Code Sections 26-1-5 and 26-18-3 and establishes Medicaid eligibility requirements for the following coverage groups:
(1) Aged;
(2) Blind;
(3) Disabled;
(4) Family;
(5) Institutional;
(6) Transitional;
(7) Child;
(8) Refugee;
(9) Prenatal and Newborn;
(10) Pregnant Women;
(11) DD/MR Home and Community Based Services Waiver;
(12) Aging Home and Community Based Services Waiver;
(13) Technologically Dependent Child Waiver/Travis C. Waiver;
(14) Persons with Brain Injury Home and Community Based Services Waiver;
(15) Personal Assistance Waiver for Adults with Physical Disabilities; and
(16) Cancer Program.

R414-303-2. Definitions.

The definitions in R414-1 and R414-301 apply to this rule. In addition:
(1) "Medicaid agency" means any one of the state departments that determine eligibility for one or more of the following medical assistance programs: Medicaid, the Primary Care Network, or the Covered-at-Work program.
(2) "Federal poverty guideline" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of the term poverty means the federal poverty guideline.

R414-303-3. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.

(1) The Department [~~shall~~]provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.301,

435.320, 435.322, 435.324, 435.340, 435.350 and 435.541, [~~2000~~]2001 ed., which are incorporated by reference. The Department [~~shall~~]provides coverage to individuals as described in 20 CFR 416.901 through 416.1094, [~~2000~~]2002 ed., which is incorporated by reference. The Department [~~shall~~]provides coverage to individuals as required by [~~Sections 470 through 479,~~]1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv)(I)[~~and 1902(e)~~]of Title XIX of the Social Security Act in effect January 1, [~~1999~~]2001, which are incorporated by reference. The Department [~~shall~~]provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, [~~1999~~]2001, which is incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) [~~shall be referred to~~]is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).[

~~(3) If a client has been denied SSI or SSA and claims to have become disabled since the SSI or SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.~~]

([~~4~~]3) [~~If a client has earned income and claims to be disabled.~~]An applicant or recipient may request the State Medicaid Disability Office to review medical evidence to determine if the individual is disabled or blind. If the client has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(a) If, within the prior 12 months, SSA has determined that the individual is not disabled, the Medicaid agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(b) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(c) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(d) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual denied disability status by the Medicaid Disability Review Office requests a fair hearing, the Disability Review Office may reconsider its determination as part of fair hearing process.

(a) The individual may provide the Department additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Department shall notify the individual of its decision upon reconsideration. Thereafter, the individual may choose to pursue or abandon his fair hearing rights.

(5) If the Department denies an individual's Medicaid application because it or SSA has determined that the individual is not disabled and that determination is later reversed on appeal and the individual has otherwise been eligible, the individual's eligibility shall extend back to the application that gave rise to the appeal.

(a) Eligibility cannot begin any earlier than the date of disability onset or the date that is three months before the date of application as defined in R414-306-4(2), whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the Medicaid agency to request the Disability Medicaid coverage.

(c) The individual must provide any verifications the Medicaid agency needs to determine eligibility for past or current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown to receive coverage, the spenddown must be met before Medicaid coverage may be provided for those months.

([~~5~~]6) The age requirement for Aged Medicaid is 65 years of age.

([~~6~~]7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, [~~1999~~]2001, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by the section.

([~~7~~]8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv)(I) of Title XIX of the Social Security Act in effect January 1, [~~1999~~]2001, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, [~~1999~~]2001, for a given year, or as subsequently authorized by Congress. Applicants will be denied coverage when the uncommitted allocated funds are insufficient to provide such coverage.

([~~8~~]9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the Department shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

([~~9~~]10) The Department shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-[~~2~~]4. Family Medicaid and Family Institutional Medicaid Coverage Groups.

(1) The Department shall provide Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, [~~2000~~]2001 ed., and 45 CFR 233.90, 2001 ed., and Title XIX of the Social Security Act as in effect January 1, [~~2000~~]2001, Sections 1902(e)(1), (4), (5), (6), (7), 1931(a), (b), and (g), which are incorporated by reference.

(2) The following definitions apply to this rule:

(a) "1931 Family Medicaid" (1931 FM) means a medical assistance program that meets the criteria found in Section 1931(a) and (b) of the Social Security Act in effect January 1, [~~1999~~]2001

that requires the Department to use the eligibility criteria of the pre-welfare reform Aid to Families With Dependent Children cash assistance program along with any subsequent amendments made by the Department as allowed under Section 1931 of the Act.

(b) "Family Employment Program" (FEP) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Temporary Assistance to Needy Families (TANF).

(c) "Diversion" means a one time FEP payment that may equal up to three months of FEP cash assistance.

(3) The Department provides Medicaid coverage to individuals who are 1931 FM qualified, as described in 45 CFR 233.39, 233.90, and 233.100, 2001 ed., which are incorporated by reference.

(4) The Department provides 1931 Family Medicaid coverage to individuals who are qualified for FEP cash assistance.

(5) For unemployed two-parent households, the Department shall not require the primary wage earner to have an employment history.

(6) Households that receive a FEP diversion payment shall have the option to receive 1931 Family Medicaid coverage for three months beginning with the month of application for the diversion payment.

(7) A specified relative, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following rules apply to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The parents' obligation to financially support their child shall be enforced.

(d) The income and resources of the specified relative will not be counted unless the specified relative is also included in the Medicaid coverage group.

(e) If the specified relative is currently included in a FEP household or a 1931 Family Medicaid household, the child shall be included in the FEP or 1931 FM case of the specified relative.

(f) The specified relative may choose to be excluded from the Medicaid coverage group. The ineligible children of the specified relative must be excluded. The specified relative will not be included in the income standard calculation.

(g) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources will not be used to determine eligibility or spenddown.

(h) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income rules apply:

(i) The monthly gross earned income of the specified relative and spouse shall be counted.

(ii) The unearned income of the relative and the excluded spouse shall be counted.

(iii) For each employed person, $90 will be deducted from the monthly gross income.

(iv) Child care expenses necessary for employment will be deducted for only the specified relative's children. The maximum allowable deduction will be $200.00 per child under age two and $175.00 per child age two and older each month for full-time employment or $160.00 per child under age two and $140.00 per child age two and older each month for part-time employment.

(8) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(9) Temporary absence from the home for purposes of schooling, vacation, [~~or~~] medical treatment, military service, or other temporary purpose shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences [~~which are~~]caused solely by reason of employment, schooling, military service, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(10) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

(11) The Department imposes no suitable home requirement.

(12) Medicaid assistance is not continued for a temporary period [~~while the effects of deprivation of support are being overcome.~~]if deprivation of support no longer exists. If deprivation of support ends due to increased hours of employment of the primary wage earner, the household may qualify for Transitional Medicaid described in R414-303-5.

(13) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity, a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration, or be determined disabled by the Medicaid Disability Review Office or the Social Security Administration;

(c) provide[~~- a Medical Report Form 21~~], either on a Department-approved form or in another written document, completed by [~~a physician~~]one of the following licensed medical professionals: medical doctor; doctor of Osteopathy; Advanced Practice Registered Nurse; Physician's Assistant; or a mental health therapist, which includes a [~~or licensed/certified~~]psychologist, Licensed Clinical Social Worker, Certified Social Worker, Marriage and Family Therapist, Professional Counselor, or MD, DO or APRN engaged in the practice of mental health therapy, [~~which indicates~~]that states the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

R414-303-[~~3~~]5. 12 Month Transitional Family Medicaid.

(1) The Department complies with Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2) as in effect January 1, [~~1999~~]2001, which are incorporated by reference.

(2) The Department shall consider Medicaid coverage under 12 month Transitional Medicaid for households that lose eligibility for 1931 Family Medicaid, FEP cash assistance, and households that receive 1931 Family Medicaid for three months because they received a FEP Diversion payment.

R414-303-[4]6. Four Month Transitional Family Medicaid.

(1) The Department adopts 42 CFR 435.112 and 435.115(f), (g) and (h), [~~2000~~]2001 ed., and Title XIX of the Social Security

Act, Section 1931(c)(1) in effect January 1, [~~1999~~]2001 which are incorporated by reference.

(2) Changes in household composition do not affect eligibility for the four month extension period. New household members may be added to the case only if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for Family Medicaid under Section 1931 of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-[~~5~~]7. Foster Care.

(1) The Department adopts 42 CFR 435.115(e)(2), [~~2000~~]2001 ed., which is incorporated by reference.

(2) Eligibility for foster children is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

R414-303-[~~6~~]8. Subsidized Adoptions.

(1) The Department adopts 42 CFR 435.115(e)(1), [~~2000~~]2001 ed., which is incorporated by reference.

(2) Eligibility for subsidized adoptions is not governed by this rule. The Department of Human Services determines eligibility for subsidized adoption Medicaid.

R414-303-[~~7~~]9. Child Medicaid.

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, [~~2000~~]2001 ed., which are incorporated by reference.

(2) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(3) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

R414-303-[~~8~~]10. Refugee Medicaid.

(1) The Department adopts 45 CFR 400.90 through 400.107, 2001 ed., which are modified by the Federal Register 60 FR 33584, published Wednesday, June 28, 1995, and 45 CFR 401, 2001 ed., all of which are incorporated by reference.

(2) Specified relative rules do not apply.

(3) Child support enforcement rules do not apply.

(4) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(5) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(6) Refugees may qualify for medical assistance for eight months after entry into the United States.

R414-303-[~~9~~]11. Prenatal and Newborn Medicaid.

(1) The Department adopts Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(IV), (VI), (VII), 1902(a)(47) and 1902(l), in effect January 1, [~~1999~~]2001, and Title XIX of the Social Security Act, Section 1902(k) in effect January 1, 1993[~~, and Section 26-18-3.1~~], which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider that the Department has determined is qualified to make a determination of presumptive eligibility for a pregnant woman and that meets the criteria defined in Section 1920(b)(2) of the Social Security Act;

(b) "presumptive eligibility" means a period of eligibility for medical services for a pregnant woman based on self-declaration that she meets the eligibility criteria.

(3) The Department provides coverage to pregnant women during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in R414-302-1;

(c) has a declared household income that does not exceed 133% of the federal poverty guideline applicable to her declared household size; and

(d) the woman is not covered by CHIP.

(4) No resource test applies to determine presumptive eligibility of a pregnant woman.

(5) A pregnant woman made eligible for a presumptive eligibility period must apply for Medicaid benefits by the last day of the month following the month the presumptive coverage begins.

(6) The presumptive eligibility period shall end on the earlier of:

(a) the day that the Medicaid agency determines whether the woman is eligible for Medicaid based on her application; or

(b) in the case of a woman who does not file a Medicaid application by the last day of the month following the month the woman was determined presumptively eligible, the last day of that following month.

(7) A pregnant woman may receive medical assistance during only one presumptive eligibility period for any single term of pregnancy.

([~~2~~]8) The Department elects to impose a resource standard on Newborn Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

([~~3~~]9) The Department elects to provide Prenatal Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

([4]10) At the initial determination of eligibility for Prenatal Medicaid applicants who have $5,000 or more of assets, the Department will require the applicant to pay four percent of countable resources to become eligible for Prenatal Medicaid. This payment amount shall not exceed $3,367. The payment must be met with cash; incurred medical bills and medical expenses are not allowed to meet this payment.

([~~5~~]a) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

([~~6~~]b) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX)[~~(A)~~] of the Social Security Act in effect January 1, [~~1999~~]2001.

([~~7~~]c) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the pregnant woman in a high risk category.

([~~8~~]11) Children born after September 30, 1983, may qualify for the newborn program through the month in which they turn 19.

(12) A child who is 18 but not yet 19 and meets the criteria under 1902(l)(1)(D) cannot be made ineligible for coverage under the Newborn program because of deeming income or assets from a parent, even if the child lives in the parent's home.

R414-303-[~~10~~]12. [~~PG~~]Pregnant Women Medicaid.

(1) The Department adopts 42 CFR 435.116 (a), 435.301 (a) and (b)(1)(i) and (iv),[~~2000~~]2001 ed. and Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(III) in effect January 1, [~~1999~~]2001, which are incorporated by reference.

R414-303-[~~11~~]13. DD/MR Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, [~~2000~~]2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, [~~1999~~]2001, which is incorporated by reference.

(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(3) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group, except for individuals who only qualify for the Primary Care Network.

(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(5) All of the client's income is countable unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(6) To determine countable earned income, the Department will deduct from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, [~~1999~~]2001.

(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver eligible client that are paid by the waiver client.

(8) The spousal impoverishment provisions for Institutional Medicaid income apply.

(9) The client obligation for the contribution to care, which may be referred to as a spenddown, will be the amount of income that exceeds the personal needs allowance after allowable deductions. The contribution to care must be paid to the Department.

(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

R414-303-[~~12~~]14. Aging Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, [~~2000~~]2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, [~~1999~~]2001, which is incorporated by reference.

(2) Medicaid eligibility for Aging Home and Community-Based Services is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care except that the spousal impoverishment resource limits apply. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(3) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(4) All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. The client's contribution to care, which may be referred to as a spenddown, is determined counting only the client's income less allowable deductions.

(5) The spousal impoverishment provisions for Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver personal needs deduction.

(6) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

(7) The Department shall count a spouse's income only if the client is given a cash contribution from a spouse.

R414-303-[~~13~~]15. Technologically Dependent Child Waiver/Travis C. Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, [~~2000~~]2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, [~~1999~~]2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and renewed effective July 1, [~~1998~~]2003 through June 30, [~~2003~~]2008, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department in R414-303-15(3), non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-[~~11~~]13, except that the earned income deduction is limited to $125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-[~~11.~~]13, except that the earned income deduction is limited to $125.

R414-303-[~~14~~]16. Persons with Brain Injury Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, [~~2000~~]2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, [~~1999~~]2001, which is incorporated by reference.

(2) The Department will operate this program statewide [~~initially~~] with a limited number of available slots.

(3) Eligibility for services under this waiver requires that the individual has medical needs resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(4) To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(5) All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-[~~12~~]14.

(6) The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

R414-303-[~~15~~]17. Personal Assistance Waiver for Adults with Physical Disabilities.

(1) The Department adopts 42 CFR 435.726 and 435.217, [~~2000~~]2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, [~~1999~~]2001, which is incorporated by reference.

(2) The Department operates this program statewide with a limited number of slots, and eligibility for this waiver [~~shall be~~]is limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than $2000. The spousal impoverishment resource provisions for married, institutionalized clients in R414-305-3 apply to this rule.

(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. After determining countable income, eligibility is determined counting only the gross income of the client.

(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to the Medicaid Basic Maintenance Standard for a household of one.

(8) Transfer of resource provisions described in R414-305-6 apply to this rule.

R414-303-[~~16~~]18. Medicaid Cancer Program.

(1) The Department shall provide coverage to individuals described in 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, [~~1999~~]2001, as amended by Pub. L. No. 106-354 effective October 24, 2000[~~-~~], which is incorporated by reference. This coverage shall be referred to as the Medicaid Cancer Program.

([~~1~~]2) Medicaid eligibility for services under this program will be provided to women who have been screened for breast or cervical cancer under the Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

([~~2~~]3) A woman who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health [~~Insurance~~]Information Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the woman has insurance coverage but is subject to a pre-existing condition period that prevents her from receiving treatment for her breast or cervical cancer or precancerous condition, she is considered to not have other health insurance coverage until the pre-existing condition period ends at which time her eligibility for the program ends.

([~~3~~]4) A woman who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

([4]5) A woman must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for a woman with breast or cervical cancer under 1902(a)(10)(A)(ii)(XVIII) ends when she is no longer in need of treatment for breast or cervical cancer. At each eligibility review, eligibility workers determine whether an eligible woman is still in need of treatment based on the woman's doctor's statement or report.

KEY: income, coverage groups[~~*~~]
[~~July 2, 2002~~]2004
Notice of Continuation January 31, 2003
26-18-3
26-1-5

▼ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-304

Income and Budgeting

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27232
FILED: 06/14/2004, 15:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Language describing counting income and determining eligibility for married couples when both are aged, blind, or disabled has been modified to explain that income is combined to determine whether they must pay a spenddown to receive Medicaid. The changes clarify that if their income does not exceed 100% of the federal poverty guideline they will not pay a spenddown. If their income is over 100% of poverty, they will receive a deduction from income that allows them to spenddown to 100% of poverty. For married couples, if both want Medicaid coverage, they would have to meet that spenddown, if applicable. However, sometimes one member of the couple could receive coverage without a spenddown or under the Medicaid Work incentive if the other spouse does not receive Medicaid. It also clarifies which coverage group each spouse will be covered under when one spouse is blind and the other is either aged or disabled depending on the amount of income they have. Various clarifications are made about treatment of certain income, how to allow certain income deductions, other minor clarifications to make the requirements more clear. This rule updates some incorporated materials.

SUMMARY OF THE RULE OR CHANGE: In Section R414-304-1, a definition has been modified and moved from Section R414-304-2 to make it more generally applicable to all program types. Subsection R414-304-2(5) has been modified to clarify that child support payments made to more than one child in the home are split equally between them unless a court orders a different division. Under Subsection R414-304-2(12), language has been modified to better describe how income of married couples is counted when both are aged, blind, or disabled. Now that the Department allows aged, blind, and disabled persons to spenddown to 100% of the federal poverty guideline, we do not have to set up separate cases when one spouse is blind and the other is either aged or disabled. The Division will combine their income first to determine whether they have a spenddown. Then if one spouse could be eligible under a different program without a spenddown, or with a premium under the Medicaid Work Incentive program, they may choose to not cover the other spouse and just have coverage for the one spouse. This section needed modification to better clarify this. Subsection R414-304-2(13) has been modified to clarify who is included in the household and whose income is counted for long-term Medicaid care including institutional and home and community-based care programs. Subsection R414-304-2(18) has been added to define how income such as retirement funds is counted when it has been divided between divorced spouses by a divorce decree under a Qualified Domestic Relations Order. In Section R414-304-3, language was modified to clarify that a child must be living in the home of the Medicaid Work Incentive recipient, or be temporarily absent, to be counted in the household size when determining eligibility. Subsection R414-304-4(7) has been modified to clarify that a $30 deduction from rental income is always allowed. Additional expenses may be deducted only when the rental income is consistent with community standards. Subsection R414-304-4(9) has a clarification about counting deferred income when it is received if the deferral was not by choice. When income is deferred by choice, it counts as income when it could have been received. Subsection R414-304-4(12) has been modified to clarify that income from any source that is to replace or repair lost, damaged, or stolen exempt assets does not count as income. There is no requirement about how the funds are actually used, except that if funds are received to pay for temporary housing and the individual does not intend to use it that way, or it is more than what is actually needed, the money not used for temporary housing counts as income. Subsection R414-304-4(17) has been modified to define that the full entitlement amount of benefit income is counted as income except when a deduction is due to an overpayment of that benefit. Subsection R414-304-4(24) has been added to clarify the counting of child support payments. Subsection R414-304-4(25) has been added to clarify that payments from annuities count as income when received. Subsection R414-304-4(26) has been added to define how income such as retirement funds is counted when it has been divided between divorced spouses under a Qualified Domestic Relations Order as specified in the divorce decree. Subsection R414-304-5(12) has been added to clarify that amounts deducted from an individual's wages for things like insurance premiums, savings, garnishments, or deferred income is counted in the month it could have been received. Subsection R414-304-6(7) has been modified to clarify that a deduction from earned income is allowed to care for an incapacitated adult in the same manner that a deduction for child care costs is allowed. This is required by 45 CFR 233.20(a)(11), 2001 ed. and the State Aid to Families with Dependent Children (AFDC) plan in effect June 16, 1996. In Section R414-304-7, a clarification about deducting health insurance premiums has been added to make it clear that either the Medicaid applicant or recipient, or a financially responsible family member must be paying the health insurance to allow it as an income deduction. A similar change has been made in Section R414-304-8. When someone who does not have a financial responsibility for the household members pays the premium, it cannot be allowed as an income deduction, except that when the Medicaid program pays the individual's health insurance premium, the premium amount is allowed as an income deduction from programs that require a spenddown. Other modifications have been made to clarify when medical bills may be used to meet a spenddown. Similar clarifications have been made in Section R414-304-9. In Subsection R414-304-9(16), the telephone expense amount allowed a community spouse to determine household expenses when deciding how much the institutionalized spouse may contribute to the community spouse has been changed to be equal to the amount allowed by the Food Stamp program. The phone expense allowance has always followed the amount allowed by the Food Stamp program; however, the Food Stamp program can change the actual dollar amount of the allowable telephone expense even though that happens very rarely. In Section R414-304-10, the definition of "reportable income change" has been modified slightly. Under Subsection R414-304-10(13), a statement

clarifying that income is not factored for retroactive months has been added. Various incorporated materials are updated.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 42 CFR 435.726, 435.811, 2001 ed; Section 404(h)(4), 1612(b)(22), 1612(b)(4)(A) and (B), 1902(r)(1), 1924, 1902(a)(10)(E), 1902(l), 1902(m), 1903(f) and 1905(p) of the Social Security Act, 2001 ed

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No cost or savings are anticipated as the changes do not add or take away any medical assistance programs, and they do not make substantial changes to eligibility requirements.

❖ LOCAL GOVERNMENTS: No cost or savings to local government are anticipated because this rulemaking concerns eligibility for Medicaid programs, which are not applicable to local governments.

❖ OTHER PERSONS: No anticipated cost or savings to Other Persons as the changes do not add or take away any medical assistance programs, and they do not make substantial changes to eligibility requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because this rulemaking does not add or take away any medical assistance programs, and it does not make substantial changes to eligibility requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Various changes are proposed to bring the rule in line with established Medicaid policies on counting income and related eligibility issues. There should be no fiscal impact resulting from these changes. Scott D. Williams MD

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:
Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@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 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.
R414-304-1. Definitions.

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

([~~1~~]a) "Allocation for a spouse" means an amount of income that is the difference between the SSI federal benefit rate for a couple minus the federal benefit rate for an individual.

([~~2~~]b) "Basic maintenance standard" or "[~~(~~]BMS[~~)~~]" means the income level for eligibility for 1931 Family Medicaid, and for coverage of the medically needy based on the number of family members who are counted in the [~~medical assistance unit~~]household size.

([~~3~~]c) "Benefit month" means a month or any portion of a month for which an individual is eligible for Medicaid.

(d) "Deeming" or "deemed" means a process of counting income from a spouse or a parent, or the sponsor of a qualified alien, to decide what amount of income after certain allowable deductions, if any, must be considered income to the applicant or recipient.

([~~4~~]e) "Federal poverty guideline[~~s~~]" or "[~~(~~]FPL[~~)~~]" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of poverty means the federal poverty guideline.

([~~5~~]f) "Household size" means the number of family members, including the client, who are counted based on the criteria of the particular program to decide what level of income to use to determine eligibility.

([~~6~~]g) "Medically needy" means medical assistance coverage under the provisions of 42 CFR 435.301, 2001 ed., and that uses the Basic Maintenance Standard as the income limit for eligibility.

([~~7~~]h) "Poverty-related" [~~program" means a~~]refers to any one of a variety of medical assistance programs that use[~~s~~] a percentage of the federal poverty guideline for the household size involved as the income limit to determine eligibility.

(i) "Qualified Domestic Relations Order" means a domestic relations order that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a pension plan pursuant to a state domestic relations law.

([~~8~~]j) "Sponsor" means one or more persons who have signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997 for an alien immigrating to the United States on or after December 19, 1997.

(k) "Temporarily absent" means a member of a household is living away from the home for a period of time but intends to return to the home when the reason for the temporary absence is accomplished. Reasons for a temporary absence may include an absence for the purpose of education, medical care, visits, military service, temporary religious service or other volunteer service such as the Peace Corps.

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

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed., and 20 CFR 416.1102, 416.1103,

416.1120 through 416.1148, 416.1150, 416.1151, 416.1163 through 416.1166, and Appendix to Subpart K of 416, 2002 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, [~~1999~~]2001, which are incorporated by reference. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:[

~~(a) "Deeming" or "deemed" means a process of counting income from a spouse of an aged, blind, or disabled person or from a parent of a blind or disabled child, or from a sponsor of an aged, blind or disabled qualified alien to decide what amount of income after certain allowable deductions, if any, must be considered income to an aged, blind, or disabled person or child.~~]

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

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

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

(3) Only the portion of a VA check to which the client is legally entitled is countable income. VA payments for aid and attendance do not count as income. The portion of a VA payment that is made because of unusual medical expenses is not countable income. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

(4) The value of special circumstance items is not countable income if the items are paid for by donors.

(5) For A, B and D Medicaid two-thirds of current child support received in a month for the disabled child is countable unearned income. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division. Child support payments that are payments owed for past months or years are countable income to determine eligibility for[~~to~~] the parent or guardian receiving the payments.

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

(7) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

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

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

(10) Payments under a contract, retroactive payments from SSI and SSA reimbursements of Medicare premiums are not considered lump sum payments.

(11) Educational loans, grants, and scholarships guaranteed by the U.S. Department of Education are not countable income if the recipient is an undergraduate. Income from service learning programs is not countable income if the recipient is an undergraduate. Deductions are allowed from countable educational income if receipt of the income depends on school attendance and if the client pays the expense. Allowable deductions include:

(a) tuition;

(b) fees;

(c) books;

(d) equipment;

(e) special clothing needed for classes;

(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount;

(g) child care necessary for school attendance.

(12) Except for an individual eligible for the Medicaid Work Incentive Program, the following provisions apply to non-institutional medical assistance:

(a) For A, B, or D Medicaid, the income of a spouse or a parent shall not be considered in determining Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors shall be eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind, or disabled person has more income after deductions than the allocation for a spouse, that income shall be deemed to be income to the aged, blind, or disabled spouse to determine eligibility.

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

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

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

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the ineligible spouse's income shall not be counted and the ineligible spouse shall not be included in the household size[~~ or the BMS~~]. Only the eligible spouse's income shall be compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for one to calculate the spenddown.

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

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

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

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

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

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

(iii) [~~If~~]In determining eligibility under (c) for an aged or disabled person [~~has a~~]whose spouse [~~who~~]is blind, [~~then income of the blind spouse shall be deemed to the aged or disabled person when this income exceeds the allocation for a spouse to determine eligibility for the 100% poverty-related Aged or Disabled Medicaid programs. If the deemed income of the blind spouse does not exceed the allocation for a spouse, none of the blind spouse's income shall be counted. In either case, countable income shall be compared to 100% of the poverty guideline for a two-person household to determine eligibility for the aged or disabled spouse.~~]both spouses income is combined.

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

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

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

~~(A) If the countable income does not exceed 100% of the two-person poverty guideline, then the aged or disabled spouse shall be eligible under the 100% poverty-related Aged or Disabled Medicaid program.~~

~~(B) If the countable income exceeds 100% of the two-person poverty guideline, then eligibility under the spenddown program shall be determined as described in (ii)(A) if the blind spouse receives SSI or as in (ii)(B) or (ii)(C)(I) or (II) if the blind spouse does not receive SSI.~~

~~(d) The Department shall determine household size and whose income counts for B Medicaid as described below.~~

~~(i) If the spouse of a blind client is aged, blind, or disabled and does not receive SSI, income of both spouses shall be combined and, after allowable deductions, compared to the BMS for a two-person household to calculate the spenddown.~~

~~(A) If only one spouse will be covered, or the aged or disabled spouse is eligible under the A or D 100% poverty-related program, income of the non-covered spouse shall be deemed when it exceeds the allocation for a spouse. The total countable income, after allowable deductions, shall then be compared to the BMS for a two-person household to calculate the spenddown.~~

~~(B) If the non-covered spouse's income does not exceed the allocation for a spouse, then only the covered spouse's income shall be counted and, after allowable deductions, compared to the BMS for a one-person household.~~

~~(C) If the spouse of a blind client receives SSI, then only the income of the blind spouse, after allowable deductions, shall be compared to the BMS for one.~~

~~(ii) If the spouse is not aged, blind, or disabled, income shall be deemed to the blind spouse when it exceeds the allocation for a spouse, and, after allowable deductions, the combined income shall be compared to the BMS for two. If the ineligible spouse's income does not exceed the allocation for a spouse, only the blind spouse's income, after allowable deductions, shall be compared to the BMS for one person to calculate the spenddown.~~]

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

(f) The Department shall determine household size and whose income counts for QMB, SLMB, and QI-1 assistance as described below.

(i) If both spouses receive Part A Medicare and both want coverage, income shall be combined and compared to the applicable percentage of the poverty guideline for a two-person household.

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

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

(iv) SSI income will not be counted to determine eligibility for QMB, SLMB or QI-1 assistance.

(g) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the income of neither parent shall be considered to determine a child's eligibility for B or D Medicaid.

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

(13) For institutional Medicaid including home and community based waiver programs, the Department shall only count the client in the household size and only count the client's income, and income deemed from an alien client's sponsor, to determine contribution to cost of care.

(14) Interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No. 105-285 effective October 27, 1998, shall not count as income.

(15) Income, unearned and earned, shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

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

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

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

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

(1) The Department adopts 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, and Appendix to Subpart K of 416, 2002 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, [~~1999~~]2001. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The Department shall allow the provisions found in R414-304-2 (3) through (11), and (14) through (1[~~7~~]8).

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

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

(5) The Department shall determine household size and whose income counts for the Medicaid Work Incentive Program as described below:

(a) If the Medicaid Work Incentive Program individual is an adult and is not living with a spouse, count only the income of the individual. Include in the household size, any dependent children under age 18, or[~~. Also include in the household size any children~~] who are 18, 19, or 20 and are full-time students. These dependent children must be living in the home or be temporarily absent. After allowable deductions, the net income shall be compared to 250% of the federal poverty guideline for the household size involved.

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

(c) If the Medicaid Work Incentive Program individual is a child living with a parent, combine the income of the Medicaid Work Incentive Program individual and the parents before allowing any deductions. Include in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students, who are living in the home or temporarily absent. Compare the net income of the Medicaid Work Incentive Program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

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

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed., and 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(v), 233.20(a)(3)(xxi), 233.20(4)(ii), and 233.51, 2001 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) of the Compilation of the Social Security Laws in effect January 1, [~~1999~~]2001, which is incorporated by reference. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

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

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

(c) "Quarter" means any three[-]-month period that includes January through March, April through June, July through September or October through December.

(3) Bona fide loans are not countable income.

(4) Support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services is not countable income.

(5) The value of food stamp assistance is not countable income.

(6) SSI and State Supplemental Payments are income for children receiving Child, Family, Newborn, or Newborn Plus Medicaid.

(7) If rental income is unearned income, deduct $30.[~~ is deducted from rental income if that~~]If the rental income is consistent with community standards[-], [~~A~~]additional deductions are allowed if the client can prove greater expenses. The following expenses in excess of $30 may be allowed:

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

(b) upkeep and repair costs necessary to maintain the current value of the property. This includes utility costs.

(c) only the interest can be deducted on a loan or mortgage made for upkeep or repair;

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

(8) Cash gifts that do not exceed $30 a quarter per person in the assistance unit are not countable income. A cash gift may be divided equally among all members of the assistance unit.

(9) Deferred income that was not deferred by choice is countable income when it is received by the client if receipt can be reasonably anticipated. If the income was deferred by choice, count it as income when it could have been received.

(10) The value of special circumstance items is not countable income if the items are paid for by donors.

(11) Home energy assistance is not countable income.

(12) [~~All money received from an insurance settlement for destroyed exempt property is counted unless the income is used to purchase replacement property. If income received exceeds the money needed to replace the property, the difference is countable income.~~]Do not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, count only the amount that the client does not intend to use or that is more than what is needed for temporary housing.

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

(14) Payments from trust funds are countable income in the month the payment is received or made available to the individual.

(15) FEP, Working Toward Employment Program payments, and Refugee Cash Assistance are not countable income.

(16) Only the portion of a Veteran's Administration check to which the client is legally entitled is countable income.

(17) If the entitlement amount of a benefit differs from the payment, the full entitlement amount is counted as income unless the amount being withheld from the entitlement is due to an overpayment of such benefits, in which case the entitlement less the amount withheld to repay the overpayment is counted. If deductions are being withheld that are purely voluntary, or are to repay a debt or meet a legal obligation other than an overpayment of the benefit, the full entitlement is counted as income.[~~When the entitlement amount of a check differs from the payment amount, the entitlement amount is countable income unless the deduction is involuntary.~~]

(18) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. Clients who dispute ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to them. Funds that are successfully disputed are not countable income.

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

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

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

(22) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(23) Interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No.105-285 effective October 27, 1998, shall not count as income.

(24) Current child support payments are countable income to the child for whom the payments are being made. If a payment is for more than one child, the amount is divided equally among the children unless a court order indicates a different division. Child support payments made for past months or years (arrearages) are countable income to determine eligibility of the parent or guardian who is receiving the payment. If ORS is collecting the child support, it is counted as current even if it is mailed late by ORS. Arrearages are payments collected for past months or years that were not paid on time and are like repayments for past-due debts. ORS may be collecting both current child support and arrearages.

(25) Payments from annuities count as unearned income in the month received.

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

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

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed., and 20 CFR 416.1110 through 416.1112, 2002 ed., which are incorporated by reference. The department adopts Subsection 1612(b)(4)(A) and (B) of the Compilation of the Social Security Laws, in effect January 1, [~~1999~~]2001, which is incorporated by reference.

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

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

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

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

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

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

(8) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

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

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

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

(11) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any A, B, or D category programs that use a percentage of the federal poverty guideline as an eligibility income limit.

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

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

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 2001 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

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

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

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

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

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

(f) "1931 Family Medicaid" means a medical assistance program that uses the AFDC eligibility criteria in effect on June 16, 1996 along with any subsequent amendments in the State Plan, except that 1931 Family Medicaid eligibility for recipients of TANF cash assistance follows the eligibility criteria of the Family Employment Program.

(g) "Temporary Assistance to Needy Families" (TANF) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Family Employment Program (FEP).

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

(a) in school or training full-time;

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

(c) in JTPA.

(4) For Family Medicaid the 30 and 1/3 deduction is allowed if the wage earner has received a TANF financial payment or 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.

(5) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

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

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

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

(9) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit, and for determining eligibility for 1931 Family Medicaid.

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

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

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

R414-304-7. A, B and D Medicaid and Family Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.831, 2001 ed., which is incorporated by reference.

(2) For aged, blind and disabled individuals eligible under 42 CFR 435.301(b)(2)(iii),(iv),and (v), described more fully in 42 CFR 435.320, .322 and .324, the Department shall allow an income deduction equal to the difference between 100% of the federal poverty guideline and the current BMS income standard for the applicable household size, to determine the spenddown amount.

(3) The Department shall allow health insurance premiums the client or a financially responsible family member pays providing coverage for any[~~one in the~~] family members living with the client[~~or the BMS~~] as deductions from income in the month of payment. The Department shall also allow an income deduction for health insurance premiums for the month it is due when the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, 2001 ed., except no deduction is allowed for Medicare premiums the Department pays for recipients.

(a) The entire payment shall be allowed as a deduction in the month it is due and will not be prorated.

(b) The Department shall not allow health insurance premiums as a deduction for determining eligibility for the poverty-related medical assistance programs or 1931 Family Medicaid.

(4) Health insurance premiums the client or a financially responsible family member paid in the application month or during the three month retroactive period which are not fully used as a deduction to reduce a spenddown in the month paid may be allowed as a deduction to reduce a spenddown in any month after the month paid but only through the month of application.

(5) Medicare premiums shall not be allowed as income deductions if the state will pay the premium or will reimburse the client.

(6) Medical expenses shall be allowed as income deductions only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, client's spouse, parent of an unemancipated client or unemancipated sibling of an unemancipated client, a deceased spouse or a deceased dependent child.

(b) The medical bill shall not be paid by Medicaid or be payable by a third party.

(c) The medical bill remains unpaid, or the medical service was received and paid during the month of application or during the three-month time-period immediately preceding the date of application. The date the medical service was provided on an unpaid expense does not matter. Bills for services received and paid during the application month or the three-month time-period preceding the date of application can be used as deductions only through the month of application.

(7) A medical expense shall not be allowed as a deduction more than once.

(8) A medical expense allowed as a deduction must be for a medically necessary service. The Department shall be responsible for deciding if services are not medically necessary.

(9) The Department shall not allow as a medical expense, co-payments or co-insurance amounts required under the State Medicaid Plan that are owed or paid by the client to receive Medicaid-covered services.

(10) For poverty-related medical assistance, an individual or household shall be ineligible if countable income exceeds the applicable income limit. Medical costs are not allowable deductions for determining eligibility for poverty-related medical assistance programs. No spenddown shall be allowed to meet the income limit for poverty-related medical assistance programs.

(11) As a condition of eligibility, clients must certify on [~~Form 1049B~~]a form approved by the Department that medical expenses in the benefit month are expected to exceed the spenddown amount. The client must do this when spenddown starts and at each review when the client continues to be eligible under the spenddown program. If medical expenses are less than or equal to the spenddown, the client shall not be eligible for that month. The client may elect to use allowable medical expenses the client still owes from previous months to reduce the spenddown so that expected medical expenses for the benefit month exceed the remaining spenddown owed, if neither Medicaid nor a third party will pay the bill.

(12) Pre-paid medical expenses shall not be allowed as deductions.

(13) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(14) Clients may choose to meet their spenddown obligation by incurring medical expenses or by paying a corresponding amount to the Department.

(15) For A, B and D Medicaid, institutional costs shall be allowed as deductions if the services are medically necessary. The Department shall be responsible for deciding if services for institutional care are not medically necessary.

(16) No one shall be required to pay a spenddown of less than $1.

(17) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in a Medicaid Health Plan. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-8. Medicaid Work Incentive Program Income Deductions.

(1) The Department shall allow the provisions found in R414-304-7 (1), (3) and (5).

(2) The Department shall apply the following deductions from income in determining countable income that is compared to 250% of the federal poverty guideline:

(a) $20 from unearned income. If there is less than $20 in unearned income, deduct the balance of the $20 from earned income;

(b) $65 plus one half of the remaining earned income.

(3) For the Medicaid Work Incentive Program (MWI), an individual or household shall be ineligible if countable income exceeds the applicable income limit. Health insurance premiums and medical costs will not be deducted from income before comparing countable income to the applicable limit.

(4) Health insurance premiums paid by the Medicaid Work Incentive Program individual or a financially responsible household

member, to purchase health insurance for himself or other family members in the household shall be deducted from income before determining the MWI buy-in premium.

(5) An eligible individual may meet the MWI buy-in premium with cash, check or money order payable to the Office of Recovery Services.

(6) No one will be required to pay a MWI buy-in premium of less than $1.

R414-304-9. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.725, 435.726, and 435.832, 2001 ed., which are incorporated by reference. The Department adopts Subsection 1902(r)(1) and 1924 of the Compilation of the Social Security Laws, in effect January 1, [~~1999~~]2001, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse who lives with the spouse.

(b) "Dependent" means earning less than $2,000 a year, not being claimed as a dependent by any other individual, and receiving more than half of one's annual support from the client or the client's spouse.

(3) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the Department shall allow an income deduction for health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. Health insurance premiums shall be allowed as an income deduction in the month due. The payment shall not be pro-rated. The Department also allows an income deduction for health insurance premiums for the month it is due if the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, 2001 ed., except no deduction is allowed for Medicare premiums the Department pays for recipients.

(b) The Department shall allow the portion of a combined premium, attributable to the institutionalized or waiver-eligible client, as an income deduction if the combined premium includes a spouse or dependent family member and is paid from the funds of the institutionalized or waiver eligible client.

(4) Medicare premiums shall not be allowed as income deductions if the state pays the premium or reimburses the client.

(5) Medical expenses shall be allowed as income deductions only if the expenses meet all of the following conditions:

(a) the medical service was received by the client;

(b) the unpaid medical bill shall not be paid by Medicaid or be payable by a third party;

(c) the paid medical bill can be allowed only in the month paid. No portion of any paid bill can be allowed after the month of payment.

(6) A medical expense shall not be allowed as an income deduction more than once.

(7) A medical expense allowed as an income deduction must be for a medically necessary service. The Department of Health shall be responsible for deciding if services are not medically necessary.

(8) Pre-paid medical expenses shall not be allowed as income deductions.

(9) The Department shall not allow as a medical expense, co-payments or co-insurance amounts required under the State Medicaid Plan that are owed or paid by a client to receive Medicaid-covered services.

(10) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(11) Institutionalized clients are to contribute all countable income remaining after allowable income deductions to the institution as their contribution to the cost of their care.

(12) The personal needs allowance shall be equal to $45.

(13) [~~If~~]When a doctor verifies that a single person, or a person whose spouse resides in a medical institution is expected to return home within six months of entering a medical institution or nursing home, the Department shall deduct a personal needs allowance equal to the current Medicaid Income Limit (BMS) for one person, defined in R414-304-11(5), for up to six months to maintain the individual's community residence.

(14) Except for an individual eligible for the Personal Assistance Waiver, an individual receiving assistance under the terms of a Home and Community-Based Services Waiver shall be eligible to receive a deduction for a non-institutionalized, non-waiver-eligible spouse and dependent family member as if that individual were institutionalized.

([~~15~~]a) Income received by the spouse or dependent family member shall be counted in calculating the deduction if that type of income is countable to determine Medicaid eligibility. No income disregards shall be allowed. Certain needs-based income and state supplemental payments shall not be counted in calculating the deduction. Tribal income shall be counted.

([~~16~~]b) If the income of a spouse or dependent family member is not reported, no deduction shall be allowed for the spouse or dependent family member.

([~~17~~]15) A client shall not be eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

([~~18~~]16) To determine an income deduction for a community spouse, the standard utility allowance for households with heating costs shall be equal to the standard utility allowance used by the federal food stamp program. For households without heating costs, actual utility costs shall be used. The maximum allowance for a telephone bill is [~~$20~~]equal to the amount allowed by the federal food stamp program. Clients shall not be required to verify utility costs more than once in a certification period.

([~~19~~]17) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in a Medicaid Health Plan. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-10. Budgeting.

(1) The Department adopts 42 CFR 435.601 and 435.640, 2001 ed., which are incorporated by reference. The Department adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, 2001 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(b) "Prospective eligibility" means that eligibility is determined each month for the immediately following month based on a best estimate of income.

(c) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(d) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(e) "Income anticipating" means using current facts regarding rate of pay and number of working hours to anticipate future monthly income.

(f) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(g) "Factoring" means that a monthly amount shall be determined to take into account the months of pay where an individual receives a fifth paycheck when paid weekly or a third paycheck when paid every other week. Weekly income shall be factored by multiplying the weekly amount by 4.3 to obtain a monthly amount. Income paid every other week shall be factored by 2.15 to obtain a monthly amount.

(h) "Reportable income changes" [~~are those~~]include any change in the source of income and any change that causes income to change by more than $25. All income changes must be reported for an institutionalized individual.

(3) The Department shall do prospective budgeting on a monthly basis.

(4) A best estimate of income based on the best available information shall be an accurate reflection of client income in that month.

(5) The Department shall use the best estimate of income to be received or made available to the client in a month to determine eligibility and spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) The Department shall count income in the following manner:

(a) For QMB, SLMB, QI-1, Medicaid Work Incentive Program, and A, B, D, and Institutional Medicaid income shall be counted as it is received. Income that is received weekly or every other week shall not be factored.

(b) For Family Medicaid programs, income that is received weekly or every other week shall be factored.

(8) Lump sums are income in the month received. Any amount of a lump sum remaining after the end of the month of receipt is a resource, unless otherwise excluded under statute or regulation. Lump sum payments can be earned or unearned income.

(9) Income paid out under a contract shall be prorated to determine the countable income for each month. Only the prorated amount shall be used to determine spenddown or eligibility for a month. If the income will be received in fewer months than the contract covers, the income shall be prorated over the period of the contract. If received in more months than the contract covers, the income shall be prorated over the period of time in which the money will be received.

(10) To determine the average monthly income for farm and self-employment income, the Department shall determine the annual income earned during one or more past years, or other applicable time period, and factor in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income shall be adjusted during the year when information about changes or expected changes is received by the Department.

(11) Student income received other than monthly shall be prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months that classes are in session.

(12) Income from Indian trust accounts not exempt by federal law shall be prorated to determine the monthly countable income when the income varies from month to month, or it is received less often than monthly. This is done by dividing the total amount by the number of months it covers.

(13) Eligibility for retroactive assistance shall be based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method shall be used for the months in the retroactive period, except when the income was not being received during, and was not intended to cover, those specific months in the retroactive period. Income will not be factored for retroactive months.

R414-304-11. Income Standards.

(1) The Department adopts Sections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f) and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, [~~1999~~]2001, which are incorporated by reference.

(2) The Aged and Disabled poverty-related Medicaid income standard shall be calculated as 100% of the federal non-farm poverty guideline. If an Aged or Disabled person's income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply unless the disabled individual or a disabled aged individual has earned income. In this case, the income standards of either the Medically Needy (BMS) program or the Medicaid Work Incentive program may be applied. The individual may choose coverage under either program if the individual meets all other eligibility criteria for both programs.

(3) The income standard for the Medicaid Work Incentive Program shall be equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply. The Department shall charge a MWI buy-in premium for the Medicaid Work Incentive Program when the countable income of the eligible individual, or the eligible individual and spouse, when the spouse is also eligible or has deemable income, exceeds 100% of the federal poverty guideline for the Aged and Disabled 100% [~~FPL~~]poverty-related coverage group. When the eligible individual is a minor child, the Department shall charge a MWI buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one-person household. The premium will be calculated as 15% percent of only the eligible individual's, or eligible couple's, countable income.

(4) The income limit for pregnant women, and children under one year of age, shall be equal to 133% of the federal poverty

guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply.

(5) The current Medicaid Income Standards (BMS) are as follows:

TABLE

Household Size	Medicaid Income Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-12. A, B and D Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI-1 Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 2001 ed., which are incorporated by reference. The Department adopts Subsections 1902(l)(1), (2), and (3), 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, [~~1999~~]2001, which are incorporated by reference.

(2) The following individuals shall be counted in the BMS for A, B and D Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for A, B, or D Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemable income above the allocation for a spouse.

(3) The following individuals shall be counted in the household size for the 100% of poverty A or D Medicaid program:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemable income above the allocation for a spouse.

(4) The following individuals shall be counted in the household size for a QMB, SLMB, or QI-1 case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemable income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemable income above the allocation for a spouse.

(5) The following individuals shall be counted in the household size for the Medicaid Work Incentive Program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children under age 18;

(e) children age 18, 19, or 20 if they are in school full-time.

(6) Eligibility for A, B and D Medicaid and the spenddown, if any; A and D 100% poverty-related Medicaid; and QMB, SLMB, and QI-1 programs shall be based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on R414-304-2;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(7) Eligibility for the Medicaid Work Incentive Program shall be based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(8) If a person is "included" in the BMS, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is "included" in the household size, it means that family member shall be counted as part of the household to determine what income limit applies, regardless of whether that family member's income will be counted or whether that family member will receive medical assistance.

R414-304-13. Family Medicaid Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 2001 ed., 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), 2001 ed., which are incorporated by reference.

(2) Except for determinations under 1931 Family Medicaid, any unemancipated minor child may be excluded from the Medicaid coverage group at the request of the specified relative responsible for the children. An excluded child shall be considered an ineligible child and shall not be counted as part of the household size for deciding what income limit will be applicable to the family. Income and resources of an excluded child shall not be considered when determining eligibility or spenddown.

(3) The Department shall not use a grandparent's income to determine eligibility or spenddown for a minor child, and the grandparent shall not be counted in the household size. A cash contribution from the grandparents received by the minor child or parent of the minor child is countable income.

(4) Except for determinations under 1931 Family Medicaid, if anyone in the household is pregnant, the unborn child shall be included in the household size. If a medical authority confirms that the pregnant woman will have more than one child, all of the unborn children shall be included in the household size.

(5) If a child is voluntarily placed in foster care and is in the custody of a state agency, the parents shall be included in the household size.

(6) Parents who have relinquished their parental rights shall not be included in the household size.

(7) If a court order places a child in the custody of the state, and the child is temporarily placed in an institution, the parents shall not be included in the household size.

(8) If a person is "included" in the household size, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS income level or, in the case of poverty-related programs, which poverty guideline income level will apply to determine eligibility for the client or family.

R414-304-14. A, B and D Institutional and Waiver Medicaid and Family Institutional Medicaid Filing Unit.

(1) For A, B, and D institutional, and home and community-based waiver Medicaid, the Department shall not use income of the client's parents or the client's spouse to determine eligibility and the contribution to cost of care, which may be referred to as a spenddown.

(2) For Family institutional, and home and community-based waiver Medicaid programs, the Department adopts 45 CFR 206.10(a)(1)(vii), 2001 ed., which is incorporated by reference.

(3) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a spenddown on the income of the client and the sponsor of an alien who is subject to deeming according to the rules described in 20 CFR 416.1166a, 2002 ed., which is incorporated by reference.

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

KEY: financial disclosures, income, budgeting
[~~January 1,~~]2004
Notice of Continuation January 31, 2003
26-18-1

Health, Epidemiology and Laboratory Services, Laboratory Improvement

R444-14

Rule for the Certification of Environmental Laboratories

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27234
FILED: 06/15/2004, 14:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment will incorporate the current major technical parts of the National Environmental Laboratory Accreditation Conference (NELAC) standards into the state rule.

SUMMARY OF THE RULE OR CHANGE: This amendment incorporates the 2002 standards for laboratory certification and the 2003 proficiency testing standards established by the NELAC. It also incorporates the latest federal regulations dealing with analytical methods for environmental testing.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-1-30(2)(9)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 136, 141, 142, 261 (July 1992-2004); and National Environmental Laboratory Conference 2002 certification standard and 2003 proficiency testing standard

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no impact on the state budget. This amendment does not change the state's responsibilities or workload in certifying environmental laboratories.

❖ LOCAL GOVERNMENTS: Changes to the incorporated standards are technical in nature to clarify requirements and provide consistency to the standard. The Division does not anticipate any significant resources required or eliminated to make changes to the laboratory's quality system to stay inline with the proposed incorporated standards. Overall the costs and savings should balance out or be minimal.

❖ OTHER PERSONS: The changes to the incorporated standards are technical in nature to clarify requirements and provide consistency to the standard. The Division does not anticipate any significant resources required or eliminated to make changes to the laboratory's quality system to stay inline with the proposed incorporated standards. Overall the costs and savings should balance out or be minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Laboratories affected should already be complying with the previous revision of the national standards adopted in this rule. Additional compliance costs will be zero to negligible.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: For Utah to maintain primacy under U.S. EPA (especially for drinking water) there must exist a laboratory certification program within the state. This rule is the foundation of the certification program. The certification program uses the standards from NELAC that are currently in effect. This rule incorporates the currently effective NELAC standards. Fiscal impact on businesses has been minimized to the extent possible. Scott D. Williams, MD

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
LABORATORY IMPROVEMENT
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:
David Mendenhall at the above address, by phone at 801-584-8470, by FAX at 801-584-8501, or by Internet E-mail at davidmendenhall@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 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R444. Health, Epidemiology and Laboratory Services, Laboratory Improvement.
R444-14. Rule for the Certification of Environmental Laboratories.
R444-14-1. Introduction.

(1) This rule is authorized by Utah Code Section 26-1-30(2)(m).

(2) This rule applies to laboratories that analyze samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, and the Federal Resource Conservation and Recovery Act.

(3) A laboratory that analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(4) A laboratory that, under subcontract with another laboratory, analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(5) A laboratory certified under this rule to analyze samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory must also obtain approval under this rule for each analyte analyzed by a specific method.

R444-14-2. Definitions.

(1) "Analyte" means the substance or thing for which a sample is analyzed to determine its presence or quantity.

(2) "Approved" means the determination by the department that a certified laboratory may analyze for an analyte under this rule.

(3) "Clean Water Act" means U.S. Public Law 92-500, as amended, governing water pollution control programs.

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

(5) "Revoke" means to withdraw a certified laboratory's certification or the approval for a certified laboratory to perform one or more specified methods.

(6) "Resource Conservation and Recovery Act" means U.S. Public Law 94-580, as amended, governing solid and hazardous waste programs.

(7) "Safe Drinking Water Act" means U.S. Public Law 93-523 94-580, as amended, governing drinking water programs.

R444-14-3. Laboratory Certification.

(1) A laboratory is the organization and facilities established for testing samples.

(2) A laboratory that conducts tests that are required by Department of Environmental Quality rules to be conducted by a certified laboratory must be certified under this rule.

(3) To become certified, to renew certification, or to become recertified under this rule, a laboratory must adhere to the requirements found in Chapter 4, "Accreditation Process", of the National Environmental Laboratory Accreditation Conference Standards approved [~~May 2001~~]July 2002, which are incorporated by reference.

R444-14-4. Analytical Methods.

(1) The department may only approve a certified laboratory to analyze an analyte by specific method. The department may approve a certified laboratory for an analyte using methods described in the July 1, 1992 through [~~2002~~]2004, editions of 40 CFR Parts 141, 142, and 143 (Safe Drinking Water Act); 40 CFR Parts 136 and 503.8 (Clean Water Act); 40 CFR Parts 260 and 261 (Resource Conservation and Recovery Act).

(2) In analyzing a sample for compliance with the Safe Drinking Water Act, the Clean Water Act, or the Resource Conservation and Recovery Act, a certified laboratory must follow the method that it reports on its final report to have used.

R444-14-5. Proficiency Testing.

For a certified laboratory to become approved and to maintain approval for an analyte by a specific method, the certified laboratory must, at its own expense, meet the proficiency testing requirements of this rule. A certified laboratory must adhere to the requirements found in Chapter 2, "Proficiency Testing", of the National Environmental Laboratory Accreditation Conference Standards approved [~~May 2001~~]July 2003, which are incorporated by reference.

R444-14-6. Quality System.

(1) A certified laboratory must adhere to the requirements found in Chapter 5, Quality Systems, of the National Environmental Laboratory Accreditation Conference Standards approved [~~May 2001~~]July 2002, which are incorporated by reference.

R444-14-7. Recognition of NELAP Accreditation.

The department may certify a laboratory that is NELAP-accredited. A laboratory seeking certification because of its NELAP accreditation must provide evidence of its accreditation and apply for certification on that basis. A laboratory certified on the basis of NELAP accreditation must obtain approval from the department for each analyte and meet the approval requirements of this rule.

R444-14-8. Penalties.

A laboratory violates this rule and is subject to the penalties provided in Title 26, Chapter 23, including administrative and civil penalties of up to $5,000.00 for each offense, criminal sanctions of a class B misdemeanor on the first offense and a class A misdemeanor on the second offense, and criminal penalties of up to $5,000.00 for each offense if it:

(1) without being certified under this rule, holds itself out as one capable of testing samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, Federal Resource Conservation and Recovery Act; or

(2) without being approved to analyze for the analyte , analyzes samples for the analyte for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory.

KEY: laboratories
[~~June 12, 2003~~]2004
Notice of Continuation June 13, 2002
26-1-30(2)(m)

Human Services, Administration, Administrative Services, Licensing
R501-7
Child Placing Adoption Agencies

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27229
FILED: 06/14/2004, 11:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes were made after a meeting was held with adoption agencies and receiving additional input from them for clarification in the rule.

SUMMARY OF THE RULE OR CHANGE: The changes have been made to create a clearer definition of the responsibilities of the agencies for the protection of the child, birth parent, and adoptive parent.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-2-106

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: It is anticipated that the cost for printing the updated rule will be absorbed by of the Office of Licensing.
❖ LOCAL GOVERNMENTS: Local government will have no additional costs because the changes in this rule are more for clarification and broader definition of an existing rule. Other than the agencies meeting local government regulations, there is no anticipated cost.
❖ OTHER PERSONS: The changes in this rule will not produce additional costs or savings to other persons because the rule changes are more for clarification and expanded definitions and not physical changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes in this rule are for clarification and definition of terms and there would be no additional cost or savings to the affected persons or organizations unless they re-write their policy manual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes made in this rule will not create any fiscal impact on the businesses affected by this rule.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Bohi at the above address, by phone at 801-538-4153, by FAX at 801-538-4553, or by Internet E-mail at jbohi@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 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Ken Stettler, Director

R501. Human Services, Administration, Administrative Services, Licensing.
R501-7. Child Placing Adoption Agencies.
R501-7-1. Authority and Purpose.
A. This rule is authorized under Section 62A-2-106.
B. This rule establishes standards for licensing agencies to provide child placing adoption services.

R501-7-2. Definitions.
A. "Adoption" is defined in Section 78-30-16.
B. "Child placing adoption agency" means an individual, agency, firm, corporation, association or group children's home that engages in child placing.
C. "Adoption Services" [~~is defined in Section 62A-4a-101.~~]means evaluating, advising, or counseling children, birth parents or adoptive families, placing children for adoption; monitoring or supervising placements until the adoption is finalized; conducting adoption studies or preparing adoption reports; or arranging for foster care.
D. "Birth Parent" is defined in Section 78-30-16.
E. "Child placing" means receiving, accepting, or providing custody or care for a child for the purpose of finding a person to adopt the child or placing a child in a home for adoption.
F. "Confinement" means the time period when a woman is hospitalized or medically restricted due to her pregnancy and childbirth.
G. "Disruption" means the termination of an adoptive placement prior to the issuance of a final decree of adoption.
H. "Foster Care" means family care in the residence of a foster parent who is licensed or certified pursuant to R501-12.
I. "Genetic and Social History" is defined in Section 78-30-16.
J. "Health History" is defined in Section 78-30-16.
K. "Intercountry Adoption" means the adoption of a child from a foreign country, whether the adoption is completed in the child's native country or in this State.
L. "Legal risk placement" means at the time the placement is made, one or more of the child's biological parents or putative legal parents has not executed a legal relinquishment or consent to the adoption, their parental rights have not been lawfully terminated, or they have expressed their intention to exercise parental rights or contest the adoption.
[~~L~~]M. "Mental Health Therapist" is defined in Section 58-60-102.

[~~M~~]N. "Sliding Scale" means an established fee schedule that varies according to an individual's annual income.

[~~N~~]O. "Special needs" [~~means a child who is three years of age or older, a sibling group, a child with mental, physical, medical or emotional disabilities, or a child who has a biological family history likely to result in temporary or permanent mental, physical, or emotional disabilities~~]is defined in Section 62a-4a-902(2).

[~~O~~]P. "Unmarried biological father" is defined in Section 78-30-4.11.

R501-7-3. Legal Requirements.

A. In addition to this rule, all child placing adoption agencies shall comply with R495-876, R501-1, R501-2-1 through 501-2-5, R501-2-8 through R501-2-14, R501-14, R501-18; Title 58, Chapter 60; title 62A, Chapters 2 and 4a: Section 76-7-203; Title 78; Chapters 3a, 30, 45a, and 45e; and other applicable local, State and Federal laws.

B. Child placing adoption agencies that do not provide housing for birth mothers are exempt from R501-2-5, 10, 11, and 12.

C. A child placing adoption agency shall not:

a. delay or deny the placement of a child or the opportunity to become an adoptive parent on the basis of race, color, ethnicity, cultural heritage, or national origin. A child placing adoption agency shall comply with all State and Federal laws regarding discrimination.

D. A child placing adoption agency shall be legally responsible for the child following relinquishment of the child to the adoption agency until the adoption is finalized, unless a court of competent jurisdiction places legal responsibility with another party, in accordance with Section 78-30-4.22.

[~~E. A child placing adoption agency shall sign and comply with written agreements regarding confidentiality and the exchange of information between birth parents and adoptive families.~~

] [~~F~~]E. A child placing adoption agency which serves Indian children shall comply with the Indian Child Welfare Act.

[~~G~~]F. A child placing adoption agency that provides foster care shall comply with R501-12.

H. A child placing adoption [~~A~~]agency shall comply with the Interstate Compact for Placement of Children, in accordance with Section 62A-4a-701 et seq.

R501-7-4. Administrative Requirements.

A. A child placing adoption agency shall have at least one social work supervisor responsible for directly supervising all staff and volunteers who [~~have direct contact with~~]provide adoption services to clients.

1 Each social work supervisor shall be licensed in this state as a mental health therapist, shall comply with the Utah Mental Health Professional Practice Act, and shall have at least [~~two~~]one year[~~s~~] of full time, paid, professional experience in a licensed child placing adoption agency.

2. A social work supervisor may not supervise more than eight staff and volunteers who [~~have direct contact with~~]provide adoption services to clients.

3. An Executive Director who is licensed in this state as a mental health therapist, complies with the Utah Mental Health Professional Practice Act, and has at least [~~two~~]one year[~~s~~] of full time, paid, professional experience in a licensed child placing agency may serve as a social work supervisor, [~~and~~]but may not supervise more than four staff and volunteers who [~~have direct contact with~~]provide adoption services to clients.

B. Individuals who provide adoption services to birth parents, children, or adoptive applicants shall maintain a current professional license as required by the Utah Mental Health Professional Practice Act and shall comply with the Utah Mental Health Professional Practice Act.

C. A child placing adoption agency shall notify the Office Of Licensing of any changes it makes to its policies or procedures and shall provide a written copy of any changes [~~within~~]no later than five business days after the change.

D. A child placing adoption agency shall provide at least 30 days' prior written notice to the Office of Licensing that the agency is:

1. dissolving or ceasing to provide child placing services,

2. adding or eliminating in-state, out-of-state, special needs, or international services, or

3. changing ownership or name[~~, or~~

~~4. transferring its cases to another agency, person, or records archive~~].

R501-7-5. Ethical Conduct.

A. A child placing adoption agency shall:

1. not give preferential treatment to its board members, employees, volunteers, agents, consultants, independent contractors, donors, or their respective families with regard to child placing decisions;

2. not provide or accept any payment or other considerations for any referral;

3. work only with agencies, entities or individuals that are authorized to provide child placing adoption services by the laws of this state or the jurisdiction in which that agency, entity or individual performs child placing adoption services;

4. not permit its employees, volunteers, agents, consultants, or independent contractors to provide adoption services to both the birth parents and the adoptive parents unless all parties [~~are first offered the opportunity to work with separate employees, volunteers, agents, consultants, or independent contractors;~~]are made aware of potential conflicts of interest[~~;~~] and sign a voluntary consent;

5. not require its clients to use or pay for specified attorneys or other service providers, shall inform clients that they are free to select independent attorneys and other service providers, and shall not charge clients fees for services that clients obtain independently; and

6. not refer or steer any individual to any private practice in which the agency's board members, volunteers, employees, agents, consultants, independent contractors, or their respective families are engaged, without first disclosing any potential conflicts of interest and informing said individuals that they are free to select independent service providers.

B. The members of the governing body of a child placing adoption agency shall disclose, in writing, to the chairperson of the governing body, any direct or indirect financial interest in the agency.

C. The child placing adoption agency, its board members, volunteers, employees, or agents shall not solicit [~~or accept~~]donations from an adoptive [~~families while a~~]family that is under consideration for placement of a child. A generalized mass solicitation through newsletters or the media shall not constitute a violation under this rule.

D. The child placing adoption agency, its board members, volunteers, employees, or agents shall not accept donations from an adoptive family that is under consideration for placement of a child.

R501-7-6 Fees.

A. A child placing adoption agency shall provide a written disclosure of all fees and expenses prospective adoptive parents may incur before the agency accepts any payments or processes any application from, or enters any agreement with, the prospective adoptive parents.

1. The disclosure shall identify the services associated with each fee, and specify both the average cost for that service for the preceding two fiscal years, and the maximum fee that may be charged for each service.

2. A child placing adoption agency shall not charge adoptive parents for any fees or expenses that exceed or were not included in the written disclosure.

3. A child placing adoption agency shall identify which fees may be non-refundable.

B. A child placing adoption agency may charge adoptive parents an agency fee, which [~~shall be a sliding scale or flat fee, and~~]shall include all administrative and professional services provided on behalf of the adoptive parents, including but not limited to pre-adoption evaluations, home studies, personnel, counseling, overhead, and training[~~, and which may include birth mothers' travel or postnatal expenses~~].

C. A child placing adoption agency may charge adoptive parents for the actual and reasonable costs of maternity, medical, and necessary pre-natal living expenses of the birth mother in accordance with Section 76-7-203.

1. The agency shall retain receipts documenting the actual costs of goods and services provided which exceed twenty-five dollars.

2. A child placing adoption agency shall not [~~directly~~]charge adoptive parents for the [~~birth mother's travel or postnatal expenses~~]travel expenses of any person other than the birth mother.

3. A child placing adoption agency shall not charge the adoptive parents for the [~~travel or~~]living expenses of any person other than the birth [~~mother~~]parents.

4. A child placing adoption agency shall not charge the adoptive parents for the birth parents' post-confinement living expenses.

D. The agency shall maintain an itemized accounting of the actual expenditures made on behalf of a birth mother[~~,~~]. The accounting [~~which~~]shall be verified and signed by the [~~birth mother~~]agency and adoptive [~~applicant~~]parents , and filed with the court and the Office of Licensing in accordance with Section 78-30-15.5.

1. The agency shall utilize an affidavit form provided by the Office of Licensing or a substantially similar form including the same information.

2. The agency shall require the birth mother to verify that she received all of the itemized goods and services by signing a file copy of the accounting.

E. The agency may delegate the responsibility for a child's care, maintenance, and support to the adoptive applicant only when the applicant has received the child into the applicant's home, in accordance with Section 78-30-4.22.

F. A birth mother who decides not to place her child shall not be responsible for reimbursing the costs of any goods or services provided to her by the prospective adoptive parents or the child placing adoption agency during her pregnancy unless she is first convicted of fraud.

R501-7-7 Documentation.

A. A child placing adoption agency shall maintain a policy and procedure manual describing how it shall comply with all licensing rules and local, state and federal laws applicable to the type of services offered.

B. A child placing adoption agency shall maintain a policy and procedure manual demonstrating how it shall:

1. train and supervise employees and volunteers;

2. identify a child who may be available for adoption;

3. identify or refer a person who is considering relinquishing a child for adoption;

4. provide services in cases where the agency does not obtain legal custody of a child;

5. verify the credentials of other individuals and agencies it works with to obtain relinquishments and place a child;

6. offer counseling services by a licensed mental health therapist to a person who is considering relinquishing a child for adoption or adopting a child;

7. inform birth parents and adoptive parents of their rights and responsibilities in writing;

8. monitor who has legal and physical responsibility for the child at all times;

9. secure the necessary relinquishments and facilitate the termination of parental rights;

10. recruit and assist adoptive families to meet the needs of available children, including but not limited to special needs children;

11. obtain a background study on a child or a home study on a prospective adoptive parent;

12. evaluate prospective adoptive parents;

13. process appeals of home study denials;

14. assess the best interests of a child and the appropriate adoptive placement for the child;

15. monitor a case post-placement until the adoption is final;

16. ensure the child is receiving all necessary services prior to finalization of adoption;

17. assume custody and provide any needed services for the child when necessary because of disruption;

18. arrange to provide foster care prior to placing the child in an adoptive home;

19. preserve the confidentiality of client files;

20. respond to requests for information from birth families, adoptees, adoptive families, and others;

21. preserve client records when a case is closed and in the event that the agency changes ownership or ceases to provide child placement adoption services, and notify the Office of Licensing and each client where the records shall be stored; and

22. enable record retrieval by individuals with a right to access them;

C. A child placing adoption agency shall provide documentation demonstrating its compliance with each subsection in R501-7-7(B).

D. A child placing adoption agency shall maintain a case file for [~~each child, ~~]the birth parents, and the prospective adoptive parents, and for each child who is more than 90 days old at the time of placement or who has been in the legal custody of someone other than the birth mother. Each case file shall cross-reference related files. Each case file shall include:

1. application for service,

2. all studies and evaluations, whether or not finalized, including but not limited to those required by Section 78-30-3.5;

3. needs assessment;

4. case notes describing services provided;

5. the individual's adjustments, interactions and relationships;

6. original or certified copies of government and religious birth records;

7. original or certified copies of relinquishment or transfer of birth mother's and birth father's rights;

8. original or certified copies of decree of termination of birth mother's and birth father's rights;

9. certified copies of marriage certificates, divorce papers, custody and visitation orders, if any;

10. certified copies of death certificates, if any, of birth parents;

11. original or certified copy of affidavit that birth mother's husband is not the child's father, if applicable;

12. waiver of confidentiality or release of information authorization, if applicable;

13. statements of birth and adoptive parents regarding any agreements to exchange information or maintain contact;

14. current and historical physical, psychological, genetic and developmental health information;

15. original or certified copy of the order of adoption; and

16. in the event that any records identified in this rule are not obtained, the child placing adoption agency shall provide documentation of its efforts to obtain those records.

E. A child placing adoption agency shall maintain current health, fire, zoning, business, and other permits, certificates, or licenses at each facility it operates, as required by state or local law;

F. All case[~~s~~] files shall be retained for a minimum of 100 years from the date the case is closed.

G. All adoption records shall be confidential and shall be maintained in a locked file when not in active use. Adoption records shall be accessible only by authorized agency employees. No information shall be shared with any person without the appropriate consent forms, except as required by law.

H. A child placing adoption agency shall maintain and provide accurate annual statistics describing the number of applications received, services provided, the number of children, birth parents, and adoptive parents served, and the number of adoptions and disruptions, and the number of children in agency custody.

R501-7-8. Services for Birth Parents.

A. Child placing adoption agencies shall [~~provide a minimum of two face-to-face~~]offer counseling sessions prior to consent or relinquishment. Prior to consent or relinquishment, the agency shall inform birth parents[~~to assure~~] that:

1. [~~birth parents'~~]their decision[~~s~~] to sign the consent or relinquishment [~~is~~]must be voluntary; and

2. [~~birth parents understand~~]their decision is permanent[~~,~~] and [~~that their parental rights and responsibilities shall end when a licensed child placing adoption agency accepts their~~]may not be revoked after the consent or relinquishment [~~of parental rights or their parental rights are otherwise terminated in accordance with Title 78, Chapter 3a, Part 4, and Section 78-30-11.~~]is signed.

B. Birth parents shall be provided complete and accurate information and their decision to consent or relinquish, or not to consent or relinquish their child shall be supported.

1. Child placing adoption agencies shall not [~~encourage~~]induce or [~~attempt to~~]persuade a birth parent to consent to adoption or to relinquish a child through duress, undue influence, misrepresentation, or deception.

C. A child placing adoption agency shall wait at least 24 hours after the birth of a child before taking the birth mother's relinquishment of parental rights [~~and~~]or legal consent to the adoption of her child, in accordance with Section 78-30-4.19.

[~~D. Child placing adoption agencies shall provide notice of adoption proceedings in compliance with Section 78-30-4.13.~~

] [~~E~~]D. Birth parents shall be assisted in considering whether they want to disclose their identity to the adoptee or the adoptive family, or hear about or from the child, directly or indirectly, in the future.

[F]E. Birth parents shall be offered non-identifying information on the potential adoptive parents, such as age, physical characteristics, educational achievement, family members, profession, nationality, health, and reason for adopting.

[~~G~~]F. A child placing adoption agency shall inform birth parents that a detailed, non-identifying health history and a genetic and social history of the child shall be provided to the adoptive parents in accordance with Section 78-30-17, and shall inform birth parents of Utah's Mutual Consent Voluntary Adoption Registry, Section 78-30-18.

[H]G. [~~The~~]A child placing adoption agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial [~~communication~~]consultation with birth parents and shall also be clearly stated in writing on the birth parents' application for services forms.

[~~I~~]H. A child who has already established some identification with a particular religious faith shall have the right to have such identification respected in any adoptive placement. Efforts shall be made to place the child within that religious faith. This information shall be documented.

[~~J~~]I. A child placing adoption agency shall initiate proceedings to terminate or determine[~~termination of~~] parental rights [~~proceedings in accordance with Title 78, Chapter 3a, Part 4~~]when required by Utah law.

[~~K~~]J. Child placing adoption agencies that provide housing for expectant birth mothers shall assure that such housing complies with the following minimum standards:

1. housing is in compliance with health, fire, zoning, and other applicable laws and regulations;

2. housing is clean, well-maintained and adequately furnished;

3. birth mothers shall have private bedrooms;

4. laundry equipment and supplies shall be available; and

5. adequate nutritious food, or resources to obtain food, is available.

[~~L~~]K. Child placing adoption agencies that provide or pay for birth [~~parents'~~]mothers' transportation to the State of Utah shall also ensure that the birth [~~parents'~~]mothers' return transportation to their home state is provided, regardless of whether the birth [~~parent~~]mother decides to relinquish parental rights.

[~~M~~]L. The placement decision shall be in writing, signed by the child placing adoption agency and the birth parents, and a copy shall be maintained in the case record of the birth parents, the adoptive parents, and the child.

R501-7-9. Services for Children.

A. After the birth parents determine that adoption is the best plan for their child, an assessment shall be made within 30 days, or

within the timeframe ordered by the court, to obtain information to assist in the placement process.

B. A determination shall be made regarding what kind of adoptive family should be selected for the child. The selection of the adoptive family for a specific child shall be based on the family's ability to meet the individual needs of the child. The wishes of the birth parents, the adoptive parents, and when applicable, the child, shall be considered.

C. The assessment shall be used to assist prospective adoptive families to make their decision about the child and birth family.

D. A complete developmental history of the child shall be obtained from the birth parent. If the child has been in an out-of-home placement prior to being placed in an adoptive home, information obtained from caseworker observation, pediatrician, foster parents, nurses, psychologists, and other consultants shall be included. The developmental history shall include:

1. birth and health history, and all evaluations;

2. descriptions of fine and gross motor skills, social, emotional, and cognitive development;

3. the child's adaptation to previous living experiences and situations;

4. the child's experience prior to adoptive placement, particularly maternal attitudes during the pregnancy and early infancy, continuity of care and affection, foster placements, description of the child's behavior and separation experiences;

5. a description of the child's cultural and ethnic background;

6. the child's language skills, educational records, talents and interests.

E. A medical examination by a qualified physician shall be conducted to determine the state of the child's health, and any known or potentially significant factors that may interfere with normal development or may signal any potential medical problems. At a minimum, the following shall be documented and shared with parents, potential adoptive parents, and the assigned agency caseworker prior to placement:

1. evaluation of the child that includes a correlation and interpretation of all available information, including but not limited to genetic and laboratory[~~,~~] test results;

2. the medical care and immunizations received to date;

3. the nature and degree of any disability,

4. treatment and support programs that should be provided to the child and adoptive parents, extra costs of medical care that can be anticipated, and plans to subsidize the health care.

F. Psychological testing for children should be used selectively and as a tool for observation and diagnosis.

G. A child placing adoption agency shall obtain information about the birth parents and their family backgrounds to:

1. provide the adoptive family with the birth family's medical, genetic, social, and mental health history;

2. provide the adoptive family with information about the talents, interests, and education of the birth parents;

3. provide the adoptive family with non-identifying information about other children born to either of the birth parents; and

4. identify characteristics which should be given consideration in selecting and preparing a child for an adoptive family.

H. An interdisciplinary approach based upon the needs of the child is to be used in the selection of a placement either by asking other professionals to submit written recommendations or by inviting them to participate as a member of the placement committee. A child placing adoption agency shall attempt to place siblings together.

I. A child shall be placed with the adoptive family at the earliest time possible after being freed for adoption.

J. A child's needs shall be assessed and a written plan shall be developed to ensure that the adoptive parents are prepared to meet the child's needs and necessary services are provided.

K. A child awaiting placement with an adoptive family shall be placed in a licensed foster or residential home or facility.

1. A child placing adoption agency shall contract with a licensed foster care program or obtain a license to provide foster care services for children in its custody, in accordance with R501-12.

2. A child awaiting adoptive placement shall be placed in a licensed group or residential treatment program when the child's needs can be met only in such a setting.

3. A child placing adoption agency shall obtain a copy of the foster home or facility license prior to placing a child, and shall retain the license in the child's case file.

L. A child placing adoption agency shall have an individualized written adoptive placement plan for each child, which shall include:

1. providing the family and child services or service referrals after the adoption is finalized; and

2. the financial and social service responsibilities of each agency and individual.

M. A social worker shall supervise the child's placement until finalization of the adoption to assist with the transition and assist the family in obtaining any needed services.

1. A minimum of [~~three~~]one supervisory visit[~~s~~] shall be made prior to finalization of the adoption.

N. A child placing adoption agency having a child available for adoption who has not been placed within 60[~~30~~] days after relinquishment or after being determined to be available for adoption by the court shall document its efforts to screen the child with other child placing agencies and shall list the child with local, regional, and inter-state adoption exchanges.

O. The needs of the child shall determine the amount of time taken to prepare the child for placement. The child shall be counseled regarding the adoptive placement and shall be protected from emotional disturbances associated with sudden separation from a known situation.

P. A child placing adoption agency shall develop a written plan with the child's current caregivers, the adoptive parents, and the child, to facilitate the child's transition into the adoptive family. The child's stated preferences shall be considered and if possible, honored.

R501-7-10. Services to Adoptive Parents.

A. Child placing adoption agencies shall provide prospective adoptive parents with a written description of their services, policies and procedures.

B. A child placing adoption agency shall explain the adoption process and the birth parents' rights, including the status of the putative father, to the prospective adoptive parents.

C. A child placing adoption agency shall provide all available non-identifying information on children who may be available for adoptive placement and their birth families, including but not limited to physical descriptions, special abilities, developmental and behavioral history, personality and temperament, medical and

genetic history, ethnic and cultural background, and prior placement history.

D. A child placing adoption agency shall inform prospective adoptive parents of the availability of non-identifying health, genetic and social histories in accordance with Section 78-30-17, and Utah's Mutual Consent Voluntary Adoption Registry, Section 78-30-18.

E. A child placing adoption agency shall provide individual or group counseling to help the prospective adoptive parents evaluate and develop their capacities to meet the ongoing needs of the child.

F. A child placing adoption agency shall review all available information about the birth parents and child with the prospective adoptive parents and encourage the selection of a child whose needs the adoptive parents will be able to meet.

G. A child placing adoption agency shall prepare the child and adoptive family for the placement of the child in the home.

H. A child placing adoption agency shall inform each prospective adoptive parent that information about individual children in the custody of the state who are available for adoption may be obtained by contacting the Division of Child and Family Services or its internet site and shall provide a pamphlet prepared by the Division of Child and Family Services regarding adoption of children in the State's custody. The agency shall inform each prospective adoptive parent that assistance may be available when adopting children in the custody of the state, including:

1. Medicaid coverage for medical, dental, and mental health services;

2. tax benefits, adoption subsidies, or other financial assistance to defray the costs of adoption; and

3. training and ongoing support for the adoptive parents.

I. A child placing adoption agency shall inform adoptive parents when a child may be eligible for an adoption subsidy or benefit, including but not limited to SSI, and shall coordinate with [~~the applicable state agency~~]Division of Child and Family Services to apply for the subsidy or benefit.

J. A child placing adoption agency shall have written procedures and standards for the evaluation and approval or denial of applications from prospective adoptive parents.

K. The home study shall include:

1. interviews with the adoptive applicants, their children, and other individuals living in the home;

2. criminal background and child abuse screening of adoptive applicants and other adults living in the home in accordance with R501-14, R501-18, and Sections 53-10-108(4) and 78-30-3.5

3. written statements from references identified by the applicants. The applicants shall supply names of at least two non-related and one related individuals who shall provide information directly to the agency regarding the applicant's qualifications for parenting an adoptive child;

4. a medical history and a doctor's report, based upon a doctor's physical examination of each applicant, made within six months prior to the date of the application[~~, and indicating whether the doctor believes each applicant is able to fulfill the responsibilities of parenthood~~]; and

5. inspections of the home, to determine whether sufficient space and facilities to meet the needs of the child exist and whether basic health and safety standards are maintained.

L. The adoptive applicants shall be informed, in writing, and within five business days after the decision is made, as to the acceptance or the reasons for the denial of their home study. The agency shall provide applicants with a written copy of the agency's appeal process, which shall include the right to submit a written appeal and request for reconsideration, and the right to request an additional evaluation, upon order of the court in accordance with Section 78-30-3.5.

M. A child placing adoption agency shall select applicants who:

1. are able to provide the continuity of a caring relationship

2. are informed with regard to a child's ethnic, religious, cultural, and racial heritage; and

3. understand the needs of a child at various developmental stages.

N. [~~A child placing adoption agency shall not reject an applicant solely based upon the applicant's marital status. Married applicants shall maintain a residence together and the relationship shall be stable~~]A child placing adoption agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with prospective adoptive parents. This disclosure shall also be clearly stated in writing on the adoptive parents' application for services forms.

O. A child placing adoption agency shall verify that an applicant's income is sufficient to provide for a child's needs.

P. A child placing adoption agency shall not reject an applicant solely based upon the applicant's choice to work outside the home. Applicants who work outside the home shall provide a written plan describing how they shall provide security and responsible child care to meet the individual child's needs.

Q. A child placing adoption agency shall not make a legal risk placement unless the prospective adoptive parents have first given their written consent, indicating that they [~~are~~]have been fully informed of the specific risks involved.

R. [~~A~~]Except when authorized by court order pursuant to Section 78-30-3.5(1)(b), a child placing adoption agency shall not place a child in an adoptive home until the home study and each adult's criminal and abuse background screenings have been approved.

S. A child placing adoption agency shall provide continuing support to the child and the adoptive family after placement[~~,~~]and before [~~and following the~~]finalization of the adoption, including but not limited to:

1. providing or making referrals to services such as counseling, crisis intervention, respite care, and support groups;

2. monitoring the child's adjustment and development;

3. assisting the family in helping the child, friends, family members, extended family members, neighbors, schools, and others understand the adoption process; and

4. assisting the family in understanding their feelings, understanding the child, and adjusting to the family composition.

T. The frequency of home visits, office contacts, telephone calls, and other contacts by the child placing adoption agency shall depend on the needs of the child and the adoptive family and may vary depending whether the child is an infant, an older child, or a child with medical or other difficulties, and whether the adoptive parents are faced with unanticipated problems.

1. The first contact after placement shall take place within two weeks of placement.

2. A minimum of [~~three~~]one [~~face~~]face-to-face supervisory home visit[~~s~~] shall take place before finalization[~~, with at least two visits in the home~~].

U. A child placing adoption agency shall provide assistance in finalizing the adoption, unless the agency removes the child due to circumstances that may impair the child's security in the family or

jeopardize the child's physical and emotional development, including but not limited to incompatibility; mental illness; seriously incapacitating illness; the death of one of the adoptive parents; the separation or divorce of the adoptive parents; the abuse, neglect, or rejection of the child; the lack of attachment to the child; or a request by the adopting parents to remove the child.

1. If a child is removed from an adoptive home by a child placing adoption agency, the adoptive parents shall be entitled to appeal the removal decision. The agency shall provide the adoptive parents written notice of their right to appeal and the procedure for appeal.

R501-7-11. Intercountry Adoptions.

A. In addition to complying with all other rules regarding adoption, a child placing adoption agency that provides inter-country adoption services shall document that it has complied with all applicable laws and regulations of the United States and the child's country of origin, and shall document that:

1. the child is legally freed for adoption in the country of origin;

2. information was provided to the adopting parents about naturalization proceedings;

B. A child placing adoption agency that provides intercountry adoption services shall:

1. establish an official and recorded method of fund transfers to avoid, when possible, the use of direct cash transactions to pay for adoption services in other countries;

2. identify, in writing and in advance of accepting any payment or signing any agreement, the total cost of providing adoption services in the child's country, including but not limited to the cost of care for the child, personnel, overhead, training, communication, obtaining any necessary documents, translation, the child's passport, notarizations and certifications, with disclosure of whether the prospective adoptive parents shall pay such costs directly in the child's country or indirectly through the child placing adoption agency;

3. itemize the costs, if any, of mandatory payments to child protection or child welfare programs in the child's country of origin, including but not limited to a description of:

a. a fixed contribution amount identified in advance and in writing to the prospective adoptive parents;

b. the intended use of the payment; and

c. the manner in which the transaction will be recorded and accounted for;

4. provide all applicants with written policies governing refunds.

C. A child placing adoption agency that provides intercountry adoption services shall notify adoptive applicants within ten business days when information is received that a foreign country is suspending its adoption program.

D. A child placing adoption agency that provides intercountry adoption services shall verify and maintain documentation regarding the credentials and qualifications of agents working in their behalf in foreign countries.

KEY: licensing, human services, child placing
2004
Notice of Continuation November 25, 2002
62A-2-101 et seq.

▼ ▼

Human Services, Recovery Services
R527-38
Unenforceable Cases

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 27223
FILED: 06/10/2004, 12:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule is to define the criteria for categorizing a case as unenforceable.

SUMMARY OF THE RULE OR CHANGE: This rule gives the criteria for categorizing a case as unenforceable. If a case is unenforceable, it may be closed under federal case closure criteria defined in 45 CFR 303.11.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 45 CFR 303.11

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There would be a decreased cost to the state budget because the office would no longer be required to keep incoming interstate unenforceable cases open. Agents would not have to continue to try working the case.
❖ LOCAL GOVERNMENTS: Administrative rules of the Office of Recovery Services do not apply to local government.
❖ OTHER PERSONS: Either or both parents may incur costs if the order is referred to a private attorney or private collection agency to try to enforce the order.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Either or both parents may incur costs if the order is referred to a private attorney or private collection agency to try to enforce the order.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kristen Lowe at the above address, by phone at 801-536-0347, by FAX at 801-536-8833, or by Internet E-mail at klowe@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 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Emma Chacon, Director

R527. Human Services, Recovery Services.
R527-38. Unenforceable Cases.
R527-38-1. Unenforceable Case Criteria.

1. This rule establishes the criteria which a support case must satisfy to be categorized as unenforceable. All of the following criteria must be met:

a. The case is currently not a paying case; in that payments shall not have been posted to the case during the last 12 months; and payments are not expected to be posted in the near future.

b. No federal offset money has been received by the Office of Recovery Services (ORS) during the last two years.

c. No state tax money shall have been received by ORS within the most recent two years.

d. ORS shall have collected $1,000 or less on the case over the last two years by methods other than federal offset or state tax.

e. There are no financial institution accounts belonging to the non-custodial parent that can be attached.

f. No executable assets belonging to the non-custodial parent have been identified.

g. A credit bureau report has been accessed within the past six months indicating income or asset information is unavailable.

h. If the matter concerns a Title IV-E case, all of the children identified as being part of the case shall have been emancipated or parental rights shall have been terminated.

KEY: child support
2004
45 CFR 303.11

▼ ▼

Human Services, Services for People with Disabilities
R539-1
Eligibility

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27233
FILED: 06/15/2004, 08:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes clarify eligibility requirements to fall in line with general eligibility and Medicaid Waivers for people with developmental disabilities, mental retardation, brain injury, and physical disabilities. The rule is also reorganized.

SUMMARY OF THE RULE OR CHANGE: Subsections are broken out into waiver and non-waiver eligibility criteria each for developmental disability, physical disability, and acquired brain injury. The changes clarify the eligibility requirements under each waiver as well as non-waiver eligibility in each of the three areas listed above. The changes also clarify the paperwork that both the Division and the person applying for services are responsible for completing.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-5-102 and 62A-5-103

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The clarifications to the eligibility requirements will result in cost neutrality. There may be possible internal staff costs due to an increase in the requirements in determining eligibility, however, there will also be a reduction in requirements in other areas, including removing the requirement of doctor visits to determine eligibility. Staff will now make those determinations. New forms were developed to streamline the process and save time within the Division.
❖ LOCAL GOVERNMENTS: No local funding is used in determining eligibility, therefore, there shall be no financial impact on local government.
❖ OTHER PERSONS: Provider agency staff are not involved in determining eligibility. No additional costs for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: People applying for services are now and shall continue to be required to complete and submit paperwork and evaluations involved in determining eligibility. Since they are not paid to complete these documents, there is no added cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Eligibility is determined within the Division. There is no fiscal impact on outside businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzie Totten at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at stotten@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 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R539. Human Services, Services for People with Disabilities.
R539-1. Eligibility.
R539-1-1. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for Division services as required by Subsection 62A-5-102(3); and

(b) notice to Applicants of hearing rights and the hearing process.

R539-1-2. Authority.

(1) This rule establishes procedures and standards for the determination of eligibility for Division services as required by Subsection 62A-5-102(3).

(2) The procedures of this rule constitute the minimum requirements for eligibility for Division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101.

(2) In addition:

(a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;

(b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;

(c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;

(d) "Department" means the Department of Human Services;

(e) "Developmental Disability" means mental retardation and related conditions;

(f) "Division" means the Division of Services for People with Disabilities;

(g) "Form" means a standard document required by Division rule or law;

(h) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;

(i) "Hearing Request" means an oral or written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;

(j) "ICF/MR" means Intermediate Care Facility for Persons with Mental Retardation;

(k) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;

(l) "Region" means one of four geographical areas of the state of Utah referred to as central, eastern, northern or western;

(m) "Region Office" means the place Applicants apply for services and where support coordinators, supervisors and region directors are located;

(n) "Related Conditions" means a severe, chronic disability that meets the following conditions:

(i) It is attributable to:

(A) Cerebral palsy or epilepsy; or

(B) Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.

(ii) It is manifest before the person reaches age 22.

(iii) It is likely to continue indefinitely.

(iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care.

(B) Understanding and use of language.

(C) Learning.

(D) Mobility.

(E) Self-direction

(F) Capacity for independent living.

(o) "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;

(p) "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah.;

(q) "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;

(r) "Support Coordinator" means an employee of the Division who completes written documentation of supports and determination of eligibility and support needs;

(s) "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and

(t) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the developmental disabilities and mental retardation waiver, the brain injury waiver and physical disabilities waiver.

R539-1-[~~1~~]4. Eligibility for [~~General~~] Non-Waiver Developmental Disability Services.

(1) The Division will serve those Applicants who meet the definition of disabled in Subsections 62A-5-101(4)(a)(i) through (iv) and 62A-5-101(4)(b).

(2) When determining limitations in the areas listed below, age appropriate abilities must be considered.

(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

(c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency.

(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from

strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with mental retardation as per 62A-5-101(6) or related conditions as per 42CFR435.1009.

(4) Applicants who have a disability due to mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance abuse or personality disorder do not qualify for services under this rule.

[~~(3)~~](5) The Applicant, parent of a minor child, or the Applicant's Guardian must be a [~~R~~]resident of the state of Utah prior to the Division's final determination of eligibility. [~~Resident is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah.~~]

[~~(4)~~](6) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.[~~The Applicant or Applicant's Representative shall be provided with information about Division service options and a copy of the Division's Guide to Services, Medicaid, state and local Family Councils, community resources (e.g. vocational rehabilitation, SSI, etc.). If an Applicant's Representative is interested in residential services for an Applicant who is 17 years of age and under, the Applicant's Representative shall be provided with (in addition to the information listed above) an Office of Recovery Services (ORS) Pamphlet and given instructions on how to contact ORS in order to request a required Duty of Support application.~~]

(7) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the [~~I~~]intake worker to determine eligibility.

(8) The following documents are required to determine eligibility for [~~State funded~~]non-waivered developmental disabilities services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff within each region office.[~~signed by a licensed physician, licensed psychologist or certified school psychologist.~~] For children under seven years of age, [~~two separate~~]Eligibility for Services Form 19[~~e~~]C, completed by the designated staff within each region office,[~~signed by a certified or licensed professional working in the disability field~~] will be accepted in lieu of the Eligibility for Services Form 19. The staff member[~~professional~~] will indicate on the Eligibility for Services Form 19[~~e~~]C that the child has substantial functional limitation in three areas of major life activity[~~or is at risk due to an existing condition associated with these limitations~~]; that the limitations are likely to continue indefinitely; and what assessment provides the bas[~~e~~]is of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in [~~a~~]Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Region staff shall determine the Applicant eligible or ineligible for funding for non-waiver developmental disabilities [~~supports~~]services within 90 days of receiving the required documentation.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are meet.[~~(12) Non-Waiver Persons who do not meet Waiver level of care must apply for a Medicaid Card prior to entering into services. Non-Waiver Persons who meet Waiver level of care must apply for determination of financial eligibility using Form 927 prior to entering into services. Non-Waiver Persons who apply for a Medicaid Card or for a determination of Waiver financial eligibility shall provide the support coordinator with the determination letter within 10 days of the receipt of such documentation. Non-Waiver Persons who fail to comply with these requirements shall have funding reduced to the state match rate.~~]

(13) This [~~policy~~]rule does not apply to Applicants who meet the separate eligibility criteria for [~~personal assistance~~]physical disability and brain injury outlined in Rule 539-1-[~~3~~]6 and Rule 539-1-[4]8 respectively.

(14) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in service packages or be discharged from services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-[~~2~~]5. Eligibility for Developmental Disabilities / Mental Retardation Waiver Services.

(1) Matching federal [~~Medicaid~~]funds may be[~~are~~] available through the Medicaid Home and Community-Based Waiver for People with Mental Retardation and Developmental Disabilities to provide an array of home and community-based services that an eligible individual needs.[~~ To be determined eligible for Waiver funding Applicants must:~~

~~(a) Meet all state defined, age-appropriate eligibility requirements as listed in R539-1-1; and~~

~~(b) Meet the following requirements, as contained in the State Implementation Plan which is incorporated by reference in the Department of Health Rule R414-61 (August 9, 2001) which this Division incorporates by reference:~~

~~(i) The individual is Medicaid eligibility;~~

~~(ii) The individual's diagnosis of mental retardation/developmental disability is documented by a physician or psychologist's assessment;~~

~~(iii) A qualified waiver support coordinator has documented that the individual meets the level of care requirements specified in R414-502-8: Criteria for Intermediate Care Facility for the Mentally Retarded; and~~

~~(iv) The individual, but for the provision of waiver services would otherwise require placement in an ICF/MR to receive needed services.~~]

[~~(c)~~](a) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

(2) Applicants who are found eligible for Waiver funding may choose to participate in the Medicaid Waiver. If the Applicant chooses not to participate in the Waiver, their funding will be equivalent to the State portion of the Waiver budget they would have received had they participated in the Waiver.[

~~(3) Children six years of age, who are currently receiving Division funding, must initiate a division Form 19 before a child's seventh birthday to re-determine eligibility for Division funding. If the child is determined to not be eligible or the Division Form 19 is not returned within 90 calendar days from the day a Form 19 was either given or mailed to the Applicant or Applicant's Representative, a Notice of Agency Action, Form 522I and a Notice of Hearing Rights Form 490S shall be sent to the Applicant or Applicant's Representative.~~]

[~~R539-1-3. Personal Assistance Services Eligibility.~~

~~A. Policy.~~

~~1. Personal Assistance Services means hands-on care of both a medical and non-medical supportive nature specific to the needs of an adult with a physical disability.~~

~~2. Applicants for Personal Assistance Services are required to complete a written application and are screened by the Division of Services for People with Disabilities. Applicants must be adults with physical disabilities who:~~

~~a. are 18 years of age or older;~~

~~b. have a documented physical disability resulting in a functional loss of two or more limbs to the extent that the assistance of another person is required to accomplish personal care;~~

~~c. are medically stable;~~

~~d. require at least 14 or more hours per week of personal assistance services;~~

~~e. demonstrate the ability to be self-directed and capable of managing their personal affairs as well as supervising the person(s) hired to provide the necessary personal assistance; and~~

~~i. have at least one personal attendant willing to be trained and available to provide support services in a setting that can accommodate the personnel and equipment needed to adequately and safely care for the individual.~~

~~ii. To be eligible for the Personal Assistance Medicaid Waiver, individuals must also:~~

~~I. qualify for Medicaid based on personal income and resources; and~~

~~II. meet admission criteria for nursing facility care as determined by the Division of Health Systems Improvement, Resident Assessment Section.~~

~~B. Procedures.~~

~~1. An application for services is made directly to the State Division Office by submitting Form 20 signed by a licensed physician. The application must be complete and include:~~

~~a. documentation of the extent of personal assistance services needed;~~

~~b. documentation that a pending or "dependent" living situation can be alleviated by Personal Assistance Services; and~~

~~c. verification by a physician of required information.~~

~~2. Members of a person's support team may assist an individual who receives support services to make an application for personal assistance services.~~

~~3. All applications shall be reviewed by a Division State Office staff member. If the applicant is determined eligible, the applicants name shall be entered on the waiting list. The persons priority on the waiting list shall be determined by the date the application was received by the Division's State Office. Applicants shall receive funding in order of priority~~

~~4. Applicants waiting for personal assistance support services or their representatives, may petition a Review Team to ask for a higher priority.~~

~~5. Individual who receive personal assistance support services may petition a Review Team to consider a request for an increase in funding~~

~~6. Appeals for denial of services will be made according to R539-2-5~~

~~7. A person determined eligible for the Personal Assistance Services Medicaid Waiver can choose to maximize the amount and/or frequency of supports by use of the Waiver. If the person chooses not to participate in the Personal Assistance Waiver, the person shall only receive that portion of State assistance that would be used to pay the State match for supports covered by Medicaid.~~

]

R539-1-6 Eligibility for Non-Waivered Physical Disabilities Services.

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

(a) Have the functional loss of two or more limbs;

(b) Be 18 years of age or older;

(c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and

(d) Be medically stable, have a physical disability and require in accordance with the Person's physician's written documentation, at least 14 hours per week of personal assistance services in order to remain in the community and prevent unwanted institutionalization.

(e) Have their physician document that the Person's qualifying disability and need for personal assistance services are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living/instrumental activities of daily living;

(f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) Be capable of managing personal financial and legal affairs; and

(h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant indicating that the intake case will be placed in inactive status.

(a) The Applicant may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

(b) determine and prioritize needs scores;

(c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for developmental disability/mental retardation and brain injury outlined in Rule 539-1-4 and Rule 539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in service packages or be discharged from services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-7 Eligibility for Physical Disabilities Waiver Services.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Physical Disabilities funding but who choose not to participate in the Home and Community-Based Waiver for People with Physical Disabilities, will receive only the state paid portion of services.

R539-1-[4]8. Eligibility for Non-Waiver Brain Injury [~~Waiver Eligibility~~]Services.

[~~A. Policy.~~

~~A person who has a documented brain injury, who requires the level of care provided in a Nursing Facility (according to Utah Administrative Rules for Health R414-502-3) and who is 18 years of age or older may be eligible for Division services under the Brain Injury Home and Community-Based Waiver. Only individuals with an acquired neurological brain injury or limitation qualify for services. Individuals with substance abuse or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer as their primary diagnosis are ineligible for these Waiver services.~~

~~B. Procedures.~~

~~1. Required documentation:~~

~~a. documentation of brain injury signed by a licensed physician;~~

~~c. a Rancho Los Amigos Adult Head Trauma Scale, completed within the last year by a qualified professional. To be eligible for services, the individual's degree of functioning must be rated at a level of 5, 6, or 7 on the Rancho Los Amigos Adult Head Trauma Scale.~~

~~2. Eligibility will not be determined until all documentation is received. Eligibility may be denied after 90 days if necessary documentation is not received.~~](1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented acquired neurological brain injury;

(b) Be 18 years of age or older;

(c) score between 40 and 120 on the Brain Injury Comprehensive Assessment Form 4-1.

(2) Applicants with substance abuse or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer as a primary diagnosis are ineligible for these non-waiver services.

(3) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(4) The Applicant or the Applicant's Guardian must be a resident of the state of Utah prior to the Division's final determination of eligibility.

(5) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(6) The intake worker will complete or compile the following documents:

(a) Brain Injury Intake, Screening and Comprehensive Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824BI, completed or updated within one year of eligibility determination;

(7) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(8) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, region staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(9) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

R539-1-9 Eligibility for Acquired Brain Injury Waiver Services.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Brain Injury funding but who choose not to participate in the Home and Community-Based Waiver for People with Brain Injury, will receive only the state paid portion of services.

(3) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

R539-1-[5]10. Graduated Fee Schedule.

(1) Pursuant to Utah Code 62A-5-105 the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements listed in the Developmental Disabilities/Mental Retardation Waiver, the Traumatic Brain Injury Waiver or the Physical Disabilities Waiver. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-2 rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who [~~do not participate in a Medicaid Waiver~~]only meet the general eligibility requirements, as per R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division [~~fee Determination Form~~]Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income (using the formula: (assets + income) / by the total number of family members = available income). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver, who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the

amount due. If a Person can show good cause, the Division Director may grant exceptions on a case-by-case basis.

KEY: [~~disabled persons, social services~~]human services, disability
[~~November 13, 2003~~]2004
Notice of Continuation December 18, 2002
62A-5-103
62A-5-105

▼ ▼

Natural Resources, Wildlife Resources
R657-42
Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27239
FILED: 06/15/2004, 16:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to provide provisions for surrendering Cooperative Wildlife Management Unit (CWMU) or Limited Entry Landowner Permits.

SUMMARY OF THE RULE OR CHANGE: The title of Rule R657-42 is being amended to Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents. Section R657-42-2 is being amended to add definitions for "landowner association operator" and "wildlife document." Section R657-42-11 is being added to provide that persons who obtain a CWMU or limited entry landowner permit may surrender the permit after the deadlines provided in the event of a death, injury or illness, deployment or mobilization, or an error occurred in issuing the permit. Other changes are being made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-19-1, 23-19-38, and 23-19-38.2

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This amendment is for clarification, and to provide provisions for persons who obtain a CWMU or limited entry landowner permit may surrender the permit after the deadlines provided in the event of a death, injury or illness, deployment or mobilization, or an error occurred in issuing the permit. The Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.
❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
❖ OTHER PERSONS: This amendment is for clarification, and to provide provisions for persons who obtain a CWMU or limited entry landowner permit may surrender the permit after the deadlines provided in the event of a death, injury or illness, deployment or mobilization, or an error occurred in issuing the permit. Therefore, this amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment is for clarification, and to provide provisions for persons who obtain a CWMU or limited entry landowner permit may surrender the permit after the deadlines provided in the event of a death, injury or illness, deployment or mobilization, or an error occurred in issuing the permit. DWR determines that there are no compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@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 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.
R657-42. [~~Accepted Payment of Fees, Late~~]Fees, Exchanges, Surrenders, Refunds and Reallocation of [~~Licenses, Certificates of Registration and Permits~~]Wildlife Documents.
R657-42-1. Purpose and Authority.
(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue [~~licenses, permits, tags and certificates of registration~~]wildlife documents in accordance with the rules of the Wildlife Board.
(2) This rule provides the standards and procedures for the:
(a) exchange of permits;
(b) surrender of [~~licenses, certificates of registration and permits;~~]wildlife documents;

[~~(c) refund of licenses, certificates of registration and permits;~~](c) refund of wildlife documents;

(d) reallocation of permits; and

(e) assessment of late fees.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and proclamations of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Deployed or mobilized" means that a person provides military or emergency services in the interest of national defense or national emergency pursuant to the demand, request or order of their employer.

(c) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) Cooperative Wildlife Management Unit (CWMU) landowner association or its designated operator as provided in Rule R657-37.

(d) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the division.

R657-42-3. [~~R657-42-3. Permit~~]Exchanges.

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office prior to the season opening date of the permit to be exchanged.

(2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit as provided in Rule R657-10.

(3) Any person who has obtained a limited entry bear any weapon or limited entry bear archery permit may exchange that permit for a limited entry bear archery or limited entry bear any weapon permit, respectively.

(4) The division may charge a handling fee for the exchange of a permit.

R657-42-4. [~~Surrender of Licenses, Certificates of Registration and Permits.~~]Surrenders.

(1) Any person who has obtained a [~~license, certificate of registration or permit~~]wildlife document and decides not to use it, may surrender the [~~license, certificate of registration or permit~~]wildlife document to any division office.

(2)(a) Any person who has obtained a [~~license, certificate of registration or permit may surrender the license, certificate of registration or permit~~]wildlife document may surrender the wildlife document prior to the season opening date of the [~~license, certificate of registration or permit~~]wildlife document for the purpose of:

(i) waiving the waiting period normally assessed and reinstating the number of bonus points, including a bonus point for the current year as if a permit had not been drawn, if applicable; or

(ii) purchasing a reallocated permit or any other permit available for which the person is eligible.

(b) Preference points shall not be reinstated when surrendering the applicable permits.

(3) A [~~Cooperative Wildlife Management Unit~~]CWMU permit must be surrendered before the following dates, except as provided in Section R657-42-11:

(a) the opening date for the respective general archery season for buck deer, bull elk or spike bull elk;

(b) September 1 for pronghorn and moose;

(c) August 15 for antlerless deer and elk;

(d) prior to the applicable season date for small game and waterfowl; and

(e) prior to the applicable season date of any variance approved by the Wildlife Board in accordance with Rules R657-21 and R657-37.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season.

(5) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-5. Refunds[~~ of Licenses, Certificates of Registration and Permits~~].

(1) The refund of a license, certificate of registration or permit shall be made in accordance with:

(a) Section 23-19-38 and Rule R657-50;

(b) Section 23-19-38.2 and Subsection (3); or

(c) Section 23-19-38 and Subsection (4).

(2)(a) An application for a refund may be obtained from any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(3) A person may receive a refund in accordance with Subsection (3) for a [~~license, permit, or certificate of registration~~]wildlife document if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the [~~license, permit or certificate of registration~~]wildlife document, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the [~~license, permit or certificate of registration~~]wildlife document;

(b) the person surrenders the [~~license, permit or certificate of registration~~]wildlife document to the division, or signs an affidavit stating the [~~license, permit or certificate of registration~~]wildlife document is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the [~~license, permit or certificate of registration~~]wildlife document, except as provided in Subsection (5); and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and

(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a [~~license, permit or certificate of registration~~]wildlife document if the person to whom it was issued dies prior to participating in the hunting or fishing

activity authorized by the [~~license, permit or certificate of registration~~]wildlife document, provided:

(a) The person legally entitled to administer the decedent's estate provides the division with:

(i) picture identification;

(ii) letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;

(iii) a photocopy of the decedent's certified death certificate; and

(iv) the [~~license, permit or certificate of registration~~]wildlife document for which a refund is requested.

(5) The director may determine that a person deployed or mobilized, or a decedent did not have the opportunity to participate in the activity authorized by the [~~license, permit or certificate of registration~~]wildlife document.

(6) The division may reinstate a bonus point or preference point, whichever is applicable, and waive waiting periods, if applicable, when issuing a refund in accordance with Subsection (3).

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry, once-in-a-lifetime and [~~Cooperative Wildlife Management Unit~~]CWMU permits.

(b) The division shall not reallocate resident and nonresident big game general permits.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public [~~Cooperative Wildlife Management Unit~~]CWMU permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list or as provided in Subsection (b).

(b) A person who is denied a permit due to an error in issuing permits may be placed on the alternate drawing list to address the error, if applicable, in accordance with the Rule R657-50.

(c) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(d) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(e) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public [~~Cooperative Wildlife Management Unit~~]CWMU permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season closes for that permit.

(4) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public [~~Cooperative Wildlife Management Unit~~]CWMU permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Section R657-42-4(2) and any other applicable rules and proclamations of the Wildlife Board.

(5) Any private [~~Cooperative Wildlife Management Unit~~]CWMU permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the division in accordance with Rule R657-37.

(6)(a) The division may allocate additional general deer permits and limited entry permits, if it is consistent with the unit's biological objectives, to address errors in accordance with Rule R657-50.

(b) The division shall not allocate additional [~~Cooperative Wildlife Management Unit~~]CWMU and Once-In-A-Lifetime permits.

(c) The division may extend deadlines to address errors in accordance with Rule R657-50.

R657-42-7. Reallocated Permit Cost.

(1) Any person who accepts the offered reallocated permit must pay the applicable permit fee.

(2) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-8. Accepted Payment of Fees.

(1) Personal checks, business checks, money orders, cashier's checks, and credit or debit cards are accepted for payment of [~~licenses, permits or certificates of registration~~]wildlife documents.

(2) Personal or business checks drawn on an out-of-state account are not accepted.

(3) Third-party checks are not accepted.

(4) All payments must be made payable to the Utah Division of Wildlife Resources.

(5)(a) Credit or debit cards must be valid at least 30 days after any drawing results are posted.

(b) Checks, and credit or debit cards will not be accepted as combined payment on single or group applications.

(c) If applicable, if applicants are applying as a group, all fees for all applicants in that group must be charged to one credit or debit card.

(d) Handling fees and donations are charged to the credit or debit card when the application is processed.

(e) Permit fees may be charged to the credit or debit card prior to the posting date of the drawings, if successful.

(f) The division shall not be held responsible for bank charges incurred for the use of credit or debit cards.

(6)(a) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The division charges a returned check collection fee for any check returned unpaid.

(7)(a) A license or permit is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The Division may make attempt to contact the successful applicant by phone or mail to collect payment prior to voiding the license or permit.

(c) The Division shall reinstate the applicant's bonus points or preference points, whichever is applicable, and waive waiting periods, if applicable, when voiding a permit in accordance with Subsection (b).

(d) A permit which is deemed void in accordance with Subsection (b) may be reissued by the Division to the next person listed on the alternate drawing list.

(8)(a) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit or debit card is invalid or refused.

(b) A person must notify the division of any change of credit or debit card numbers if the credit or debit card is invalid or refused.

(9) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(10) The division may require a money order or cashier's check to correct payment for a license, permit, or certificate of registration.

(11) Any person who fails to pay the required fee for any [~~license, permit or certificate of registration~~]wildlife document, shall be ineligible to obtain any other [~~license, permit, tag, or certificate of registration~~]wildlife document until the delinquent fees and associated collection costs are paid.

R657-42-9. Assessment of Late Fees.

(1) Any wildlife application submitted under the Utah Administrative Code Rules provided in Subsection (a) through (e), within 30 days of the applicable application deadline established in such rules, in the proclamations of the Wildlife Board, or by the division may be processed only upon payment of a [~~$10.00 late fee~~]late fee as provided by the approved fee schedule.

(a) R657-52, Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs;

(b) R657-21, Cooperative Wildlife Management Units for Small Game;

(c) R657-22, Commercial Hunting Areas;

(d) R657-37, Cooperative Wildlife Management Units for Big Game; or

(e) R657-43, Landowner Permits.

R657-42-10. [~~Duplicate License, Permit or Certificate of Registration.~~]Duplicates.

(1) Whenever any unexpired [~~license, permit, tag or certificate of registration~~]wildlife document is destroyed, lost or stolen, a person may obtain a duplicate from a division office, for five dollars or half of the price of the original [~~license, or permit~~]wildlife document, whichever is less.

(2) The division may waive the fee for a duplicate unexpired [~~license, permit, tag or Certificate of Registration~~]wildlife document provided the person did not receive the original [~~license, permit, tag or certificate of registration.~~]wildlife document.

(3) To obtain the duplicate [~~license, permit, tag or certificate of registration~~]wildlife document, the applicant must complete an affidavit testifying to such loss, destruction or theft pursuant to Section 23-19-10.

R657-42-11. Surrender of Cooperative Wildlife Management Unit or Limited Entry Landowner Permits.

(1) A person who has obtained a CWMU or limited entry landowner permit may surrender the permit after the deadlines provided in Subsections R657-42-4(3)(a), (b), and (c) for CWMU permits and after the season opening date for limited entry landowner permits for the purpose of:

(a) death in accordance with Section 23-19-38, Subsection (2) and Section R657-42-5(4);

(b) injury or illness in accordance with Section 23-19-38 and Subsection (2);

(c) deployment or mobilization in the interest of national defense or national emergency in accordance with Section 23-19-38.2 and Subsection (2); or

(d) an error occurring in issuing the permit in accordance with Subsection (2) and Rule R657-50.

(2)(a) The permittee and the landowner association operator must sign an affidavit stating that the permittee has not participated in any hunting activity.

(b) The permittee and landowner association operator signatures must be notarized.

(c) The affidavit and unused permit must be submitted to the division.

(3)(a) The division may reissue a voucher to a landowner association operator, or reallocate a surrendered permit in accordance with Section 23-19-38 and as provided in Subsections (b) and (c).

(b) The division may reallocate a surrendered permit:

(i) originally issued by the division through the big game drawing process in accordance with Section R657-42-6; or

(ii) originally issued by the division through a voucher redemption in the form of a new voucher issued to the landowner association operator.

(c) Reissuance of vouchers or reallocation of permits under this section may only occur in the year in which the surrendered permit was valid.

KEY: wildlife, permits
[~~January 21,~~] 2004
Notice of Continuation May 14, 2003
23-19-1
23-19-38
23-19-38.2

▼ ▼

Natural Resources, Wildlife Resources
R657-50
Error Remedy Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27240
FILED: 06/15/2004, 16:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to provide the standards and procedures in the identification and resolution of landowner association operator errors, which result in the incorrect processing of a voucher to obtain a wildlife document.

SUMMARY OF THE RULE OR CHANGE: Section R657-50-3 is being amended to add definitions for: "landowner association operator," "landowner association operator error," and "voucher." Section R657-50-6 is being amended to provide the standards and procedures for landowner association operator errors, which results in the incorrect processing of a voucher to obtain a wildlife document. Other changes are being made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-19, 23-19-1, and 23-19-38

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule is being amended to provide the standards and procedures in the identification and resolution of landowner association operator errors. The Division of Wildlife Resources (DWR) determines that this amendment does not create a cost or savings impact to the state budget or DWR's budget.

❖ LOCAL GOVERNMENTS: None--This rule does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
❖ OTHER PERSONS: This rule is being amended to provide the standards and procedures in the identification and resolution of landowner association operator errors. The rule does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule is being amended to provide the standards and procedures in the identification and resolution of landowner association operator errors. The DWR determines that there are no additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@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 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.
R657-50. Error Remedy [~~Rule~~].
R657-50-1. Purpose and Authority.

(1) Under the authority of Sections 23-14-19, 23-19-1, and 23-19-38 this rule is established to provide guidelines for identifying and resolving errors resulting in the:

(a) rejection of a [~~license, permit, tag, or Certificate of Registration (COR)~~]wildlife document application;

(b) denial of a [~~license, permit, tag, or COR~~]wildlife document; or

(c) incorrect issuance of a [~~license, permit, tag or COR~~]wildlife document.

(2) This rule provides standards and procedures in the identification and resolution of division errors, third party errors and petitioner errors.

R657-50-2. Policy.

(1)(a) The Division receives hundreds of thousands of applications and issues tens of thousands of wildlife documents each year through a variety of distribution methods, including:

(i) drawings;

(ii) over-the-counter sales;

(iii) license agent sales; and

(iv) online sales.

(b) The application procedures and eligibility requirements for wildlife documents are set forth in Utah Code, Title 23, and Utah Administrative Code Rules, Title R657.

(c) The public must comply with the procedures and requirements set forth in the statutes and rules identified in Subsection (1)(b).

(d) The Division recognizes, however, that errors may be made by the Division in processing and issuing wildlife documents. Therefore, procedures are needed for evaluation, identification and resolution of errors.

(2)(a) The Division may notify petitioners of rejection status for wildlife document applications completed incorrectly as provided under the applicable application correction procedures set forth in the respective statutes and rules identified in Subsection (1)(b).

(b) The Division may use the data on file to correct rejection status applications. Ultimately, however, it is the responsibility of the petitioner to provide all necessary information as required on the application.

(3)(a) The Division may mitigate division and third party errors when issuing wildlife documents by:

(i) extending a deadline;

(ii) issuing a refund on an erroneously collected fee;

(iii) issuing the correct wildlife document; or

(iv) authorizing an incorrectly issued wildlife document.

(b) Any mitigation efforts shall be subject to the Division's determination that the petitioner shall not receive an unfair benefit from the mitigation.

(c) The Division may not mitigate errors caused in whole or part by the petitioner's knowing violation of statute, rule or proclamation.

(d) This rule applies only to errors adversely effecting a petitioner that cannot be remedied through compliance with existing processes and procedures set in statute, rule or proclamation.

(e) The Division may refund any fee collected in error.

R657-50-3. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2, and the applicable rules as provided in Section R657-50-1(b).

(2) In addition:

(a)(i) "Division error" means the Division or one of its license agents erroneously:

(A) provides information to the petitioner, which the petitioner relied upon to their detriment in obtaining, or attempting to obtain a wildlife document;

(B) rejects a properly completed and accurate wildlife document application;

(C) incorrectly issues a wildlife document; or

(D) incorrectly denies issuing a wildlife document.

(ii) "Division error" does not include any error made by the Division or its agents acting in reliance upon inaccurate information provided by the petitioner or any other individual acting in the petitioner's behalf.

(b) "Error Committee" means a committee established by the Director consisting of the Wildlife Chief, [~~Public~~]Administrative Services Chief, [~~and~~]Licensing Coordinator, and Rules Coordinator, or their designees[~~, to:~~

~~(i) review complaints of errors on applications, permits, and fees;~~

~~(ii) determine facts;~~

~~(iii) apply the provisions of this rule; and~~

~~(iv) recommend resolutions to the Director's Office or Wildlife Board.~~

~~(c)~~].

(c) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) Cooperative Wildlife Management Unit (CWMU) landowner association or its designated operator as provided in Rule R657-37.

(d) "Landowner association operator error" means a landowner association operator whose error or mistake results in an incorrect voucher redemption.

(e) "Petitioner" means the person directly impacted by an error adversely effecting the opportunity to obtain or use a wildlife document.

[~~(d)~~](f) "Petitioner error" means the petitioner did not comply with the procedures and requirements to apply for or obtain a wildlife document. Petitioner error includes errors made by a person acting on the petitioner's behalf.

[~~(e)~~](g) "Rejection status" means the application will not be considered for a wildlife document due to:

(i) a petitioner error on the application;

(ii) the application lacking required information; or

(iii) the petitioner does not meet a specific requirement.

[~~(f)~~](h) "Third party error" means the petitioner has satisfied the procedures and requirements for obtaining a wildlife document, but the opportunity is lost due to an error by mail carrier services or financial institutions.

(i) "Voucher" means a document issued by the division to a landowner association member or landowner association operator, to designate who may purchase a CWMU big game hunting permit or a limited entry landowner permit from a division office.

(j)[~~(g)~~] "Wildlife document" means any license, permit, tag, or certificate of registration issued by the Division.

R657-50-4. Division Error Procedures.

(1) A Division error, which results in the rejection or incorrect processing of an application to obtain a wildlife document through a drawing, may be handled as provided in Subsections (a) through (d).

(a) If the drawing has not been held, the Division may extend the application deadline and evaluate the application as though filed timely.

(b) If the drawing is over and the wildlife document applied for is available, the Division may issue the wildlife document.

(c) If the drawing is over and the wildlife document applied for is not available, the Division must follow the procedures set forth in Subsection (6).

(d) If an application is for one or more persons applying as a group, the Division may treat the remaining members of the group the same as the petitioner.

(2) A Division error, which results in an application denial for wildlife documents other than those issued through a drawing, may be resolved by extending the application deadline and evaluating the application as though filed timely.

(3) A Division error, which results in an impermissible surrender or exchange of a wildlife document may be resolved by extending the deadline necessary to validate the surrender or exchange, provided:

(a) the petitioner has not participated in the activity authorized by the surrendered wildlife document; and

(b) the petitioner shall be substantially prejudiced if relief under this section is not granted.

(4) A Division error, which results in the improper denial of a wildlife document, may be resolved as provided in Subsections (a) through (b).

(a) If the wildlife document erroneously denied is available, the Division may issue the wildlife document.

(b) If the wildlife document erroneously denied is not available, the Division must follow the procedures set forth in Subsection (6).

(5) A Division error, which results in the erroneous issuance of a wildlife document may be resolved as provided in Subsections (a) through (b).

(a) If the wildlife document requested by the petitioner prior to or at the time of the error is currently available, the Division may issue the wildlife document.

(b) If the wildlife document requested by the petitioner prior to or at the time of the error is currently not available, the Division must follow the procedures set forth in Subsection (6).

(6) Procedures for issuing wildlife documents otherwise unavailable for distribution are as follows:

(a) If the petitioner would have received a wildlife document absent an error, or if the petitioner received a wildlife document because of an error, the Division shall determine if an additional wildlife document beyond the applicable quota may be issued without detriment to the particular wildlife species in a specific hunt area.

(i) If issuing the additional wildlife document is not detrimental to the species in the hunt area, the Division may issue the wildlife document, except as provided in Subsection (A).

(A) Only the Wildlife Board may approve issuing an additional permit for a once-in-a-lifetime hunt.

(B) Additional [~~Cooperative Wildlife Management Unit~~]CWMU permits may not be issued.

(ii) If a wildlife document cannot be issued, the petitioner may be placed at the top of the alternate drawing list.

(iii) If a wildlife document is not issued under Subsection (i) or (ii), the Division may issue a bonus point or preference point, whichever is applicable.

(iv) If a bonus point or preference point does not apply, the Division may issue a refund of the wildlife document and handling fee.

(b) If the petitioner would not have received a wildlife document in a drawing, absent an error, the Division may issue a bonus point or preference point, where applicable.

(c) If the wildlife document was applied for through a Division drawing and the hunting season for that wildlife document is over, the Division may:

(i) issue a bonus point or preference point for which the application was submitted, where applicable; or

(ii) issue a refund of the wildlife document and handling fee where bonus points or preference points do not apply.

R657-50-5. Third Party Errors.

(1) The Division shall not be held responsible for third party errors, including those of a financial institution or postal service, however, the Division may mitigate a third party error as provided under this section.

(2)(a) The petitioner must:

(i) provide proof to the satisfaction of the Division that the error was due to a third party; and

(ii) provide written documentation from the third party verifying the error.

(b) If the petitioner cannot prove to the satisfaction of the Division that the error was due to a third party, no mitigating action will be taken.

(3) Third party errors which result in the rejection or incorrect processing of an application to obtain a wildlife document through a drawing shall be handled as provided in Subsections (a) through (c).

(a) If the error is found prior to the drawing and there is sufficient time to complete the processing of the application before the drawing for which the application was submitted, the application shall be included in the drawing as though filed timely.

(b) If the error is found after the drawing or there is not sufficient time to complete the processing of the application before the drawing, and the petitioner's application is rejected because of the error, or the petitioner otherwise fails to obtain the wildlife document applied for, the Division may issue a bonus point or preference point for the hunt applied for, where applicable.

(c) A refund of handling fees shall not be made for third party errors.

(4) A third party error, which results in a rejected application for a wildlife document issued outside of a drawing process, may be handled by extending the application deadline and evaluating the application as though filed timely.

(5) If an application is for one or more persons applying as a group, the Division may treat the remaining members of the group the same as the petitioner.

R657-50-6. Landowner Association Operator Errors.

(1)(a) The Division shall not be held responsible for landowner association operator errors, however, the Division may mitigate a landowner association operator error as provided under this section.

(b) The petitioner must provide proof to the satisfaction of the Division that the error was due to a landowner association operator.

(c) If the petitioner cannot prove to the satisfaction of the Division that the error was due to a landowner association operator, the division will take no mitigating action.

(2) A landowner association operator error, which results in the incorrect processing of a voucher to obtain a wildlife document, shall be mitigated as provided in Rule R657-42-11(3).

R657-50-7. Petitioner Errors.

A petitioner error will not be corrected, except as provided in the applicable proclamations and rules under the Utah Administrative Code, Title R657.

R657-50-[~~7~~]8. Limitations.

An error may be reviewed at any time, but a wildlife document may not be issued or exchanged after the season closure for the activity authorized by the particular wildlife document.

R657-50-[~~8. Error Committee.~~]9. Error Committee.

(1) The error committee shall:

(i) review complaints of errors on applications, vouchers, wildlife documents, and fees;

(ii) determine facts;

(iii) apply the provisions of this rule; and

(iv) recommend resolutions to the Director's Office or Wildlife Board.

(2) Any relief granted and decisions made pursuant to this rule shall be reviewed and approved by the Error Committee and is subject to review by the Division Director.

KEY: wildlife, permits
[~~April 16, 2002~~]2004
23-14-19
23-19-1
23-19-38

Tax Commission, Administration
R861-1A-38
Class Actions Pursuant to Utah Code Ann. Section 59-1-304

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27236
FILED: 06/15/2004, 14:36

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-1-304 provides that a person may be included as a member of a class in a class action relating to a tax or fee if the person exhausts all administrative remedies with the Commission. This section also requires the Commission to make rules to simplify and expedite the administrative remedies with the Commission.

SUMMARY OF THE RULE OR CHANGE: The proposed section indicates actions the Commission may take to expedite a taxpayer's exhaustion of administrative remedies if the restrictions of Subsection 51-1-304(2) do not prevent the maintenance of a class action relating to a tax fee administered by the Commission.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-1-304

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Any impacts were taken into account by S.B. 250 (2004). (DAR NOTE: S.B. 250 is found at UT L 2004 Ch 84, and was effective 03/16/2004.)

❖ LOCAL GOVERNMENTS: None--Any impacts were taken into account by S.B. 250 (2004).
❖ OTHER PERSONS: None--Any impacts were taken into account by S.B. 250 (2004).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed section's expedited exhaustion of administrative remedies will make it easier for a taxpayer to join a class action that relates to a tax or fee administered by the Commission.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact as a result of this section.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
ADMINISTRATION
210 N 1950 W
SALT LAKE CITY UT 84134-0002, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@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 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements
2004
Notice of Continuation April 22, 2002
59-1-304

▼ ▼

Tax Commission, Auditing
R865-19S-7
Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27226
FILED: 06/11/2004, 13:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-106 provides that a sales tax license is invalid if the holder has ceased to do business or has changed the business address.

SUMMARY OF THE RULE OR CHANGE: The proposed amendments set forth the parameters for determining when a sales tax license in invalid because the holder has ceased to do business or has changed the business address.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-106

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Some minor savings may be realized for not sending returns, notices, etc. to persons that are not in business.
❖ LOCAL GOVERNMENTS: Some minor savings may be realized for not sending returns, notices, etc. to persons that are not in business.
❖ OTHER PERSONS: None--Persons that are not in business will not receive mail directed towards persons that are in business and therefore, subject to sales tax laws.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Persons that are not in business will no longer receive forms and notices that persons in business must complete and return.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on businesses since this change only refers to entities that have ceased doing business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@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 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.

A.1. A separate sales and use tax license must be obtained for each place of business, but where more than one place of business is operated by the same person, one application may be filed giving the required information about each place of business.

2. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. [~~Any person required to collect sales tax must~~]The holder of a license issued under Section 59-12-106 shall notify the [~~Tax Commission~~]commission:

1. of any change of address of the business;

2. [~~or~~]of a change of character of the business, or

3. if [~~the business is discontinued~~]the license holder ceases to do business.

C. The commission may determine that a person has ceased to do business or has changed that person's business address if:

1. mail is returned as undeliverable as addressed and unable to forward;

2. the person fails to file four consecutive monthly or quarterly sales tax returns, or two consecutive annual sales tax returns;

3. the person fails to renew its annual business license with the Department of Commerce; or

4. the person fails to renew its local business license.

D. If the requirements of C. are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

E. A person may request the commission to reopen a sales and use tax license that has been determined invalid under D.

F. The holder of a license issued under Section 59-12-106 shall be responsible for any sales and use tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

KEY: charities, tax exemptions, religious activities, sales tax
[~~October 29, 2003~~]2004
Notice of Continuation April 5, 2002
59-12-106

▼ ▼

Workforce Services, Workforce Information and Payment Services
R994-305-801
Wage List Requirement

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27237
FILED: 06/15/2004, 15:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes are made to reflect statutory changes made in S.B. 5, 2004 General Session. (DAR NOTE: S.B. 5 is found at UT L 2004 Ch 7, and was effective July 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: Employers are required to file wage list information with the Department. The fee for an employer's failure to file the wage list in a timely manner was $50. This changes reflects legislative changes that provide the fee is $50 for each 15 days the list is late up to a maximum of $250.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 35A-4-305(1)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There will be no costs or savings to the State budget because this is a federally-funded program. This rule change is only being made to bring the rule into compliance with recent statutory changes. If there were costs associated with that change, they were contemplated by the legislature at the time the bill was passed.
❖ LOCAL GOVERNMENTS: In addition to the reasons stated in relation to the State budget, there will be no costs or savings to local government as this is a federally-funded, state-wide program that does not affect local government.
❖ OTHER PERSONS: There will be no cost or savings to any person for the reasons stated in relation to the State budget. An employer could incur additional costs if it filed its wage lists more than 15 days after the due date. This was a statutory change, not a rule change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs to any person for the reasons stated in relation to the State budget. An employer could incur

additional costs if it filed its wage lists more than 15 days after the due date. This was a statutory change, not a rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have no fiscal impact on any business in Utah as it merely codifies the new legislative changes. An employer can incur additional late fees if that employer does not file its wage list in a timely fashion but the additional late fee is in the statute and this rule does not create that additional late fee.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES
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 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.
R994-305. Collection of Contributions.
R994-305-801. Wage List Requirement.

(1) General Definition.

The Department uses wage information submitted by employers to establish benefit determinations for claimants and to verify employer contribution payments. This rule explains what information is required, due dates, acceptable formats, and penalties for non-compliance.

(2) Wage List Due Date.

The wage list for a quarter must be filed by the last day of the month following the end of that calendar quarter.[~~ The due dates are January 31, April 30, July 31, and October 31.~~]

(3) Wage Information Required.

Each page of the wage list must be identified by the employer's Utah registration number, the employer's name, and the quarter and year being reported. The following information must be provided on each wage list in this order: employee's social security number, employee's name (first initial, second initial and full last name), gross wages paid during the quarter (see Section 35A-4-208 for a definition of wages)[~~, and the date of hire if hired or rehired during the quarter being reported~~]. The gross wages reported are wages, which are considered to be subject employment (see Section 35A-4-204 for a definition of subject employment). Only those employees who were paid wages during the quarter should be listed on the wage list.

(4) Wage Reporting Methods.

The Department will accept wage lists filed on approved forms or approved magnetic tape, cartridge, [~~or~~]diskette, or filed electronically through the Department's website. All wage lists reported on forms other than those provided by the Department require prior approval.

(a) Approved Form Reporting.

The wage list must be typewritten or machine printed in black ink so that it is capable of being "read" by an optical scanner. The wage list must be on Forms 3C or 3H, Utah Employer's Quarterly Wage List, or on plain white paper using the exact same format, placement on the page, and spacing as on the forms listed above. Photocopies of the Department's wage list forms are not acceptable. Wage list forms are available upon request from the Department.

(b) Magnetic Media Reporting.

Employers may report wages paid during the quarter on magnetic tape, cartridge, [~~or~~]diskette, or filed electronically through the Department's website. Magnetic media reporting must be submitted according to specifications approved by the Department.

(5) Wage List Total Must Equal the Quarterly Report Total.

The total amount of wages reported on the wage list must be the same as the total wages shown on the Form 3, "Employer's Contribution Report." The total of the wage list for a reimbursable employer must be the same as the total wages shown as "insured payroll" on Form 794, "Reimbursable Insured Employment and Wage Report, Payrolls and New Hires in Utah." Wage lists consisting of more than one page must show the employer's UI registration number, the quarter and year of the reporting period, a total for each page and a grand total for all pages on the first page.

(6) Wage Lists Corrections for Prior Quarters.

Corrections to wage lists for prior quarters must be made on a separate report and not on the wage list for the current quarter. The employer must submit the name, social security number, the quarter, the amount of wages that should have been properly reported, and an explanation for the corrections being made. Corrections to wages may result in additional contributions being assessed or refunded.

(7) Penalty for Failure to Provide Wage List Information.

A [~~$50~~]penalty may be assessed for each failure to submit a wage list by the due date as specified in this rule or for failure to submit a wage list in an acceptable format as specified in this rule. The [~~$50~~]penalty amount is $50 for every 15 days, or fraction thereof, that the filing is late, not to exceed $250 per filing. The reports are due on the last day of the month that follows the end of each calendar quarter unless the division, after giving notice, changes the due date. The penalty will be collected in the same manner and under the same legal provisions as unpaid contributions. Waiver of the [~~$50~~]penalty will be made if the employer can show good cause for failure to provide the required wage list. Good cause may be established if the employer was prevented from filing a wage list for circumstances which are compelling or beyond his control. Payment of the [~~$50~~]penalty does not relieve the employer from the responsibility of filing the wage list in the approved format.

KEY: unemployment compensation, overpayments[~~*~~]
[~~August 15, 1995~~]2004
Notice of Continuation December 20, 1999
35A-4-305(1)

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends August 2, 2004. At its option, the agency may hold public hearings.

From the end of the waiting period through October 29, 2004, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Environmental Quality, Air Quality
R307-415-6c
Permit Content: Compliance Requirements

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 26947
Filed: 06/15/2004, 13:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is amended in response to a public question about one of the changes that were proposed in the March 1, 2004, Bulletin.

SUMMARY OF THE RULE OR CHANGE: The Change in Proposed Rule restores a sentence that was deleted from the federal rule when it was last revised. The sentence addresses the requirements of Section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413(c)(2)) to ensure that sources of air pollution that are subject to Rule R307-415 include all necessary information to ensure that their certifications of accuracy are complete. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the March 1, 2004, issue of the Utah State Bulletin, on page 10. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-109.1 and 40 CFR 70.6c

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is no cost to the state budget as all costs of the Operating Permit program are funded by fees paid by the affected sources.
❖ LOCAL GOVERNMENTS: There are several local governments that own sources that are subject to Operating Permits requirements, but this change is unlikely to change their costs.
❖ OTHER PERSONS: Additional costs are unlikely. The certification is based on a source's "reasonable inquiry" into matters that could affect their compliance, and the new sentence simply reinforces the need to be as thorough as is reasonable.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Additional costs are unlikely. The certification is based on a source's "reasonable inquiry" into matters that could affect their compliance, and the new sentence simply reinforces the need to be as thorough as is reasonable.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No additional costs are expected.

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 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-415. Permits: Operating Permit Requirements.
R307-415-6c. Permit Content: Compliance Requirements.

All operating permits shall contain all of the following elements with respect to compliance:

(1) Consistent with R307-415-6a(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including any report, required by an operating permit shall contain a certification by a responsible official that meets the requirements of R307-415-5d;

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Executive Secretary or an authorized representative to perform any of the following:

(a) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(e) Claims of confidentiality on the information obtained during an inspection shall be made pursuant to Section 19-1-306;

(3) A schedule of compliance consistent with R307-415-5c(8);

(4) Progress reports consistent with an applicable schedule of compliance and R307-415-5c(8) to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the Executive Secretary. Such progress reports shall contain all of the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved;

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:

(a) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the Executive Secretary;

(b) In accordance with R307-415-6a(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may reference the permit or previous reports, as applicable):

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under R307-415-6a(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(iii) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in (ii) above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and

(iv) Such other facts as the executive secretary may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the Executive Secretary;

(e) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification, and Section 504(b) of the Act, Monitoring and Analysis;

(6) Such other provisions as the Executive Secretary may require.

KEY: air pollution, environmental protection, operating permits, emission fees
2004
Notice of Continuation February 9, 2004
19-2-109.1
19-2-104

▼ ▼

Environmental Quality, Drinking Water
R309-700
Financial Assistance: State Drinking Water Project Revolving Loan Program

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 26974
Filed: 06/15/2004, 18:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Minor changes are made addressing comments received by Kent Bishop, research consultant for the Legal Review section of the Governor's Office of Planning and Budget.

SUMMARY OF THE RULE OR CHANGE: Wording considered regulatory rather than defining is moved out of definitions to initiation procedures. An example of insufficient data relating to local income data is presented which may result in the Board accepting other measures. Some points in Table 2 were changed to match changes made in Rule R309-705. (DAR NOTES: The proposed changes to Rule R309-705 are under DAR No. 26975 in this issue. This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the March 15, 2004, issue of the Utah State Bulletin, on page 31. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104 and Title 73, Chapter 10c

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Since the proposed changes only clarify certain issues raised by review, they will not add or reduce the cost to State Budget.
❖ LOCAL GOVERNMENTS: Little to None--As indicated in the original amendments, changes simply clarify costs for which reimbursement is eligible and changes in calculated interest are intended to more closely match that calculated by Rule R309-705.
❖ OTHER PERSONS: Little to None--As indicated in the original amendments, clarification of issues to be addressed by applicants concerning alternatives and justification for the chosen project as well as financial alternatives may slightly increase the work load for engineering companies and financial consultants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Little to None--As indicated in the original amendments, some applicants may see slightly increased costs from engineers and financial consultants as a result of the clarification of items required from the applicant at the time of application.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees that the proposed changes to this rule will have little to no detrimental impact on water systems applying for or receiving financial assistance, nor will it adversely impact any of the affiliated businesses such as engineering firms, escrow agents, bond counselors, or financial advisors which provide service to the applicants.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@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 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.
R309-700. Financial Assistance: State Drinking Water Project Revolving Loan Program.
R309-700-3. Definitions and Eligibility.

Title 73, Chapter 10c, subsection 4(2)(a) limits eligibility for financial assistance under this section to political subdivisions.

Definitions for terms used in this rule are given in R309-110. Definitions for terms specific to this rule are given below.

"Board" means the Drinking water Board.

"Drinking Water Project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary project, easement or right of way, engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law.[~~Those costs incurred subsequent to the submission of a funding application to the Board and prior to the execution of a financial assistance agreement and which meet the above criteria are eligible for reimbursement from the proceeds of the financial assistance agreement.~~]

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Eligible Water System" means any community drinking water system owned by a political subdivision of the State.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, for the purpose of reducing the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.

"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.

"Interest" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal.

"Emergency" means an unexpected, serious occurrence or situation requiring urgent or immediate action resulting from the failure of equipment or other infrastructure, or contamination of the water supply, threatening the health and / or safety of the public / water users.

R309-700-4. Application and Project Initiation Procedures.

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare its application and an effective and appropriate financial assistance agreement.

(2) A completed application form, engineering report listing the project alternatives considered and including a justification for the chosen alternative, a project financing plan including an evaluation of credit enhancement, interest buy-down and loan methods applicable to the project, and financial capability assessment are submitted to the Board. Comments from the local health department and/or district engineer may accompany the application. Comments from other interested parties such as an association of governments will also be accepted. Those costs incurred subsequent to the submission of a completed funding application form to the Board and prior to the execution of a financial assistance agreement and which meet the criteria for project costs are eligible for reimbursement from the proceeds of the financial assistance agreement.

(3) An engineering and financial feasibility report is prepared by Division staff for the Board's consideration.

(4) The Board may authorize financial assistance for the project on the basis of the staff's feasibility report and designate whether a loan, credit enhancement agreement, interest buy-down agreement, hardship grant or any combination thereof, is to be entered into, and approve the project schedule (see R309-700-13).

The Board shall authorize a hardship grant only if it determines that other financing alternatives are unavailable or unreasonably expensive to the applicant (see R309-700-5). If the applicant seeks financial assistance in the form of a loan of amounts in the security account established pursuant to Chapter 10c, Title 73 "Utah Code", which loan is intended to provide direct financing of projects costs, then the Board shall authorize such loan only if it determines that credit enhancement agreements, interest buy-down agreements and other financing alternatives are unavailable or unreasonably expensive to the applicant or that a loan represents the financing alternative most economically advantageous to the state and the applicant; provided, that for purposes of this paragraph and for purposes of Section 73-10c-4(2), Utah Code, the term "loan" shall not include loans issued in connection with interest buy-down agreements as described in R309-700-11(2) or in connection with any other interest buy-down arrangement.

(5) Planning Grant - The applicant must submit an application provided by the Division and attach a scope of work, project schedule, cost estimates, and a draft contract for planning services.

(6) Planning Loan - The applicant requesting a Planning Loan must complete an application for a Planning Loan, prepare a plan of study, satisfactorily demonstrate procurement of planning services, and prepare a draft contract for planning services including financial evaluations and a schedule of work.

(7) Design Grant or Loan - The applicant requesting a Design Grant or Loan must have completed an engineering plan meeting program requirements.

(8) The project applicant must demonstrate public support for the project. As a minimum, for a loan to be secured by a revenue bond, the Sponsor must mail notices to each water user in the Sponsor's service area informing them of a public hearing. In addition to the time and location of the public hearing the notice shall inform water users of the Sponsor's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the rate of interest, the repayment schedule and shall describe the impact of the project on the user including: user rates, impact and connection fees. The notice shall state that water users may respond to the Sponsor in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of a public hearing shall be forwarded to the Division of Drinking Water.

(9) For financial assistance mechanisms when the applicant's bond is purchased by the Board, the project applicant's bond documentation, including an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant (see R309-700-14(3)), must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to the Utah Code, Section 11-14-21. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant.

(10) Hardship Grant - The Board or its designee executes a grant agreement setting forth the terms and conditions of the grant.

(11) The Board, through its Executive Secretary, shall issue a Plan Approval for plans and specifications.

(12) If a project is designated to be financed by the Board through a loan or an interest buy-down agreement as described in R309-700-11(2) to cover any part of project costs an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for qualified project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement as described in R309-700-11(1) all project funds will be maintained in a separate account and a quarterly report of project expenditures will be provided to the Board.

(13) If a revenue bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. If a general obligation bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(14) A plan of operation for the completed project, including staffing with an appropriately certified (in accordance with R309-300) operator, staff training, and procedures to assure efficient start-up, operation and maintenance of the project, must be submitted by the applicant and approved by the Board, its Executive Secretary or other designee.

(15) The applicant's contract with its engineer must be submitted to the Board for review to determine that there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(16) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, and adequacy of bidding and contract documents.

(17) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board executes the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and notifies the applicant to sell the bonds (See R309-700-10 and -11).

(18) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant sells the bonds and notifies the Board of the terms of sale. If a credit enhancement agreement is utilized, the bonds shall contain the legend required by Section 73-10c-6(3)(d), Utah Code. If an interest buy-down agreement is utilized, the bonds shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(19) The applicant opens bids for the project.

(20) LOAN ONLY - The Board approves purchase of the bonds and executes the loan contract (see R309-700-4(24)).

(21) LOAN ONLY - The loan closing is conducted.

(22) A preconstruction conference shall be held.

(23) The applicant issues a written notice to proceed to the contractor.

(24) The applicant must have adopted a Water Management and Conservation Plan prior to executing the loan agreement.

R309-700-5. Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Consideration Policy.

(1) Board Priority Determination. In determining the priority for financial assistance the Board shall consider:

(a) The ability of the applicant to obtain funds for the drinking water project from other sources or to finance such project from its own resources;

(b) The ability of the applicant to repay the loan or other project obligations;

(c) Whether a good faith effort to secure all or part of the services needed from the private sector through privatization has been made; and

(d) Whether the drinking water project:

(i) meets a critical local or state need;

(ii) is cost effective;

(iii) will protect against present or potential hazards;

(iv) is needed to comply with the minimum standards of the Federal Safe Drinking Water Act, 42 USC, 300f, et. seq. or similar or successor statute;

(v) is needed to comply with the minimum standards of the Utah Safe Drinking Water Act, Title 19, Chapter 4 or similar or successor statute.

(vi) is needed as a result of an Emergency.

(e) The overall financial impact of the proposed project on the citizens of the community, including direct and overlapping indebtedness, tax levies, user charges, impact or connection fees, special assessments, etc., resulting from the proposed project, and anticipated operation and maintenance costs versus the median income of the community;

(f) Consistency with other funding source commitments which may have been obtained for the project;

(g) The point total from an evaluation of the criteria listed in Table 1;

TABLE 1

NEED FOR PROJECT	POINTS
1. PUBLIC HEALTH AND WELFARE (SELECT ONE)	
A. There is evidence that waterborne illnesses have occurred	15
B. There are reports of illnesses which may be waterborne	10
C. No reports of waterborne illness, but high potential for such exists	5
D. No reports of possible waterborne illness and low potential for such exists	0
2. WATER QUALITY RECORD (SELECT ONE)	
A. Primary Maximum Contaminant Level (MCL) violation more than 6 times in preceding 12 months	15
B. In the past 12 months violated a primary MCL 4 to 6 times	12
C. In the past 12 months violated a primary MCL 2 to 3 times or exceeded the Secondary Drinking Water Standards by double	9
D. In the past 12 months violated MCL 1 time	6
E. Violation of the Secondary Drinking Water Standards	5
F. Does not meet all applicable MCL goals	3
G. Meets all MCLs and MCL goals	0
3. VERIFICATION OF POTENTIAL SHORTCOMINGS (SELECT ONE)	
A. Has had sanitary survey within the last year	5
B. Has had sanitary survey within the last five years	3
C. Has not had sanitary survey within last five years	0
4. GENERAL CONDITIONS OF EXISTING FACILITIES (SELECT ALL THOSE WHICH ARE TRUE AND PROJECT WILL REMEDY)	
A. The necessary water treatment facilities do not exist, not functioning, functioning but do not meet the requirements of the Utah Public Drinking Water Rules (UPDWR)	10
B. Sources are not developed or protected according to UPDWR	10
C. Source capacity is not adequate to meet current demands and system occasionally goes dry or suffers from low pressures	10
D. Significant areas within distribution system have inadequate fire protection	8
E. Existing storage tanks leak excessively or are structurally flawed	5
F. Pipe leak repair rate is greater than 4 leaks per 100 connections per year	2
G. Existing facilities are generally sound and meeting existing needs	0
5. ABILITY TO MEET FUTURE DEMANDS (Select One)	
A. Facilities have inadequate capacity and cannot reliably meet current demands	10
B. Facilities will become inadequate within the next three years	5
C. Facilities will become inadequate within the next five to ten years	3
6. OVERALL URGENCY (Select One)	
A. System is generally out of water. There is no fire protection or water for flushing toilets	10
B. System delivers water which cannot be rendered safe by boiling	10
C. System delivers water which can be rendered safe by boiling	8
D. System is occasionally out of water	5
E. Situation should be corrected, but is not urgent	0
TOTAL POSSIBLE POINTS FOR NEED FOR PROJECT	100

(h) Other criteria that the Board may deem appropriate.

(2) Drinking Water Board Financial Assistance Determination. The amount and type of financial assistance offered will be based on the following considerations:

(a) An evaluation based upon the criteria in Tables 2 and 3 of the applicant's financial condition, the project's impact on the community, and the applicant's commitment to operating a responsible water system.

The interest rate to be charged by the Board for its financial assistance will be computed using the number of points assigned to the project from Table 2 to reduce, in a manner determined by Board resolution from time to time, the most recent Revenue Bond Buyer Index (RBBI) as published by the Bond Buyer's Guide. The interest rate so calculated will be assigned to the financial assistance. To encourage rapid repayment of a loan the Board will increase the interest rate 0.02 per cent (0.02%) for each year the repayment period exceeds five (5.0) years.

____For hardship grant consideration, exclusive of planning and design grants or loans described in Sections R309-700-6, 7 and 8, the estimated annual cost of drinking water service for the average residential user should exceed 1.75% of the median adjusted gross household income from the most recent available State Tax Commission records. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income (i.e. local income survey or

questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filings for a given zip code or city). The Board will also consider the applicant's level of contribution to the project.

TABLE 2

FINANCIAL CONSIDERATIONS	POINTS
1. COST EFFECTIVENESS RATIO (SELECT ONE)	
A. Project cost $0 to $500 per benefitting connection	[~~15~~]13
B. $501 to $1,500	[~~12~~]11
C. $1,501 to $2,000	9
D. $2,001 to $3,000	6
E. $3,001 to $5,000	3
F. $5,001 to $10,000	1
G. Over $10,000	0
2. PRIVATE SECTOR OR OTHER FUNDING, BUT NOT OWN CONTRIBUTION (SELECT ONE)	
A. A reasonable search for it has been made without success	10
B. Will provide greater than 50% of project cost	10
C. Will provide 25 to 49% of project cost	8
D. Will provide 10 to 24% of project cost	5
E. Will provide 1 to 9% of project cost	3
F. Has not been investigated	0
3. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)	
A. Less than 70% of State Median AGI	15
B. 71 to 90% of State Median AGI	12
C. 91 to 115% of State Median AGI	9
D. 116 to 135% of State Median AGI	6
E. 136 to 160% of State Median AGI	3
F. Greater than 161% of State Median AGI	0
4. APPLICANT'S COMMITMENT TO PROJECT PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)	
a. Greater than 25% of project funds	15
b. 10 to 25% of project funds	12
c. 5 to 9% of project funds	9
d. 2 to 4% of project funds	6
e. Less than 2% of project funds	0
5. ABILITY TO REPAY LOAN	
5A. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)	
a. Greater than 2.50% of local median AGI	15
b. 2.01 to 2.50% of local median AGI	11
c. 1.51 to 2.00% of local median AGI	7
d. 1.01 to 1.50% of local median AGI	3
e. 0 to 1.00% of local median AGI	0
5B. TOTAL DEBT LOAD (PRINCIPAL ONLY) OF APPLICANT AFTER PROJECT IS CONSTRUCTED (INCLUDING WATER AND SEWER DEBT, LIGHTING DEBT, SCHOOL DEBT, ETC.) (SELECT ONE)	
a. Greater than 12% of fair market value	15
b. 8.1 to 12% of fair market value	12
c. 4.1 to 8.0% of fair market value	9
d. 2.1 to 4.0% of fair market value	6
e. 1.0 to 2.0% of fair market value	3
f. Less than 1% of fair market value	0
6. SPECIAL INCENTIVES Applicant:	
A. is using a master plan which includes water management & conservation	4
B. has a replacement fund receiving annual deposits of 5% of drinking water budget	4
C. is creating or enhancing a regionalization Plan	4
D. has a rate structure encouraging conservation	4
E. has received a Quality Community designation	4
TOTAL POSSIBLE POINTS FOR FINANCIAL NEED	100

(b) Optimizing return on the security account while still allowing the project to proceed.

(c) Local political and economic conditions.

(d) Cost effectiveness evaluation of financing alternatives.

(e) Availability of funds in the security account.

(f) Environmental need.

(g) Other criteria the Board may deem appropriate.

KEY: loans, interest buy-downs, credit enhancements, hardship grants
2004
Notice of Continuation September 16, 2002
19-4-104
73-10c

Environmental Quality, Drinking Water
R309-705
Financial Assistance: Federal Drinking Water Project Revolving Loan Program

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 26975
Filed: 06/15/2004, 18:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Minor changes are made addressing comments received by Kent Bishop, research consultant for the Legal Review section of the Governor's Office of Planning and Budget.

SUMMARY OF THE RULE OR CHANGE: Wording considered regulatory rather than defining is moved out of definitions to initiation procedures. An example of insufficient data relating to local income data is presented which may result in the Board accepting other measures. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the March 15, 2004, issue of the Utah State Bulletin, on page 39. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104, and Title 73, Chapter 10c

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--The proposed changes only clarify certain issues raised by review and will not add or reduce the cost to the State Budget.
❖ LOCAL GOVERNMENTS: Little to None--As indicated in the original amendments, changes simply clarify costs for which reimbursement is eligible.
❖ OTHER PERSONS: Little to None--As indicated in the original amendments, clarification of issues to be addressed by applicants concerning alternatives and justification for the chosen project as well as financial alternatives may slightly increase the work load for engineering companies and financial consultants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Little to None--As indicated in the original amendments, some applicants may see slightly increased costs from engineers and financial consultants as a result of the clarification of items required from the applicant at the time of application.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees that the proposed changes to this rule will have little to no detrimental impact on water systems applying for or receiving financial assistance, nor will it adversely impact any of the affiliated businesses such as engineering firms, escrow agents, bond counselors, or financial advisors which provide service to the applicants.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@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 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.
R309-705. Financial Assistance: Federal Drinking Water Project Revolving Loan Program.
R309-705-1. Purpose.

The purpose of this rule is to establish criteria for financial assistance to public drinking water system in accordance with a federal grant established under 42 U.S.C. 300j et seq., federal Safe Drinking Water Act (SDWA).

R309-705-3. Definitions.

Definitions for general terms used in this rule are given in R309-110. Definitions for terms specific to this rule are given below.

"Board" means the Drinking Water Board.

"Drinking Water Project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way, except property condemnation cost, which are not eligible costs; engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; Hardship Grant Assessments, fees and interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law.[~~Those costs incurred subsequent to the submission of a funding application to the Board and prior to the execution of a financial assistance agreement and which meet the above criteria are eligible for reimbursement from the proceeds of the financial assistance agreement.~~]

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax commission from federal individual income tax returns excluding zero exemption returns, or where the estimated annual cost, including loan repayment costs, of drinking water service for the average residential user exceeds 1.75% of the median adjusted gross income. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income (i.e. local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filing for a given zip code or city).

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Eligible Water System" means any community drinking water system, either privately or publicly owned; and nonprofit noncommunity water systems.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, for the purpose of reducing the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.

"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.

"Hardship Grant Assessment" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal. Hardship grant assessment funds shall be subject to the requirements of UAC R309-700 for hardship grants.

"Negative Interest" means a loan with an interest rate at less than zero percent. The repayment schedule for loans having a negative interest rate will be prepared by the Drinking Water Board.

"Principal Forgiveness" means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan. The terms for principal forgiveness will be as directed by section 4 of this rule and by the Drinking Water Board.

"Interest" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal.

"Emergency" means an unexpected, serious occurrence of situation requiring urgent or immediate action. With regard to a water system this would be a situation resulting from the failure of equipment or other infrastructure, or contamination of the water supply, which threatens the health and / or safety of the public / water users.

"Technical Assistance" means financial assistance provided for a feasibility study or master plan, to identify and / or correct system deficiencies, to help a water system overcome other technical problems. The system receiving said technical assistance may or may not be required to repay the funds received. If repayment is required, the Board will establish the terms of repayment.

"SRF Technical Assistance Fund" means a fund (or account) that will be established for the express purpose of providing "Technical Assistance" to eligible drinking water systems.

R309-705-5. Application and Project Initiation Procedures.

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare its application and an effective and appropriate financial assistance agreement.

(2) A completed application form and project engineering report listing the project alternatives considered and including a justification for the chosen alternative, a project financing plan including an evaluation of credit enhancement, interest buy-down and loan methods applicable to the project and financial capability assessment and a history of the applicant's compliance with the SDWA are submitted to the Board. Comments from other interested parties such as an association of governments will also be accepted. Those costs incurred subsequent to the submission of a completed funding application form to the Board and prior to the excution of a financial assistance agreement and which meet the criteria for project costs are eligible for reimbursement from the proceeds of the financial assistance agreement.

(3) An engineering, capacity development analysis, and financial feasibility report is prepared by Division staff for presentation to the Board.

(4) The Board may authorize financial assistance for the project on the basis of the staff's feasibility report and designate whether a loan, credit enhancement agreement, interest buy-down agreement, or any combination thereof, is to be entered into, and approve the project schedule (see section 7 of this rule).

(5) The applicant must demonstrate public support for the project prior to bonding, as deemed acceptable by the Drinking Water Board. As a minimum, for a loan to be secured by a revenue bond, the Sponsor must mail notices to each water user in the Sponsor's service area informing them of a public hearing. In addition to the time and location of the public hearing the notice shall inform water users of the Sponsor's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the "effective rate", the repayment schedule and shall describe the impact of the project on the user including: user rates, impact and connection fees. The notice shall state that water users may respond to the Sponsor in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of the public hearing shall be forwarded to the Division of Drinking Water.

(6) For financial assistance mechanisms where the applicant's bond is purchased by the Board, the project applicant's bond documentation must include an opinion from recognized bond counsel. Counsel must be experienced in bond matters, and must include an opinion that the drinking water project obligation is a valid and binding obligation of the applicant (see section 8 of this rule). The opinion must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to 11-14-21 of the Utah Code. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel, experienced in bond matters, that the drinking water project obligation is a valid and binding obligation of the applicant.

(7) The Board, through its Executive Secretary, shall issue, if warranted by conformance to Rules R309-500-560, a Plan Approval for plans and specifications.

(8) If a project is designated to be financed by the Board through a loan or an interest buy-down agreement, an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for eligible project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement, all project funds will be maintained in a separate account, and a quarterly report of project expenditures will be provided to the Board.

Incremental disbursement bonds will be required. Cash draws will be based on a schedule that coincides with the rate at which project related costs are expected to be incurred for the project.

(9) If a revenue bond is to be used to secure a loan, a User Charge Ordinance, or water rate structure, must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. If a general obligation bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(10) A "Private Company" will be required to enter into a Loan Agreement with the Board. The loan agreement will establish the procedures for disbursement of loan proceeds and will set forth the security interests to be granted to the Board by the Applicant to secure the Applicant's repayment obligations.

(a) The Board may require any of the following forms of security interest or additional/other security interests to guarantee repayment of the loan: deed of trust interests in real property, security interests in equipment and water rights, and personal guarantees.

(b) The security requirements will be established after the Board's staff has reviewed and analyzed the Applicants financial condition.

(c) These requirements may vary from project to project at the discretion of the Board

(d) The Applicant will also be required to execute a Promissory Note in the face amount of the loan, payable to the order of the lender, and file a Utah Division of Corporations and Commercial Code Financing Statement, Form UCC-1.

(e) The Board may specify that loan proceeds be disbursed incrementally into an escrow account for expected construction costs, or it may authorize another acceptable disbursement procedure.

(11) The applicant's contract with its engineer must be submitted to the Board for review to determine if there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(12) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, validity and quantity of water rights, and adequacy of bidding and contract documents, as required.

(13) A position fidelity bond may be required by the Board insuring the treasurer or other local staff handling the repayment funds and revenues produced by the applicant's system and payable to the State of Utah through the Drinking Water Board.

(14) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board shall execute the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and shall notify the applicant to sell the bonds.

(15) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant shall sell the bonds and shall notify the Board of the terms of sale. If a credit enhancement agreement is utilized, the bonds shall contain the legend required by 73-10c-6(3)(d) of the Utah Code. If an interest buy-down agreement is being utilized, the bonds shall bear a legend referring to the interest buy-down agreement and state that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(16) The applicant shall open bids for the project.

(17) LOAN ONLY - The Board shall give final approval to purchase the bonds and execute the loan contract.

(18) LOAN ONLY - The closing of the loan is conducted.

(19) A preconstruction conference shall be held.

(20) The applicant shall issue a written notice to proceed to the contractor.

R309-705-12. Compliance with Federal Requirements.

(1) Applicants must show the legal, institutional, managerial, and financial capability to construct, operate, and maintain the drinking water system(s) that the project will serve.

(2) Applicant(s) shall require its contractors to comply with federal provisions for disadvantaged business enterprises and exclusions for businesses under suspension and/or debarment. Any bidder not complying with these requirements shall be considered a non-responsive bidder.

(3) As required by Federal Code, applicants may be subject to the following federal requirements (all assessments shall consider the impacts of the project twenty (20) years into the future):

Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended

Clean Air Act, Pub. L. 84-159, as amended

Coastal Barrier Resources Act, Pub. L. 97-348

Coastal Zone Management Act, Pub. L. 92-583, as amended

Endangered Species Act, Pub. L. 92-583

Environmental Justice, Executive Order 12898

Floodplain Management, Executive Order 11988 as amended by Executive Order 12148

Protection of Wetlands, Executive Order 11990

Farmland Protection Policy Act, Pub. L. 97-98

Fish and Wildlife Coordination Act, Pub. L. 85-624

National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190

National Historic Preservation Act of 1966, PL 89-665, as amended

Safe Drinking Water Act, Pub. L. 93-523, as amended

Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Age Discrimination Act of 1975, Pub. L. 94-135

Title VI of the Civil Rights Act of 1964, Pub. L. 88-352

Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)

Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)

The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)

Equal Employment Opportunity, Executive Order 11246

Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432

Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

Anti-Lobbying Provisions (40 CFR Part 30)

Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended

Procurement Prohibitions under Section 306 of the Clean Water Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

Debarment and Suspension, Executive Order 12549

Accounting procedures, whereby applicants agree to maintain a separate project account in accordance with Generally Accepted Accounting Standards and Utah State Uniform Accounting requirements

KEY: SDWA, financial assistance, loans
2004
Notice of Continuation September 16, 2002
19-4-104
73-10c

Insurance, Administration
R590-229
Annuity Disclosure

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 27082
Filed: 06/08/2004, 13:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed due to comments received during the first comment period.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule are as follows: 1) the change in Section R590-229-3 allows an additional exemption for funding agreements; 2) the change in Section R590-229-4 corrects the title of the buyer's guide and adds a definition for "Funding agreement"; 3) the change in Section R590-229-5 clarifies whether Appendix I is to be used; 4) the change in Section R590-229-6 corrects a reference within the rule and punctuation; and 5) the change in Section R590-229-8 extends date of enforcement from July 1, 2004 to October 1, 2004. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the May 1, 2004, issue of the Utah State Bulletin, on page 12. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-22-425

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: The change clarifies that the "Buyer's Guide to Fixed Deferred Annuities" and the "Appendix I, Equity-Indexed Annuities" are two seperate forms, dated 1998

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These changes will have no effect on cost or savings to the state budget. No additional people will need to be hired and no additional revenue will be created or lost as a result of these changes.

❖ LOCAL GOVERNMENTS: The changes will not affect local government since the rule deals solely with the relationship between the Insurance Department and regulated licensed insurers. Therefore, there are no costs or savings to local government.

❖ OTHER PERSONS: The proposed changes to this rule will create no additional cost or savings to insurers and therefore will have no fiscal impact on the insurance consumer. The proposed changes are mainly for clarification and to provide the life insurer with more time to comply with the provisions of this new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed changes to this rule will create no additional cost or savings to insurers and therefore will have no fiscal impact on the insurance consumer. The proposed changes are mainly for clarification and to provide the life insurer with more time to comply with the provisions of this new rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These rule changes will have no fiscal impact on Utah businesses.

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 08/03/2004

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-229. Annuity Disclosure.
R590-229-1. Authority.

This rule is promulgated pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for buyer's guides and disclosures and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

R590-229-2. Purpose.

The purpose of this rule is to:

(1) provide standards for the disclosure of minimum information about annuity contracts to protect consumers by specifying:

(a) the minimum information that must be disclosed; and

(b) the method for disclosing it in connection with the sale of annuity contracts; and

(2) foster consumer education by ensuring that purchasers of annuity contracts understand certain basic features of annuity contracts.

R590-229-3. Scope.

This rule applies to individual and group annuity contracts and certificates except:

(1) registered or non-registered variable annuities or other registered products;

(2)(a) annuities used to fund:

(i) an employee pension plan that is covered by the Employee Retirement Income Security Act (ERISA);

(ii) a plan described by Internal Revenue Code (IRC) Sections 401(a), 401(k), or 403(b) where the plan is established or maintained by an employer;

(iii) a government or church plan defined in IRC Section 414 or a deferred compensation plan or a state or local government or a tax exempt organization under IRC Section 457; or

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(b) Notwithstanding Subsection (2)(a), this rule shall apply to annuities used to fund a plan or arrangement that is funded solely by

contributions an employee elects to make whether on a pre-tax or after-tax basis and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement; and

(3) structured settlement annuities[-]; and

(4) funding agreements.

R590-229-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Buyer's Guide" means a document which contains, and is limited to, the language contained in the "Buyer's Guide to Fixed Deferred Annuities" and its "Appendix I[~~or the "Buyer's Guide to Fixed Deferred Annuities with Appendix for~~] Equity-Indexed Annuities," dated 1998, as adopted by, and available from the National Association of Insurance Commissioners, which are incorporated in this rule by reference [~~as Appendix A, dated January 2003~~]or go to the department's website.

(2) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(3) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if all of the underlying elements that go into its calculation are either guaranteed or determinable.

(4) "Disclosure document" means the document described in Subsection 6(2) of this rule and shall be clearly labeled "Annuity Disclosure."

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are based on mortality or morbidity contingencies.

([~~5~~]6) "Generic name" means a short title descriptive of the annuity contract being applied for such as "single premium deferred annuity".

([~~6~~]7) "Guaranteed elements" means premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

([~~7~~]8) "Non-guaranteed elements" means the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying elements that go into its calculation are non-guaranteed.

([~~8~~]9) "Structured settlement annuity" means a "qualified funding asset" as defined in IRC Section 130(d) or an annuity that would be a qualified funding asset under IRC Section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

R590-229-5. Appropriate Buyer's Guide.

(1) Where an application for an equity-indexed annuity is taken, the "Buyer's Guide to Fixed Deferred Annuities" with "Appendix I for Equity-Indexed Annuities" shall be the Buyer's Guide given to the applicant and will be considered the appropriate Buyer's Guide for the product.

(2) For all other annuity products, [~~either~~]the "Buyer's Guide to Fixed Deferred Annuities" with or without "Appendix I Equity-Indexed Annuities" will be considered the appropriate Buyer's Guide.

R590-229-6. Standards for the Disclosure Document and Buyer's Guide.

(1)(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall, at or before the time of application, be given both the disclosure document described in Subsection 6(2) of this section and the appropriate Buyer's Guide[~~contained in Appendix A~~], as described in Section 5.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the appropriate Buyer's Guide no later than five business days after the completed application is received by the insurer.

(i) With respect to an application received as a result of a direct solicitation through the mail:

(A) providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the appropriate Buyer's Guide be provided no later than five business days after receipt of the application; and

(B) providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(ii) With respect to an application received via the Internet:

(A) taking reasonable steps to make the appropriate Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the appropriate Buyer's Guide be provided no later than five business days of receipt of the application; and

(B) taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the prospective applicant can obtain from the insurer a free annuity Buyer's Guide upon request.

(2) At a minimum, the following information shall be included in the disclosure document required to be provided under this rule:

(a) the generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) the insurer's name and address;

(c) a description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate of:

(i) the guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;

(ii) an explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(iii) periodic income options, both on a guaranteed and non-guaranteed basis;

(iv) any value reductions caused by withdrawals from or surrender of the contract;

(v) how values in the contract can be accessed;

(vi) the death benefit, if available, and how it will be calculated;

(vii) a summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(viii) impact of any rider, such as a long-term care rider;

(d) specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(e) information about the current guaranteed rate for a new contract that contains a clear notice that the rate is subject to change.

(3) An insurer shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

R590-229-7. Report to Contract Owners.

For an annuity in the payout period with changes in non-guaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide the contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

(1) the beginning and end date of the current report period;

(2) the accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(3) the total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period; and

(4) the amount of outstanding loans, if any, as of the end of the current report period.

R590-229-8. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule [~~July~~]October 1, 2004.

R590-229-9. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, annuity disclosure
2004
31A-2-201
31A-22-425

End of the Notices of Changes in 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
R414-1B
Prohibition of Payment for Certain Abortion Services

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 27222
FILED: 06/09/2004, 17:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 68, which passed during the 2004 Legislative session, prohibits the direct or indirect funding of certain abortions with public funds. Medicaid providers requested clarification of certain aspects of the law. (DAR NOTE: S.B. 68 (2004) is found at UT L 2004 Ch 271, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: This rule implements the law by a) creating a standardized mechanism for Medicaid providers to certify compliance with the law and b) establishing accounting methodologies that providers can consider to justify their certification. (DAR NOTE: A corresponding proposed new rule is under DAR No. 27227 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-46a-7, 26-1-5, and 26-18-3

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The Department will experience minimal costs to produce the certification form and track filing of the form. This can be handled within existing budgets.
❖ LOCAL GOVERNMENTS: The Department does not believe that local governments will be providing services impacted by S.B. 68. No costs are anticipated for local government.
❖ OTHER PERSONS: Health care providers that perform services such as pregnancy terminations for grave fetal defects will be required, upon submitting a claim for reimbursement to a Department program, to certify compliance with S.B. 68. This rule should save providers significant expense by setting forth a basis to support that certification. Exact costs are impossible to determine and will vary by provider type.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Each provider billing Department programs for services covered by S.B. 68 will be required to file a one time certification with the law. The cost of this filing, along with the necessary accounting practices to support that certification will vary by provider type and are impossible to determine.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Several hospitals approached the Department in mid-May and requested this rulemaking to help them with compliance with S.B. 68. This rule is the result of that request and reflects input from many sources. This rule will allow Utah hospitals and doctors to resume services related to grave fetal defects, if they choose. Costs should be reduced by the rule as a result of creating a standard which providers may choose to adopt for supporting their certification. Scott D. Williams, MD

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.
Certain hospital providers have stopped offering selected surgical services to Utah women until this law is clarified through this rule. Delaying implementation until a routine rule

filing can be completed meets the requirements of Subsection 63-46a-7(1) and justifies this rule filing.

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: 06/09/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement.
R414-1B. Prohibition of Payment for Certain Abortion Services.
R414-1B-1. Introduction and Authority.

This rule is to assure compliance with the prohibition on using public funds for certain abortion services as provided in Utah Code Section 76-7-326. It is authorized by Utah Code Sections 26-1-5 and 26-18-3.

R414-1B-2. Definitions.

(1) "Abortion billing code" means the following codes:

(a) 59840, 59841, 59850, 59851, 59852, 59855, 59856 and 59857 as shown in the Current Procedural Terminology (CPT) manual of the American Medical Association, 2003 edition; and

(b) 69.01, 69.51, 74.91 and 75.0 as shown in the International Classification of Diseases, 9th Edition, Volumes 1 and 2, Clinical Modification, Volume 3 Procedures.

(2) "Certification" or "Certify" means submitting to the Division of Health Care Financing, Utah Department of Health, a Department-approved document signed by one authorized to act on behalf of a Medicaid provider.

(3) "Public funds" means money provided by the state, its institutions or its political subdivisions. "Public funds" does not include (i) clinical revenue generated from nongovernmental payors,; (ii) gift or donor provided funds; (iii) investment income; or (iv) federal funds appropriated by the legislature.

R414-1B-3. Certification.

(1) Each Medicaid provider that bills the Utah Department of Health for services related to an abortion billing code at any time after May 3, 2004 must certify that funds it receives from the Department are not used to pay or otherwise reimburse, either directly or indirectly, any person, agency, or facility for the performance of any induced abortion services unless:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life;

(b) the pregnancy is the result of rape or incest reported to law enforcement agencies, unless the woman was unable to report the crime for physical reasons or fear of retaliation; or

(c) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to prevent permanent, irreparable and grave damage to a major bodily function of the pregnant women provided that a caesarian procedure or other medical procedure that could also save the life of the child is not a viable option.

(2) The certification shall be ongoing and apply to all future claims unless the provider notifies the Department in writing of a change in its certification status.

(3) Nothing in this rule shall increase Medicaid coverage for abortion services beyond what is required under federal law.

R414-1B-4. Standards for Certification.

(1) Each provider who submits a certification is responsible to be informed of the abortion funding restrictions found in Utah Code section 76-7-326 and to assess whether it receives public funds for any abortion that is not excepted in subsections (a), (b), or (c) of Utah Code subsection 76-7-326(2).

(2) A provider meets the requirements of this rule if it certifies that it is able to demonstrate that:

(a) it uses non-public funds to make up any difference between the reimbursement it receives from all payors for services identified by abortion billing codes, other than those services identified in R414-1B-3(1), and the costs incurred by the provider for those procedures; or

(b) it has adopted another method, based on generally accepted accounting principles, that provides a good faith basis for supporting the certification.

(3) Each provider that submits a certification meeting the requirements of this rule shall maintain records to support the certification and make those records available to the Department on request consistent with participation as a Medicaid provider.

KEY: Medicaid, abortion, physicians, hospitals
June 9, 2004
26-1-5
26-18-3

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).

Commerce, Consumer Protection
R152-21
Credit Services Organizations Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27238
FILED: 06/15/2004, 16:04

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: Subsection 13-2-5(1) authorizes the Director of the Division of Consumer Protection to issue rules to administer and enforce, inter alia, the Credit Services Organizations Act, Utah Code Title 13, Chapter 21. The Credit Services Organizations Act Rule provides clarification on some of the mandates and prohibitions contained in Section 13-21-3.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Consumer Protection has received written comments during the relevant five-year period related to the Credit Services Organizations Act, but none of those comments address the Credit Services Organizations Act Rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Credit Services Organizations Act prohibits, inter alia, the disputing of an entry in a credit report without both a factual basis and a written statement from the consumer indicating "that the entry contains a material error or omission, outdated information, inaccurate information, or unverifiable information" Subsection 13-21-3(1)(d). The Credit Services Organizations Act Rule provides guidance to help a Credit Services Organization ensure compliance with that statutory requirement. The rule defines some terms that the statute does not, including the terms: challenge, credit report, inaccurate information, material error, material omission, outdated information, and unverifiable information. The rule also provides a safe harbor for a Credit Services Organization with respect to the statutory requirement. If a Credit Services Organization follows the process and avoids the fraudulent practices outlined in the rule, the organization may rely on the rule as evidence that the organization is in compliance with Subsection 13-21-3(1)(d); and, therefore this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
CONSUMER PROTECTION
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:
Thad LeVar at the above address, by phone at 801-530-6929, by FAX at 801-530-6001, or by Internet E-mail at tlevar@utah.gov

AUTHORIZED BY: Francine Giani, Director

EFFECTIVE: 06/15/2004

Commerce, Occupational and Professional Licensing
R156-44a
Nurse Midwife Practice Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27224
FILED: 06/10/2004, 15:38

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 44a, provides for the licensure of certified nurse midwives. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-44a-201(3) provides that the Certified Nurse Midwife Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 44a, with respect to certified nurse midwives.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in July 1999, it has been amended one time. In July 2001, amendments were made to the rule to delete the quality review requirement as a result of statute changes made during the 2001 legislative session. No written comments have been received by the Division with respect to this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 44a, with respect to certified nurse midwives.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Laura Poe at the above address, by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 06/10/2004

Commerce, Occupational and Professional Licensing

R156-61

Psychologist Licensing Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27225
FILED: 06/10/2004, 15:41

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 61, provides for the licensure of psychologists and certified psychology residents. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-61-201(3) provides that the Psychologist Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 61, with respect to psychologists and certified psychology residents.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in July 1999, it has been amended three times. In August 1999, the rule was amended to update information regarding approved or accredited programs regarding psychology education. A July 19, 1999, public rule hearing was held. The Division received no written comments with respect to these proposed amendments. In February 2000, the rule was again amended to include changes with respect to the Division's application review process and to update the national examination passing score due to the examination becoming computerized. The Division received no written comments with respect to these proposed amendments. In June 2001, the rule was again amended to implement changes made in the statute during the 2001 legislative session regarding the certification of psychology residents. The Division received no written comments with respect to these amendments.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 61, with respect to psychologists and certified psychology residents.

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:
Debra Hendren at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at dhendren@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 06/10/2004

Environmental Quality, Air Quality
R307-215
Emission Standards: Acid Rain Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27220
FILED: 06/08/2004, 13:09

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: Subsection 19-2-104(3)(q) authorizes the Board to make rules to "meet the requirements of federal air pollution laws." Title V of the Clean Air Act requires the states to conduct operating permit programs for large sources of air pollution, and those programs must adopt the federal standards for power plants that are included in Title IV and 40 CFR Part 76 for acid rain. Rule R307-215 incorporates 40 CFR Part 76 by reference. Without Rule R307-215, Utah's authority to run the operating permit program would be revoked.

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 and the rule has not been amended 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: The rule is required under the Clean Air Act, 42 U.S.C. 7651-7661, and therefore, should be continued.

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

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 06/08/2004

Environmental Quality, Air Quality
R307-309
Davis, Salt Lake and Utah Counties, Ogden City and Any Nonattainment Area for PM10: Fugitive Emissions and Fugitive Dust

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27217
FILED: 06/08/2004, 12:55

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R307-309 regulates the amount of dust and fugitive emissions that are allowed to leave the site of any source of air pollution, because dust and fugitive emissions are components of PM10, which lodges in human lungs and contributes to lung disease and heart problems. These regulations are part of the state implementation plan to control PM10 in geographic areas where levels of pollution have exceeded federal health standards in the past; the plan is incorporated by reference under Section R307-110-10. The plan is required under the Clean Air Act, 42 U.S.C. 7410. Subsection 19-2-104(1) authorizes the Air Quality Board to make rules "(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contamination that may be emitted by any air contaminant source"; and "b) establishing air quality standards." Subsection 19-2-104(3)(q) authorizes the Board to make rules to "meet the requirements of federal air pollution laws."

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 and the rule has not been amended 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: The rule is required under

the state implementation plan for PM10, incorporated by reference under Section R307-110-10. The plan is required under the Clean Air Act, Section 110; without the state plan, the EPA is required to put in place its own plan, therefore, this rule should be continued.

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

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 06/08/2004

Environmental Quality, Air Quality

R307-343

Davis and Salt Lake Counties and Ozone Nonattainment Areas: Emission Standards for Wood Furniture Manufacturing Operations

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27219
FILED: 06/08/2004, 13:06

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(3)(q) allows the Board to make rules to "meet the requirements of federal air pollution laws." Rule R307-343 regulates the emissions from wood furniture manufacturers in Davis and Salt Lake Counties that have the potential to emit 25 tons or more of volatile organic compounds each year. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 U.S.C. 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1) authorizes the Air Quality Board to make rules "(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contamination that may be emitted by any air contaminant source." Subsection 19-2-104(3)(e) allows the Board to "prepare and develop a comprehensive plan or plans for the prevention, abatement or control of air pollution within this state."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received and the rule has not been amended 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: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 U.S.C. 7410; without the state plan, the EPA is required to put in place its own plan, therefore, this rule should be continued.

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

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 06/08/2004

Environmental Quality, Air Quality

R307-420

Permits: Ozone Offset Requirements in Davis and Salt Lake Counties

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27218
FILED: 06/08/2004, 13:03

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 purpose of Rule R307-420 is to ensure that the installation of large new and modified sources of the pollutants that are precursors to ozone formation do not cause increases in those pollutants in Davis and Salt Lake Counties. The mechanism to ensure this is a

requirement that large new or modified sources of those pollutants offset their increases. For increases in nitrogen oxides, the offset ratio is 1.15:1; for volatile organic compounds, the ratio is 1.2:1. This provision is needed because ozone levels in Davis and Salt Lake Counties have exceeded the federal health standard for ozone in the past. Subsection 19-2-104(1) says that the Air Quality Board may make rules "(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contamination that may be emitted by any air contaminant source." Subsection 19-2-104(3)(q) says the Air Quality Board may make rules to "meet the requirements of federal air pollution laws."

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 and the rule has not been amended 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: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 U.S.C. 7410; without the state plan, the EPA is required to put in place its own plan, therefore, this rule should be continued.

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

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 06/08/2004

Health, Community and Family Health Services, Chronic Disease

R384-100

Cancer Reporting Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27235
FILED: 06/15/2004, 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 Section 26-1-30 which authorizes the Department of Health to investigate and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health; provide for the detection, reporting, prevention, and control of communicable, infectious, acute, chronic, or any other disease or health hazard that the department considers to be dangerous, important, or likely to affect the public health; and collect and report information on causes of injury, sickness, death, and disability and the risk factors that contribute to the causes of injury, sickness, death, and disability within the state. It is also authorized by Section 26-5-3, which provides that the Department shall develop and maintain a system for detecting and monitoring chronic diseases within the state and shall investigate and determine the epidemiology of those conditions which contributed to preventable and premature sickness, or both, and to death and disability. Cancer reporting is essential to monitoring and prevention of chronic diseases.

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 from interested persons either in support or opposition of the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Cancer reporting is crucial to the efforts of public health to reduce cancer morbidity and mortality. Cancers constitute a leading cause of morbidity and mortality in Utah and, therefore, pose an important risk to the public health. Through the routine reporting of cancer cases, trends in cancer incidence and mortality can be monitored and prevention and control measures evaluated. The Utah Cancer Registry on behalf of the Utah Department of Health manages cancer records. This Cancer Reporting Rule specifies the reporting requirements for the cases of cancer to the Cancer Registry and should be continued.

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

HEALTH
COMMUNITY AND FAMILY HEALTH SERVICES,
CHRONIC DISEASE
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:
Kathryn Rowley at the above address, by phone at 801-538-6233, by FAX at 801-538-9495, or by Internet E-mail at krowley@utah.gov

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 06/15/2004

Labor Commission, Antidiscrimination and Labor, Labor
R610-4
Employment Agency Licensing

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27228
FILED: 06/11/2004, 16:32

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 34-29-10(2) authorizes the Commission to enact rules to enforce and administer the provisions of Title 34, Chapter 29, which deals with regulation of employment agencies.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the last five years, the Commission has received no written comments supporting or opposing this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In light of the Commission's continuing responsiblity to licence and enforce the fees charged by employment agencies, it remains necessary for the Commission to address how employment agencies become licensed by the Commission, therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR, LABOR
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:
Sara Danielson or Sherrie M. Hayashi at the above address, by phone at 801-530-6953 or (n/a), by FAX at 801-530-6390 or (n/a), or by Internet E-mail at sdanielson@utah.gov or shayashi@utah.gov

AUTHORIZED BY: R Lee Ellertson, Commissioner

EFFECTIVE: 06/11/2004

Lieutenant Governor, Administration
R622-2
Use of the Great Seal of the State of Utah

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27221
FILED: 06/09/2004, 11:12

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: Section 67-1a-7 provides that "Except as otherwise provided by law, the lieutenant governor, or the lieutenant governor's designee, is authorized to use or affix the Great Seal of this state to any document whatever and only in pursuance of law, and is redsponsible for its safekeeping."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the original filing was made effective on June 22, 1999.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statutory provisions of Sections 67-1a-7 and 67-1a-8, and Subsection 67-1a-2(1)(a)(iv) continue to apply to the Lieutenant Governor, thereby prolonging the need for this rule to remain in effect.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LIEUTENANT GOVERNOR
ADMINISTRATION
Room 210 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:
Kent Bishop at the above address, by phone at 801-538-1564, by FAX at 801-538-1547, or by Internet E-mail at kbishop@utah.gov

AUTHORIZED BY: Kent Bishop, Rules Analyst

EFFECTIVE: 06/09/2004

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

Agriculture and Food
Regulatory Services
No. 27069 (AMD): R70-330. Raw Milk for Retail.
Published: May 1, 2004
Effective: June 2, 2004

Commerce
Occupational and Professional Licensing
No. 26937 (AMD): R156-47b. Massage Therapy Practice Act Rules.
Published: March 1, 2004
Effective: June 7, 2004

No. 27112 (AMD): R156-55b. Electricians Licensing Rules.
Published: May 15, 2004
Effective: June 15, 2004

Environmental Quality
Air Quality
No. 26946 (AMD): R307-110-28. Regional Haze.
Published: March 1, 2004
Effective: June 8, 2004

Health
Epidemiology and Laboratory Services, Epidemiology
No. 27024 (AMD): R386-702. Communicable Disease Rule.
Published: April 15, 2004
Effective: June 11, 2004

Insurance
Administration
No. 27083 (NEW): R590-230. Senior Protection in Annuity Transactions.
Published: May 1, 2004
Effective: June 3, 2004

Lieutenant Governor
Elections
No. 27123 (NEW): R623-2. Uniform Ballot Counting Standards.
Published: May 15, 2004
Effective: June 16, 2004

No. 27127 (NEW): R623-3. Utah State Plan on Election Reform.
Published: May 15, 2004
Effective: June 16, 2004

Natural Resources
Forestry, Fire and State Lands
No. 27070 (AMD): R652-41-1300. Unauthorized Uses.
Published: May 1, 2004
Effective: June 4, 2004

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, 2004, including notices of effective date received through June 15, 2004, the effective dates of which are no later than July 1, 2004. 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. 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
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Administrative Services					
Facilities Construction and Management					
R23-29	Across the Board Delegation	26991	5YR	03/10/2004	2004-7/35
Finance					
R25-7	Travel-Related Reimbursements for State Employees	27120	AMD	07/01/2004	2004-10/4
Fleet Operations, Surplus Property					
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	26843	AMD	02/12/2004	2004-1/4
Agriculture and Food					
Animal Industry					
R58-20	Domesticated Elk Hunting Parks	26990	5YR	03/05/2004	2004-7/35
R58-20-5	Facilities	26989	AMD	05/04/2004	2004-7/3
R58-21	Trichomoniasis	26891	AMD	03/04/2004	2004-3/4

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Plant Industry					
R68-7-6	Categorization of Pesticide Applicators	26794	NSC	01/01/2004	Not Printed
R68-20-1	Authority	26949	AMD	04/01/2004	2004-5/2
Regulatory Services					
R70-330	Raw Milk for Retail	27069	AMD	06/02/2004	2004-9/4
Alcoholic Beverage Control					
Administration					
R81-1-3	General Policies	27025	AMD	06/01/2004	2004-8/4
R81-1-8	Consent Calendar Procedures	27027	AMD	06/01/2004	2004-8/5
R81-1-21	Beer Advertising in Event Venues	27028	AMD	06/01/2004	2004-8/6
R81-1-22	Diplomatic Embassy Shipments and Purchases	27029	AMD	06/01/2004	2004-8/8
R81-1-23	Sales Restrictions on Products of Limited Availability	27030	AMD	06/01/2004	2004-8/10
R81-2-1	Special Orders of Liquor by Public	27031	AMD	06/01/2004	2004-8/11
R81-2-2	Liquor Returns, Refunds and Exchanges	27032	AMD	06/01/2004	2004-8/12
R81-2-7	Minors on Premises	27033	AMD	06/01/2004	2004-8/14
R81-2-8	Accepting Checks as Payment for Liquor	27034	AMD	06/01/2004	2004-8/14
R81-2-9	Accepting Credit Cards as Payment for Liquor	27035	AMD	06/01/2004	2004-8/16
R81-2-10	State Store Hours	27036	AMD	06/01/2004	2004-8/17
R81-2-11	Industry Members in State Stores	27037	AMD	06/01/2004	2004-8/18
R81-3-5	Special Orders of Liquor by Public	27038	AMD	06/01/2004	2004-8/19
R81-3-6	Liquor Returns, Refunds and Exchanges	27039	AMD	06/01/2004	2004-8/20
R81-3-14	Type 5 Package Agencies	27040	AMD	06/01/2004	2004-8/22
R81-3-16	Minors on Premises	27041	AMD	06/01/2004	2004-8/23
R81-3-17	Consignment Inventory Package Agencies	27042	AMD	06/01/2004	2004-8/24
R81-3-18	Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales	27043	AMD	06/01/2004	2004-8/25
R81-3-19	Credit Cards	27044	AMD	06/01/2004	2004-8/26
R81-4D-13	On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales	27045	AMD	06/01/2004	2004-8/27
R81-6-6	Religious Wine Permits	27046	AMD	06/01/2004	2004-8/29
R81-8-2	Out of State Business	27047	AMD	06/01/2004	2004-8/30
R81-8-3	Winery Tasting Facilities	27048	AMD	06/01/2004	2004-8/31
Commerce					
Consumer Protection					
R152-11	Utah Consumer Sales Practices Act Rules	26945	AMD	05/20/2004	2004-5/3
R152-21	Credit Services Organizations Act Rules	27238	5YR	06/15/2004	2004-13/67
R152-34	Postsecondary Proprietary School Act Rules	26905	AMD	05/20/2004	2004-4/2
Occupational and Professional Licensing					
R156-1	General Rules of the Division of Occupational and Professional Licensing	26678	NSC	01/01/2004	Not Printed
R156-1-106	Division - Duties, Functions, and Responsibilities	26805	AMD	01/20/2004	2003-24/4
R156-5a	Podiatric Physician Licensing Act Rules	26917	5YR	01/27/2004	2004-4/74
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	AMD	02/19/2004	2003-22/11

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	CPR	02/19/2004	2004-2/10
R156-22-503	Administrative Penalties	26859	NSC	01/01/2004	Not Printed
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	26786	AMD	01/06/2004	2003-23/7
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	27019	AMD	05/24/2004	2004-8/32
R156-37c	Utah Controlled Substance Precursor Act Rules	26916	5YR	01/27/2004	2004-4/74
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	26834	AMD	02/03/2004	2004-1/5
R156-39a	Alternative Dispute Resolution Providers Certification Act Rules	26915	5YR	01/27/2004	2004-4/75
R156-44a	Nurse Midwife Practice Act Rules	27224	5YR	06/10/2004	2004-13/67
R156-46a	Hearing Instrument Specialist Licensing Act Rules	27247	5YR	06/24/2004	Not Printed
R156-47b	Massage Therapy Practice Act Rules	26937	AMD	06/07/2004	2004-5/5
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	AMD	01/20/2004	2003-18/4
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	CPR	01/20/2004	2003-24/70
R156-55b	Electricians Licensing Rules	27112	AMD	06/15/2004	2004-10/6
R156-56	Utah Uniform Building Standard Act Rules	26693	AMD	01/01/2004	2003-21/7
R156-56	Utah Uniform Building Standard Act Rules	26866	NSC	01/01/2004	Not Printed
R156-56-707	Statewide Amendments to the IPC	26692	AMD	01/01/2004	2003-21/34
R156-61	Psychologist Licensing Act Rules	27225	5YR	06/10/2004	2004-13/68
R156-63	Security Personnel Licensing Act Rules	26888	AMD	03/04/2004	2004-3/5
R156-68	Utah Osteopathic Medical Practice Act Rules	26956	AMD	04/15/2004	2004-6/2
R156-71-202	Naturopathic Physician Formulary	26998	AMD	05/04/2004	2004-7/3
R156-74	Certified Shorthand Reporters Licensing Act Rules	26927	5YR	02/02/2004	2004-4/75
R156-76-102	Definitions	26777	AMD	01/20/2004	2003-23/14
Real Estate					
R162-3	License Status Change	27026	AMD	05/20/2004	2004-8/44
R162-6-2	Standards of Practice	26944	AMD	04/21/2004	2004-5/6
R162-7-3	Investigation and Enforcement	26835	AMD	02/18/2004	2004-1/9
R162-105	Scope of Authority	26890	5YR	01/13/2004	2004-3/42
R162-202	Residential Mortgage Renewal Period	26837	AMD	02/03/2004	2004-1/10
R162-203	Changes to Residential Mortgage Registration Statement	26909	AMD	04/12/2004	2004-4/7
R162-204	Residential Mortgage Record Keeping Requirements	26908	AMD	04/12/2004	2004-4/8
R162-205	Residential Mortgage Unprofessional Conduct	26907	AMD	04/12/2004	2004-4/9
R162-206	Licensing Examination	26840	NEW	02/03/2004	2004-1/12
R162-207	License Renewal	26839	NEW	02/03/2004	2004-1/13
R162-208	Continuing Education	26836	NEW	02/03/2004	2004-1/14
R162-209	Administrative Proceedings	26906	AMD	04/12/2004	2004-4/10
Securities					
R164-11-2	Hearings for Certain Exchanges of Securities	26481	AMD	01/05/2004	2003-15/17
R164-11-2	Hearings for Certain Exchanges of Securities	26481	CPR	01/05/2004	2003-23/83

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Corrections					
Administration					
R251-101	Corrections Advisory Council Bylaws	26769	REP	03/24/2004	2003-23/15
Education					
Administration					
R277-102	Adjudicative Proceedings	26958	5YR	02/26/2004	2004-6/58
R277-105	Recognizing Constitutional Freedoms in the Schools	27214	5YR	06/01/2004	2004-12/80
R277-413	Accreditation of Secondary Schools, Alternative or Special Purpose Schools	26959	5YR	02/26/2004	2004-6/58
R277-425	Budgeting, Accounting, and Auditing for Utah School Districts	26960	5YR	02/26/2004	2004-6/59
R277-437	Student Enrollment Options	26871	5YR	01/05/2004	2004-3/42
R277-438	Dual Enrollment	27205	5YR	06/01/2004	2004-12/80
R277-444	Distribution of Funds to Arts and Sciences Organizations	26979	AMD	04/15/2004	2004-6/4
R277-462	Comprehensive Guidance Program	26850	AMD	02/05/2004	2004-1/16
R277-469	Instructional Materials Commission Operating Procedures	26999	AMD	05/05/2004	2004-7/5
R277-484	Data Standards, Deadlines and Procedures	26688	NSC	01/01/2004	Not Printed
R277-486	Professional Staff Cost Program	26828	NEW	01/15/2004	2003-24/5
R277-501	Educator Licensing Renewal	26980	AMD	04/15/2004	2004-6/5
R277-502	Educator Licensing and Data Retention	26827	AMD	01/15/2004	2003-24/6
R277-514	Board Procedures: Sanctions for Educator Misconduct	26981	AMD	04/15/2004	2004-6/10
R277-517	Athletic Coaching Certification	26852	AMD	02/05/2004	2004-1/18
R277-518	Vocational-Technical Certificates	27000	AMD	05/05/2004	2004-7/8
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RULES INDEX - BY KEYWORD (SUBJECT)

ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

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	27019	R156-26a-303b	AMD	05/24/2004	2004-8/32
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	26773	R602-2-1	AMD	01/02/2004	2003-23/47
Natural Resources, Forestry, Fire and State Lands	27070	R652-41-1300	AMD	06/04/2004	2004-9/17
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Education, Administration	27001	R277-734	REP	05/05/2004	2004-7/11
	26963	R277-734	5YR	02/26/2004	2004-6/60
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Commerce, Consumer Protection	26945	R152-11	AMD	05/20/2004	2004-5/3

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	26946	R307-110-28	AMD	06/08/2004	2004-5/9
	26898	R307-110-31	AMD	05/18/2004	2004-3/13
	26899	R307-110-34	AMD	05/18/2004	2004-3/14
	26942	R307-150	5YR	02/09/2004	2004-5/43
	26939	R307-214	5YR	02/09/2004	2004-5/44
	27220	R307-215	5YR	06/08/2004	2004-13/69
	26897	R307-301	AMD	05/18/2004	2004-3/15
	27217	R307-309	5YR	06/08/2004	2004-13/69
	27219	R307-343	5YR	06/08/2004	2004-13/70
	26940	R307-415	5YR	02/09/2004	2004-5/45
	27218	R307-420	5YR	06/08/2004	2004-13/71
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	27027	R81-1-8	AMD	06/01/2004	2004-8/5
	27028	R81-1-21	AMD	06/01/2004	2004-8/6
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	27030	R81-1-23	AMD	06/01/2004	2004-8/10
	27031	R81-2-1	AMD	06/01/2004	2004-8/11
	27032	R81-2-2	AMD	06/01/2004	2004-8/12
	27033	R81-2-7	AMD	06/01/2004	2004-8/14
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	27035	R81-2-9	AMD	06/01/2004	2004-8/16
	27036	R81-2-10	AMD	06/01/2004	2004-8/17
	27037	R81-2-11	AMD	06/01/2004	2004-8/18
	27038	R81-3-5	AMD	06/01/2004	2004-8/19
	27039	R81-3-6	AMD	06/01/2004	2004-8/20
	27040	R81-3-14	AMD	06/01/2004	2004-8/22
	27041	R81-3-16	AMD	06/01/2004	2004-8/23
	27042	R81-3-17	AMD	06/01/2004	2004-8/24
	27043	R81-3-18	AMD	06/01/2004	2004-8/25
	27044	R81-3-19	AMD	06/01/2004	2004-8/26
	27045	R81-4D-13	AMD	06/01/2004	2004-8/27
	27046	R81-6-6	AMD	06/01/2004	2004-8/29
	27047	R81-8-2	AMD	06/01/2004	2004-8/30
	27048	R81-8-3	AMD	06/01/2004	2004-8/31
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Commerce, Occupational and Professional Licensing	26915	R156-39a	5YR	01/27/2004	2004-4/75

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Administrative Services, Fleet Operations, Surplus Property	26843	R28-3	AMD	02/12/2004	2004-1/4
Workforce Services, Workforce Information and Payment Services	26924	R994-406	AMD	04/04/2004	2004-4/45
	26929	R994-508	R&R	04/04/2004	2004-4/51
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Education, Administration	27000	R277-518	AMD	05/05/2004	2004-7/8
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Tax Commission, Property Tax	26910	R884-24P-24	NSC	01/27/2004	Not Printed
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Commerce, Occupational and Professional Licensing	26915	R156-39a	5YR	01/27/2004	2004-4/75
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Public Safety, Fire Marshal	26900	R710-5	AMD	03/03/2004	2004-3/32
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	26967	R616-2-3	AMD	04/15/2004	2004-6/55
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	26693	R156-56	AMD	01/01/2004	2003-21/7
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Administrative Services, Facilities Construction and Management	26991	R23-29	5YR	03/10/2004	2004-7/35
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Health, Community and Family Health Services, Chronic Disease	27235	R384-100	5YR	06/15/2004	2004-13/71
certification					
Labor Commission, Safety	26967	R616-2-3	AMD	04/15/2004	2004-6/55
	26674	R616-2-3	AMD	01/01/2004	2003-20/25
	26966	R616-3-3	AMD	04/15/2004	2004-6/56
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Commerce, Occupational and Professional Licensing	27224	R156-44a	5YR	06/10/2004	2004-13/67
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Health, Health Systems Improvement, Child Care Licensing	27242	R430-8	5YR	06/16/2004	Not Printed
Workforce Services, Employment Development	26707	R986-700	AMD	01/01/2004	2003-21/83
	26933	R986-700	AMD	04/01/2004	2004-4/36
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Health, Health Systems Improvement, Child Care Licensing	26824	R430-2	AMD	04/12/2004	2003-24/25
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Human Services, Administration, Administrative Services, Licensing	26904	R501-7	AMD	05/28/2004	2004-4/22
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	27007	R527-258	AMD	05/19/2004	2004-8/72
	27109	R527-302	5YR	04/21/2004	2004-10/38
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Human Services, Child and Family Services	27014	R512-3	NSC	03/04/2004	Not Printed
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	26757	R382-10	AMD	01/05/2004	2003-22/21
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Health, Health Care Financing, Coverage and Reimbursement Policy	26809	R414-99	NEW	02/17/2004	2003-24/15
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Education, Administration	26852	R277-517	AMD	02/05/2004	2004-1/18
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Natural Resources, Oil, Gas and Mining; Coal	26710	R645-301-100	AMD	02/06/2004	2003-22/34
	26711	R645-301-500	AMD	02/06/2004	2003-22/35
	26712	R645-303-200	AMD	02/06/2004	2003-22/36
	26713	R645-401	AMD	02/06/2004	2003-22/38
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Environmental Quality, Air Quality	27219	R307-343	5YR	06/08/2004	2004-13/70
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Public Safety, Administration	26969	R698-4	5YR	02/27/2004	2004-6/62
communicable diseases					
Health, Epidemiology and Laboratory Services, Epidemiology	27024	R386-702	AMD	06/11/2004	2004-8/60
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Education, Rehabilitation	26872	R280-201	5YR	01/05/2004	2004-3/43
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Commerce, Consumer Protection	26945	R152-11	AMD	05/20/2004	2004-5/3
	27238	R152-21	5YR	06/15/2004	2004-13/67
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Commerce, Occupational and Professional Licensing	27019	R156-26a-303b	AMD	05/24/2004	2004-8/32
	26786	R156-26a-303b	AMD	01/06/2004	2003-23/7
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Commerce, Occupational and Professional Licensing	26834	R156-38	AMD	02/03/2004	2004-1/5
	27112	R156-55b	AMD	06/15/2004	2004-10/6
	26693	R156-56	AMD	01/01/2004	2003-21/7
	26866	R156-56	NSC	01/01/2004	Not Printed
	26692	R156-56-707	AMD	01/01/2004	2003-21/34

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Corrections, Administration	26769	R251-101	REP	03/24/2004	2003-23/15
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Education, Administration	26850	R277-462	AMD	02/05/2004	2004-1/16
Workforce Services, Workforce Information and Payment Services	26922	R994-103	REP	04/04/2004	2004-4/40
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Commerce, Occupational and Professional Licensing	26927	R156-74	5YR	02/02/2004	2004-4/75
covered-at-work benefits					
Health, Health Care Financing, Coverage and Reimbursement Policy	26811	R414-300	NEW	02/10/2004	2003-24/17
credit insurance filings					
Insurance, Administration	26950	R590-228	NEW	04/08/2004	2004-5/25
credit reporting					
Commerce, Consumer Protection	27238	R152-21	5YR	06/15/2004	2004-13/67
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Public Safety, Criminal Investigations and Technical Services, Criminal Identification	26858	R722-900	NSC	01/15/2004	Not Printed
	26895	R722-900	5YR	01/15/2004	2004-3/48
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Regents (Board Of), University of Utah, Museum of Natural History (Utah)	26913	R807-1	5YR	01/26/2004	2004-4/77
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Education, Administration	26979	R277-444	AMD	04/15/2004	2004-6/4
	26902	R277-700	AMD	03/03/2004	2004-3/10
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Education, Administration	26870	R277-735	5YR	01/05/2004	2004-3/43
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Human Services, Administration	26822	R495-879	AMD	01/26/2004	2003-24/27
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Administrative Services, Facilities Construction and Management	26991	R23-29	5YR	03/10/2004	2004-7/35
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Health, Health Care Financing, Coverage and Reimbursement Policy	26810	R414-310	AMD	02/10/2004	2003-24/18
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Health, Health Care Financing, Coverage and Reimbursement Policy	26782	R414-51	AMD	01/28/2004	2003-23/25
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Education, Rehabilitation	26872	R280-201	5YR	01/05/2004	2004-3/43
	26873	R280-202	5YR	01/05/2004	2004-3/44
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Environmental Quality, Water Quality	26903	R317-8	AMD	03/30/2004	2004-3/19
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Education, Administration	26981	R277-514	AMD	04/15/2004	2004-6/10
	27141	R686-103	5YR	05/05/2004	2004-11/91
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Agriculture and Food, Animal Industry	26891	R58-21	AMD	03/04/2004	2004-3/4
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Commerce, Occupational and Professional Licensing	26678	R156-1	NSC	01/01/2004	Not Printed
	26805	R156-1-106	AMD	01/20/2004	2003-24/4
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Human Services, Child and Family Services	27014	R512-3	NSC	03/04/2004	Not Printed
	26774	R512-3	NSC	03/04/2004	Not Printed
drinking water					
Environmental Quality, Drinking Water	26970	R309-110	AMD	04/21/2004	2004-6/13
	26971	R309-204	AMD	04/21/2004	2004-6/23
driver education					
Public Safety, Driver License	26894	R708-2	AMD	03/04/2004	2004-3/27
	27245	R708-2	EMR	07/01/2004	Not Printed
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Education, Administration	27205	R277-438	5YR	06/01/2004	2004-12/80
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Human Services, Mental Health	27117	R523-1-10	AMD	06/17/2004	2004-10/21
	27118	R523-1-16	AMD	06/17/2004	2004-10/23
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education Commerce, Consumer Protection	26905	R152-34	AMD	05/20/2004	2004-4/2
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educational testing Education, Administration	26962	R277-712	5YR	02/26/2004	2004-6/60
educator Education, Administration	26851	R277-520	R&R	02/05/2004	2004-1/20
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educator licensing Education, Administration	26827	R277-502	AMD	01/15/2004	2003-24/6
	27000	R277-518	AMD	05/05/2004	2004-7/8
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	27127	R623-3	NEW	06/16/2004	2004-10/27
electricians Commerce, Occupational and Professional Licensing	27112	R156-55b	AMD	06/15/2004	2004-10/6
electronic high school Education, Administration	26982	R277-725	NEW	04/15/2004	2004-6/12
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emergency medical services Health, Health Systems Improvement, Emergency Medical Services	26669	R426-13	AMD	01/01/2004	2003-20/7
	26670	R426-14	AMD	01/01/2004	2003-20/10
	26671	R426-15	AMD	01/01/2004	2003-20/14

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Labor Commission, Antidiscrimination and Labor, Labor	27228	R610-4	5YR	06/11/2004	2004-13/72
employment support procedures					
Workforce Services, Employment Development	26705	R986-100	AMD	01/01/2004	2003-21/75
	26932	R986-100-134	AMD	04/01/2004	2004-4/33
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Commerce, Occupational and Professional Licensing	26859	R156-22-503	NSC	01/01/2004	Not Printed
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Education, Administration	26871	R277-437	5YR	01/05/2004	2004-3/42
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Tax Commission, Auditing	26957	R865-7H	5YR	02/25/2004	2004-6/63
environmental protection					
Environmental Quality, Air Quality	26896	R307-110-12	CPR	05/18/2004	2004-8/87
	26898	R307-110-31	CPR	05/18/2004	2004-8/87
	26899	R307-110-34	CPR	05/18/2004	2004-8/88
	26940	R307-415	5YR	02/09/2004	2004-5/45
exiting provider					
Public Service Commission, Administration	26901	R746-350	NSC	03/01/2004	Not Printed
exiting providers					
Public Service Commission, Administration	26785	R746-350	NEW	01/15/2004	2003-23/79
eyeglasses					
Health, Health Care Financing, Coverage and Reimbursement Policy	26783	R414-53	AMD	01/28/2004	2003-23/28
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Education, Administration	26829	R277-724	NEW	01/15/2004	2003-24/11
facility					
Health, Health Care Financing, Coverage and Reimbursement Policy	26854	R414-9	NEW	02/03/2004	2004-1/26
family employment program					
Workforce Services, Employment Development	26934	R986-200	AMD	04/01/2004	2004-4/35
	26704	R986-200	AMD	02/02/2004	2003-21/77
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Lieutenant Governor, Elections	27127	R623-3	NEW	06/16/2004	2004-10/27
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	27118	R523-1-16	AMD	06/17/2004	2004-10/23
Natural Resources, Parks and Recreation	26948	R651-611	AMD	04/01/2004	2004-5/29
	26776	R651-611	AMD	01/06/2004	2003-23/52

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Environmental Quality, Drinking Water	26760	R309-705	AMD	01/01/2004	2003-22/19
financial disclosures					
Health, Health Care Financing, Coverage and Reimbursement Policy	26781	R414-304	AMD	01/01/2004	2003-23/29
fire prevention					
Public Safety, Fire Marshal	27003	R710-4	AMD	05/05/2004	2004-7/19
	26793	R710-4	AMD	01/02/2004	2003-23/67
	26920	R710-4	EMR	01/28/2004	2004-4/66
	26919	R710-9	EMR	01/28/2004	2004-4/70
	26788	R710-9	AMD	01/02/2004	2003-23/72
	27002	R710-9	AMD	05/05/2004	2004-7/23
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Public Safety, Fire Marshal	26795	R710-2	AMD	01/02/2004	2003-23/65
fish					
Natural Resources, Wildlife Resources	26659	R657-13	AMD	01/02/2004	2003-20/28
fishing					
Natural Resources, Wildlife Resources	26659	R657-13	AMD	01/02/2004	2003-20/28
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Natural Resources, Water Rights	26844	R655-11	NSC	01/01/2004	Not Printed
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Agriculture and Food, Regulatory Services	27069	R70-330	AMD	06/02/2004	2004-9/4
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Education, Administration	26829	R277-724	NEW	01/15/2004	2003-24/11
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Health, Epidemiology and Laboratory Services, Environmental Services	27187	R392-101	5YR	05/24/2004	2004-12/81
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Human Services, Child and Family Services	27243	R512-306	EMR	06/22/2004	Not Printed
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Commerce, Consumer Protection	27238	R152-21	5YR	06/15/2004	2004-13/67
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Education, Administration	27214	R277-105	5YR	06/01/2004	2004-12/80
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Natural Resources, Wildlife Resources	26817	R657-5	AMD	01/21/2004	2003-24/46
	26818	R657-17-4	AMD	01/21/2004	2003-24/55
	26867	R657-33	AMD	02/24/2004	2004-2/3

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gifted children Education, Administration	26962	R277-712	5YR	02/26/2004	2004-6/60
government hearings Public Service Commission, Administration	26849	R746-100	AMD	04/01/2004	2004-1/28
	26849	R746-100	CPR	04/01/2004	2004-5/36
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	26799	R428-11	AMD	02/27/2004	2003-23/37
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health facilities Health, Health Systems Improvement, Licensing	26868	R432-1	5YR	01/05/2004	2004-3/44
	26876	R432-2	5YR	01/05/2004	2004-3/45
	26875	R432-3	5YR	01/05/2004	2004-3/45
	26886	R432-6	5YR	01/08/2004	2004-3/47
	26755	R432-100-16	AMD	01/09/2004	2003-22/24
	26993	R432-150-6	AMD	05/26/2004	2004-7/13
	26992	R432-270-29b	AMD	05/26/2004	2004-7/15
health facility Health, Health Systems Improvement, Licensing	26877	R432-5	5YR	01/05/2004	2004-3/46
health facilties Health, Health Systems Improvement, Licensing	26869	R432-4	5YR	01/05/2004	2004-3/46
health insurance filings Insurance, Administration	26806	R590-220	CPR	03/24/2004	2004-4/61
	26806	R590-220	NEW	03/24/2004	2003-24/33
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hearing aids Commerce, Occupational and Professional Licensing	27247	R156-46a	5YR	06/24/2004	Not Printed
hearings Labor Commission, Adjudication	26773	R602-2-1	AMD	01/02/2004	2003-23/47
Help America Vote Act Lieutenant Governor, Elections	27123	R623-2	NEW	06/16/2004	2004-10/24
highways Transportation, Administration	26720	R907-67	NEW	01/05/2004	2003-22/50
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hospital policy Health, Center for Health Data, Health Care Statistics	26800	R428-10	AMD	02/27/2004	2003-23/36
	26799	R428-11	AMD	02/27/2004	2003-23/37
human services Human Services, Administration, Administrative Services, Licensing	26925	R501-2	AMD	03/17/2004	2004-4/16
	26904	R501-7	AMD	05/28/2004	2004-4/22
	26804	R501-16	AMD	04/12/2004	2003-24/29
hunting Natural Resources, Wildlife Resources	26819	R657-38	AMD	01/21/2004	2003-24/56
hunting and fishing licenses Natural Resources, Wildlife Resources	26818	R657-17-4	AMD	01/21/2004	2003-24/55
implements of husbandry Transportation, Motor Carrier	26823	R909-1	AMD	03/01/2004	2003-24/66
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income withholding fees Human Services, Recovery Services	27109	R527-302	5YR	04/21/2004	2004-10/38
independent liviing Human Services, Child and Family Services	27243	R512-306	EMR	06/22/2004	Not Printed
industrial waste Environmental Quality, Water Quality	26796	R317-1	AMD	03/29/2004	2003-23/16
informal review Public Service Commission, Administration	26780	R746-200-6	AMD	01/07/2004	2003-23/76
information technology resources Governor, Planning and Budget, Chief Information Officer	27119	R365-7	NEW	06/28/2004	2004-10/20

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Education, Administration	26870	R277-735	5YR	01/05/2004	2004-3/43
Inspections					
Agriculture and Food, Animal Industry	26990	R58-20	5YR	03/05/2004	2004-7/35
inspections					
Agriculture and Food, Animal Industry	26989	R58-20-5	AMD	05/04/2004	2004-7/3
Agriculture and Food, Plant Industry	26794	R68-7-6	NSC	01/01/2004	Not Printed
	26949	R68-20-1	AMD	04/01/2004	2004-5/2
instructional materials					
Education, Administration	26999	R277-469	AMD	05/05/2004	2004-7/5
insurance					
Insurance, Administration	26787	R590-102	AMD	01/08/2004	2003-23/39
	26882	R590-102-5	NSC	02/01/2004	Not Printed
	27126	R590-166	5YR	04/28/2004	2004-10/39
	26976	R590-170	5YR	03/01/2004	2004-6/62
	26812	R590-170	NSC	01/01/2004	Not Printed
	27083	R590-230	NEW	06/03/2004	2004-9/14
insurance law					
Insurance, Administration	26978	R590-86	REP	04/23/2004	2004-6/53
	27121	R590-93	5YR	04/28/2004	2004-10/38
	27122	R590-98	5YR	04/28/2004	2004-10/39
	27113	R590-190	5YR	04/26/2004	2004-10/40
	27115	R590-191	5YR	04/26/2004	2004-10/40
insurance licensing					
Insurance, Administration	27011	R590-195	5YR	03/19/2004	2004-8/97
interconnection					
Public Service Commission, Administration	26826	R746-348-6	AMD	04/13/2004	2003-24/65
	26883	R746-365	5YR	01/06/2004	2004-3/49
interstate highway system					
Transportation, Administration	26878	R907-64	5YR	01/05/2004	2004-3/49
	26879	R907-65	5YR	01/05/2004	2004-3/50
inventories					
Environmental Quality, Air Quality	26942	R307-150	5YR	02/09/2004	2004-5/43
investment advisers					
Money Management Council, Administration	26676	R628-19	CPR	02/10/2004	2004-1/38
	26676	R628-19	NEW	02/10/2004	2003-20/27
IT Planning					
Governor, Planning and Budget, Chief Information Officer	27108	R365-6	NEW	06/28/2004	2004-10/18
jurisdiction					
Workforce Services, Workforce Information and Payment Services	26924	R994-406	AMD	04/04/2004	2004-4/45

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laboratory animals					
Health, Epidemiology and Laboratory Services, Laboratory Services	26968	R438-13	5YR	02/27/2004	2004-6/61
law					
Public Safety, Fire Marshal	26919	R710-9	EMR	01/28/2004	2004-4/70
	27002	R710-9	AMD	05/05/2004	2004-7/23
	26788	R710-9	AMD	01/02/2004	2003-23/72
law enforcement officer certification					
Public Safety, Administration	26969	R698-4	5YR	02/27/2004	2004-6/62
license					
Education, Administration	26851	R277-520	R&R	02/05/2004	2004-1/20
licensing					
Commerce, Occupational and Professional Licensing	26678	R156-1	NSC	01/01/2004	Not Printed
	26805	R156-1-106	AMD	01/20/2004	2003-24/4
	26917	R156-5a	5YR	01/27/2004	2004-4/74
	26754	R156-17a-612	AMD	02/19/2004	2003-22/11
	26754	R156-17a-612	CPR	02/19/2004	2004-2/10
	26786	R156-26a-303b	AMD	01/06/2004	2003-23/7
	27019	R156-26a-303b	AMD	05/24/2004	2004-8/32
	26916	R156-37c	5YR	01/27/2004	2004-4/74
	26834	R156-38	AMD	02/03/2004	2004-1/5
	26915	R156-39a	5YR	01/27/2004	2004-4/75
	27224	R156-44a	5YR	06/10/2004	2004-13/67
	27247	R156-46a	5YR	06/24/2004	Not Printed
	26937	R156-47b	AMD	06/07/2004	2004-5/5
	26580	R156-54-302b	CPR	01/20/2004	2003-24/70
	26580	R156-54-302b	AMD	01/20/2004	2003-18/4
	27112	R156-55b	AMD	06/15/2004	2004-10/6
	26693	R156-56	AMD	01/01/2004	2003-21/7
	26866	R156-56	NSC	01/01/2004	Not Printed
	26692	R156-56-707	AMD	01/01/2004	2003-21/34
	27225	R156-61	5YR	06/10/2004	2004-13/68
	26888	R156-63	AMD	03/04/2004	2004-3/5
	26956	R156-68	AMD	04/15/2004	2004-6/2
	26998	R156-71-202	AMD	05/04/2004	2004-7/3
	26927	R156-74	5YR	02/02/2004	2004-4/75
	26777	R156-76-102	AMD	01/20/2004	2003-23/14
Human Services, Administration, Administrative Services, Licensing	26925	R501-2	AMD	03/17/2004	2004-4/16
	26904	R501-7	AMD	05/28/2004	2004-4/22
	26804	R501-16	AMD	04/12/2004	2003-24/29
Labor Commission, Antidiscrimination and Labor, Labor	27228	R610-4	5YR	06/11/2004	2004-13/72

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life insurance filings					
Insurance, Administration	26951	R590-226	NEW	04/08/2004	2004-5/14
liquefied petroleum gas					
Public Safety, Fire Marshal	26801	R710-6	AMD	01/16/2004	2003-24/63
	26938	R710-6-1	AMD	04/01/2004	2004-5/32
loans					
Environmental Quality, Drinking Water	26760	R309-705	AMD	01/01/2004	2003-22/19
lt. governor					
Lieutenant Governor, Administration	27221	R622-2	5YR	06/09/2004	2004-13/72
MACT					
Environmental Quality, Air Quality	26939	R307-214	5YR	02/09/2004	2004-5/44
management					
Natural Resources, Forestry, Fire and State Lands	27070	R652-41-1300	AMD	06/04/2004	2004-9/17
massage therapy					
Commerce, Occupational and Professional Licensing	26937	R156-47b	AMD	06/07/2004	2004-5/5
mediation					
Commerce, Occupational and Professional Licensing	26915	R156-39a	5YR	01/27/2004	2004-4/75
Medicaid					
Health, Health Care Financing, Coverage and Reimbursement Policy	26955	R414-1-5	AMD	05/19/2004	2004-6/47
	27023	R414-1A	AMD	05/25/2004	2004-8/68
	27222	R414-1B	EMR	06/09/2004	2004-13/65
	26854	R414-9	NEW	02/03/2004	2004-1/26
	26964	R414-49	AMD	05/07/2004	2004-6/48
	26802	R414-50	AMD	01/28/2004	2003-24/13
	26782	R414-51	AMD	01/28/2004	2003-23/25
	26798	R414-52	AMD	01/01/2004	2003-23/27
	26783	R414-53	AMD	01/28/2004	2003-23/28
	26803	R414-54	AMD	01/28/2004	2003-24/14
	27012	R414-54	5YR	03/23/2004	2004-8/94
	27049	R414-55	AMD	06/17/2004	2004-8/69
	26809	R414-99	NEW	02/17/2004	2003-24/15
	26811	R414-300	NEW	02/10/2004	2003-24/17
	26781	R414-304	AMD	01/01/2004	2003-23/29
	26965	R414-305-3	AMD	05/07/2004	2004-6/50
	26810	R414-310	AMD	02/10/2004	2003-24/18
midwifery					
Commerce, Occupational and Professional Licensing	27224	R156-44a	5YR	06/10/2004	2004-13/67

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Natural Resources, Oil, Gas and Mining; Non-Coal	27015	R647-1-106	AMD	06/01/2004	2004-8/74
	27016	R647-6	NEW	06/01/2004	2004-8/76
	27017	R647-7	NEW	06/01/2004	2004-8/79
	27018	R647-8	NEW	06/01/2004	2004-8/83
motorcycle rider training schools					
Public Safety, Driver License	26918	R708-30	5YR	01/27/2004	2004-4/76
natural resources					
Natural Resources, Forestry, Fire and State Lands	27070	R652-41-1300	AMD	06/04/2004	2004-9/17
natural resources; management; surveys					
Natural Resources, Forestry, Fire and State Lands	26865	R652-40-1800	AMD	02/24/2004	2004-2/2
naturopathic physician					
Commerce, Occupational and Professional Licensing	26998	R156-71-202	AMD	05/04/2004	2004-7/3
naturopaths					
Commerce, Occupational and Professional Licensing	26998	R156-71-202	AMD	05/04/2004	2004-7/3
NCLB					
Education, Administration	26853	R277-524	NEW	02/05/2004	2004-1/25
network interconnection					
Public Service Commission, Administration	26826	R746-348-6	AMD	04/13/2004	2003-24/65
nutrition					
Education, Administration	26830	R277-720	AMD	01/15/2004	2003-24/10
occupational licensing					
Commerce, Occupational and Professional Licensing	26678	R156-1	NSC	01/01/2004	Not Printed
	26805	R156-1-106	AMD	01/20/2004	2003-24/4
	27112	R156-55b	AMD	06/15/2004	2004-10/6
offset					
Environmental Quality, Air Quality	27218	R307-420	5YR	06/08/2004	2004-13/71
operating permits					
Environmental Quality, Air Quality	26940	R307-415	5YR	02/09/2004	2004-5/45
	26941	R307-417	5YR	02/09/2004	2004-5/45
operator certification					
Environmental Quality, Water Quality	27022	R317-10	AMD	06/23/2004	2004-8/52
optometry					
Health, Health Care Financing, Coverage and Reimbursement Policy	26798	R414-52	AMD	01/01/2004	2003-23/27
organ transplants					
Health, Health Care Financing, Coverage and Reimbursement Policy	26935	R414-58	5YR	02/03/2004	2004-5/46

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Health, Health Care Financing, Coverage and Reimbursement Policy	26782	R414-51	AMD	01/28/2004	2003-23/25
osteopathic physician					
Commerce, Occupational and Professional Licensing	26956	R156-68	AMD	04/15/2004	2004-6/2
osteopaths					
Commerce, Occupational and Professional Licensing	26956	R156-68	AMD	04/15/2004	2004-6/2
overpayments					
Workforce Services, Workforce Information and Payment Services	26924	R994-406	AMD	04/04/2004	2004-4/45
ozone					
Environmental Quality, Air Quality	26896	R307-110-12	AMD	05/18/2004	2004-3/12
	26896	R307-110-12	CPR	05/18/2004	2004-8/87
	26946	R307-110-28	AMD	06/08/2004	2004-5/9
	26898	R307-110-31	CPR	05/18/2004	2004-8/87
	26898	R307-110-31	AMD	05/18/2004	2004-3/13
	26899	R307-110-34	CPR	05/18/2004	2004-8/88
	26899	R307-110-34	AMD	05/18/2004	2004-3/14
	26897	R307-301	AMD	05/18/2004	2004-3/15
	27219	R307-343	5YR	06/08/2004	2004-13/70
	27218	R307-420	5YR	06/08/2004	2004-13/71
paleontological resources					
Regents (Board Of), University of Utah, Museum of Natural History (Utah)	26913	R807-1	5YR	01/26/2004	2004-4/77
paraprofessional qualifications					
Education, Administration	26853	R277-524	NEW	02/05/2004	2004-1/25
parks					
Natural Resources, Parks and Recreation	26776	R651-611	AMD	01/06/2004	2003-23/52
	26948	R651-611	AMD	04/01/2004	2004-5/29
	27139	R651-633	5YR	05/03/2004	2004-11/91
particulate matter					
Environmental Quality, Air Quality	26896	R307-110-12	CPR	05/18/2004	2004-8/87
	26896	R307-110-12	AMD	05/18/2004	2004-3/12
	26946	R307-110-28	AMD	06/08/2004	2004-5/9
	26898	R307-110-31	CPR	05/18/2004	2004-8/87
	26898	R307-110-31	AMD	05/18/2004	2004-3/13
	26899	R307-110-34	CPR	05/18/2004	2004-8/88
	26899	R307-110-34	AMD	05/18/2004	2004-3/14
	26897	R307-301	AMD	05/18/2004	2004-3/15
pedestrians					
Regents (Board Of), University of Utah, Administration	26914	R805-1	5YR	01/27/2004	2004-4/76

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peer review					
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	26786	R156-26a-303b	AMD	01/06/2004	2003-23/7
per diem allowances					
Administrative Services, Finance	27120	R25-7	AMD	07/01/2004	2004-10/4
permits					
Natural Resources, Wildlife Resources	26820	R657-42	AMD	01/21/2004	2003-24/61
Transportation, Motor Carrier, Ports of Entry	26881	R912-14	5YR	01/05/2004	2004-3/51
permitting authority					
Environmental Quality, Air Quality	26941	R307-417	5YR	02/09/2004	2004-5/45
personal property					
Tax Commission, Property Tax	26910	R884-24P-24	NSC	01/27/2004	Not Printed
pharmacies					
Commerce, Occupational and Professional Licensing	26754	R156-17a-612	AMD	02/19/2004	2003-22/11
	26754	R156-17a-612	CPR	02/19/2004	2004-2/10
pharmacists					
Commerce, Occupational and Professional Licensing	26754	R156-17a-612	CPR	02/19/2004	2004-2/10
	26754	R156-17a-612	AMD	02/19/2004	2003-22/11
physician					
Health, Health Care Financing, Coverage and Reimbursement Policy	27222	R414-1B	EMR	06/09/2004	2004-13/65
podiatric physician					
Commerce, Occupational and Professional Licensing	26917	R156-5a	5YR	01/27/2004	2004-4/74
podiatrists					
Commerce, Occupational and Professional Licensing	26917	R156-5a	5YR	01/27/2004	2004-4/74
point-system					
Public Safety, Driver License	27142	R708-3	EMR	05/05/2004	2004-11/88
postsecondary school					
Commerce, Consumer Protection	26905	R152-34	AMD	05/20/2004	2004-4/2
precursor					
Commerce, Occupational and Professional Licensing	26916	R156-37c	5YR	01/27/2004	2004-4/74
primary care					
Health, Health Care Financing, Coverage and Reimbursement Policy	26810	R414-310	AMD	02/10/2004	2003-24/18
primary care network					
Health, Health Care Financing, Coverage and Reimbursement Policy	26811	R414-300	NEW	02/10/2004	2003-24/17
private security officers					
Commerce, Occupational and Professional Licensing	26888	R156-63	AMD	03/04/2004	2004-3/5

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professional competency					
Education, Administration	26827	R277-502	AMD	01/15/2004	2003-24/6
	26981	R277-514	AMD	04/15/2004	2004-6/10
professional education					
Education, Administration	27000	R277-518	AMD	05/05/2004	2004-7/8
professional engineers					
Commerce, Occupational and Professional Licensing	26859	R156-22-503	NSC	01/01/2004	Not Printed
professional geologists					
Commerce, Occupational and Professional Licensing	26777	R156-76-102	AMD	01/20/2004	2003-23/14
professional land surveyors					
Commerce, Occupational and Professional Licensing	26859	R156-22-503	NSC	01/01/2004	Not Printed
professional staff					
Education, Administration	26828	R277-486	NEW	01/15/2004	2003-24/5
prohibited items and devices					
Human Services, Mental Health	27117	R523-1-10	AMD	06/17/2004	2004-10/21
	27118	R523-1-16	AMD	06/17/2004	2004-10/23
property casualty insurance filing					
Insurance, Administration	26821	R590-225	CPR	03/24/2004	2004-4/64
	26821	R590-225	NEW	03/24/2004	2003-24/38
property tax					
Tax Commission, Property Tax	26910	R884-24P-24	NSC	01/27/2004	Not Printed
prosecution					
Workforce Services, Workforce Information and Payment Services	26923	R994-104	REP	04/04/2004	2004-4/41
psychologists					
Commerce, Occupational and Professional Licensing	27225	R156-61	5YR	06/10/2004	2004-13/68
public buildings					
Public Safety, Fire Marshal	26920	R710-4	EMR	01/28/2004	2004-4/66
	27003	R710-4	AMD	05/05/2004	2004-7/19
	26793	R710-4	AMD	01/02/2004	2003-23/67
public education					
Education, Administration	27214	R277-105	5YR	06/01/2004	2004-12/80
	26871	R277-437	5YR	01/05/2004	2004-3/42
	27205	R277-438	5YR	06/01/2004	2004-12/80
	26850	R277-462	AMD	02/05/2004	2004-1/16
	26870	R277-735	5YR	01/05/2004	2004-3/43
public funds					
Money Management Council, Administration	26676	R628-19	CPR	02/10/2004	2004-1/38
	26676	R628-19	NEW	02/10/2004	2003-20/27

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Health, Epidemiology and Laboratory Services, Environmental Services	27187	R392-101	5YR	05/24/2004	2004-12/81
public input in policy					
Human Services, Child and Family Services	26774	R512-3	NSC	03/04/2004	Not Printed
	27014	R512-3	NSC	03/04/2004	Not Printed
public schools					
Education, Administration	27212	R277-916	5YR	06/01/2004	2004-12/81
public utilities					
Public Service Commission, Administration	26849	R746-100	AMD	04/01/2004	2004-1/28
	26849	R746-100	CPR	04/01/2004	2004-5/36
	26883	R746-365	5YR	01/06/2004	2004-3/49
radiology practical technician					
Commerce, Occupational and Professional Licensing	26580	R156-54-302b	AMD	01/20/2004	2003-18/4
radiology practical technicians					
Commerce, Occupational and Professional Licensing	26580	R156-54-302b	CPR	01/20/2004	2003-24/70
radiology technologist					
Commerce, Occupational and Professional Licensing	26580	R156-54-302b	AMD	01/20/2004	2003-18/4
radiology technologists					
Commerce, Occupational and Professional Licensing	26580	R156-54-302b	CPR	01/20/2004	2003-24/70
rates					
Labor Commission, Industrial Accidents	26697	R612-4-2	AMD	01/01/2004	2003-21/64
real estate appraisals					
Commerce, Real Estate	26890	R162-105	5YR	01/13/2004	2004-3/42
real estate brokers					
Commerce, Real Estate	26835	R162-7-3	AMD	02/18/2004	2004-1/9
real estate business					
Commerce, Real Estate	27026	R162-3	AMD	05/20/2004	2004-8/44
	26944	R162-6-2	AMD	04/21/2004	2004-5/6
reclamation					
Natural Resources, Oil, Gas and Mining; Coal	26710	R645-301-100	AMD	02/06/2004	2003-22/34
	26711	R645-301-500	AMD	02/06/2004	2003-22/35
	26712	R645-303-200	AMD	02/06/2004	2003-22/36
	26713	R645-401	AMD	02/06/2004	2003-22/38
recreation					
Natural Resources, Wildlife Resources	26819	R657-38	AMD	01/21/2004	2003-24/56
registration					
Commerce, Consumer Protection	26905	R152-34	AMD	05/20/2004	2004-4/2

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rehabilitation					
Education, Rehabilitation	26873	R280-202	5YR	01/05/2004	2004-3/44
reimbursement					
Health, Health Care Financing, Coverage and Reimbursement Policy	26854	R414-9	NEW	02/03/2004	2004-1/26
replacement provider					
Public Service Commission, Administration	26901	R746-350	NSC	03/01/2004	Not Printed
replacement providers					
Public Service Commission, Administration	26785	R746-350	NEW	01/15/2004	2003-23/79
reporting requirements and procedures					
Health, Community and Family Health Services, Chronic Disease	27235	R384-100	5YR	06/15/2004	2004-13/71
reports					
Education, Administration	26688	R277-484	NSC	01/01/2004	Not Printed
Environmental Quality, Air Quality	26942	R307-150	5YR	02/09/2004	2004-5/43
reservoirs					
Natural Resources, Water Rights	26844	R655-11	NSC	01/01/2004	Not Printed
residential mortgage loan origination					
Commerce, Real Estate	26837	R162-202	AMD	02/03/2004	2004-1/10
	26909	R162-203	AMD	04/12/2004	2004-4/7
	26908	R162-204	AMD	04/12/2004	2004-4/8
	26907	R162-205	AMD	04/12/2004	2004-4/9
	26840	R162-206	NEW	02/03/2004	2004-1/12
	26839	R162-207	NEW	02/03/2004	2004-1/13
	26836	R162-208	NEW	02/03/2004	2004-1/14
	26906	R162-209	AMD	04/12/2004	2004-4/10
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Transportation, Administration	26878	R907-64	5YR	01/05/2004	2004-3/49
	26879	R907-65	5YR	01/05/2004	2004-3/50
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Education, Administration	26958	R277-102	5YR	02/26/2004	2004-6/58
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	26894	R708-2	AMD	03/04/2004	2004-3/27
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	26849	R746-100	CPR	04/01/2004	2004-5/36
	26780	R746-200-6	AMD	01/07/2004	2003-23/76
safety					
Labor Commission, Safety	26674	R616-2-3	AMD	01/01/2004	2003-20/25
	26967	R616-2-3	AMD	04/15/2004	2004-6/55
	26966	R616-3-3	AMD	04/15/2004	2004-6/56
Transportation, Motor Carrier	26880	R909-3	5YR	01/05/2004	2004-3/50

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school transportation Education, Administration	26961	R277-601	5YR	02/26/2004	2004-6/59
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	27245	R708-2	EMR	07/01/2004	Not Printed
science Education, Administration	26979	R277-444	AMD	04/15/2004	2004-6/4
SDWA Environmental Quality, Drinking Water	26760	R309-705	AMD	01/01/2004	2003-22/19
securities Money Management Council, Administration	26676	R628-19	CPR	02/10/2004	2004-1/38
	26676	R628-19	NEW	02/10/2004	2003-20/27
securities regulation Commerce, Securities	26481	R164-11-2	AMD	01/05/2004	2003-15/17
	26481	R164-11-2	CPR	01/05/2004	2003-23/83
security guards Commerce, Occupational and Professional Licensing	26888	R156-63	AMD	03/04/2004	2004-3/5
senior protection Insurance, Administration	27083	R590-230	NEW	06/03/2004	2004-9/14
services Public Service Commission, Administration	26785	R746-350	NEW	01/15/2004	2003-23/79
	26901	R746-350	NSC	03/01/2004	Not Printed
settlement Labor Commission, Adjudication	26773	R602-2-1	AMD	01/02/2004	2003-23/47
shorthand reporter Commerce, Occupational and Professional Licensing	26927	R156-74	5YR	02/02/2004	2004-4/75
signs Transportation, Preconstruction, Right-of-Way Acquisition	26892	R933-2-3	EMR	01/14/2004	2004-3/39
	26893	R933-2-3	AMD	03/23/2004	2004-3/37
SLCC Regents (Board Of), Salt Lake Community College	26994	R784-1	5YR	03/12/2004	2004-7/36

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	26898	R307-110-31	CPR	05/18/2004	2004-8/87
	26898	R307-110-31	AMD	05/18/2004	2004-3/13
	26899	R307-110-34	CPR	05/18/2004	2004-8/88
	26899	R307-110-34	AMD	05/18/2004	2004-3/14
	26897	R307-301	AMD	05/18/2004	2004-3/15
solid waste management					
Environmental Quality, Solid and Hazardous Waste	26972	R315-320	5YR	03/01/2004	2004-6/61
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source maintenance					
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Regents (Board Of), University of Utah, Administration	26914	R805-1	5YR	01/27/2004	2004-4/76
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state flag					
Lieutenant Governor, Administration	27221	R622-2	5YR	06/09/2004	2004-13/72
state plan					
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stream alterations					
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	26814	R655-13	NEW	03/25/2004	2003-24/43
surplus property					
Administrative Services, Fleet Operations, Surplus Property	26843	R28-3	AMD	02/12/2004	2004-1/4
surveyors					
Commerce, Occupational and Professional Licensing	26859	R156-22-503	NSC	01/01/2004	Not Printed
suspension					
Transportation, Administration	26720	R907-67	NEW	01/05/2004	2003-22/50
taxation					
Tax Commission, Auditing	26957	R865-7H	5YR	02/25/2004	2004-6/63
Tax Commission, Property Tax	26910	R884-24P-24	NSC	01/27/2004	Not Printed
telecommunications					
Public Service Commission, Administration	26826	R746-348-6	AMD	04/13/2004	2003-24/65
	26901	R746-350	NSC	03/01/2004	Not Printed
	26785	R746-350	NEW	01/15/2004	2003-23/79
	26883	R746-365	5YR	01/06/2004	2004-3/49

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title insurance					
Insurance, Administration	26791	R590-153	AMD	05/13/2004	2003-23/41
	26791	R590-153	CPR	05/13/2004	2004-7/31
	26792	R590-187	AMD	01/08/2004	2003-23/44
	26885	R590-187	NSC	03/01/2004	Not Printed
traffic violations					
Public Safety, Driver License	27142	R708-3	EMR	05/05/2004	2004-11/88
transportation					
Administrative Services, Finance	27120	R25-7	AMD	07/01/2004	2004-10/4
Transportation, Administration	26720	R907-67	NEW	01/05/2004	2003-22/50
transportation safety					
Transportation, Motor Carrier	26823	R909-1	AMD	03/01/2004	2003-24/66
trucks					
Transportation, Motor Carrier	26823	R909-1	AMD	03/01/2004	2003-24/66
Transportation, Motor Carrier, Ports of Entry	26881	R912-14	5YR	01/05/2004	2004-3/51
unemployment compensation					
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	26922	R994-103	REP	04/04/2004	2004-4/40
	26923	R994-104	REP	04/04/2004	2004-4/41
	26928	R994-201	AMD	04/04/2004	2004-4/42
	26930	R994-404	R&R	04/04/2004	2004-4/43
	26924	R994-406	AMD	04/04/2004	2004-4/45
	26929	R994-508	R&R	04/04/2004	2004-4/51
utah.gov					
Governor, Planning and Budget, Chief Information Officer	26953	R365-4	NEW	04/15/2004	2004-5/12
utility service					
Public Service Commission, Administration	26780	R746-200-6	AMD	01/07/2004	2003-23/76
voting					
Lieutenant Governor, Elections	27123	R623-2	NEW	06/16/2004	2004-10/24
waste disposal					
Environmental Quality, Solid and Hazardous Waste	26972	R315-320	5YR	03/01/2004	2004-6/61
Environmental Quality, Water Quality	26796	R317-1	AMD	03/29/2004	2003-23/16
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Environmental Quality, Water Quality	26796	R317-1	AMD	03/29/2004	2003-23/16
	26242	R317-2	AMD	01/06/2004	2003-10/27
	26242	R317-2	CPR	01/06/2004	2003-18/35
	26903	R317-8	AMD	03/30/2004	2004-3/19
	27022	R317-10	AMD	06/23/2004	2004-8/52
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	26242	R317-2	AMD	01/06/2004	2003-10/27
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Natural Resources, Water Resources	26784	R653-5	AMD	01/07/2004	2003-23/59
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Natural Resources, Wildlife Resources	26817	R657-5	AMD	01/21/2004	2003-24/46
	26659	R657-13	AMD	01/02/2004	2003-20/28
	26818	R657-17-4	AMD	01/21/2004	2003-24/55
	26867	R657-33	AMD	02/24/2004	2004-2/3
	26819	R657-38	AMD	01/21/2004	2003-24/56
	26778	R657-41	AMD	01/05/2004	2003-23/61
	26820	R657-42	AMD	01/21/2004	2003-24/61
wildlife conservation					
Natural Resources, Wildlife Resources	26819	R657-38	AMD	01/21/2004	2003-24/56
wildlife law					
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Labor Commission, Adjudication	26772	R602-1	AMD	01/02/2004	2003-23/46
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Education, Administration	27212	R277-916	5YR	06/01/2004	2004-12/81
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Labor Commission, Adjudication	26773	R602-2-1	AMD	01/02/2004	2003-23/47
Labor Commission, Industrial Accidents	26697	R612-4-2	AMD	01/01/2004	2003-21/64
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