UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed May 16, 2006, 12:00 a.m. through June 1, 2006, 11:59 p.m.

Number 2006-12
June 15, 2006

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.

Division of Administrative Rules, Salt Lake City 84114

Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Utah state bulletin.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
I. Utah. Office of Administrative Rules.

KFU440.A73S7
348.792'025--DDC 85-643197

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SPECIAL NOTICES

Governor's Proclamation: Calling the Fifty-Sixth Legislature into an Eleventh Extraordinary Session

P R O C L A M A T I O N

WHEREAS, since the close of the 2006 General Session of the 56th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature in Extraordinary Session;

NOW, THEREFORE, I, JON M. HUNTSMAN, JR., Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 56th Legislature into an Eleventh Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 21st day of June, 2006, at 12:00 noon, for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2006 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Salt Lake Capitol Complex in Salt Lake City, Utah, this 6th day of June, 2006.

(State Seal)

Jon M. Huntsman, Jr.
Governor

Gary R. Herbert
Lieutenant Governor

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 May 16, 2006, 12:00 a.m., and June 1, 2006, 11:59 p.m. are included in this, the June 15, 2006, 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 July 17, 2006. 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 13, 2006, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page.

Administrative Services, Fleet Operations, Surplus Property
R28-1
State Surplus Property Disposal

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28766
FILED: 05/31/2006, 13:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division is updating the rule to include all personal handheld electronic devices. This is in response to S.B. 132 in the 2006 general legislative session. (DAR NOTE: S.B. 132 (2006) is found at Chapter 6, Laws of Utah 2006, and was effective 02/24/2006.)

SUMMARY OF THE RULE OR CHANGE: This amendment defines what a personal handheld electronic device is; and sets forth policy and procedure of personal handheld electronic devices to a user who is provided such a device by an agency, and who subsequently leaves or changes employment.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63A-9-801 and 63A-9-808.1

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is no anticipated savings to the state. Prices for the sale of personal handheld electronic devices will be determined at the time of sale. It is not known how many will be sold or at what price they will be sold for.
❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. As always, local governments can purchase surplus property from the state, and now personal handheld electronic devices will be available.
❖ OTHER PERSONS: There are no anticipated costs or savings to other persons. As always, other persons can purchase surplus property from the state.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons. As always, anyone can purchase surplus property from the state.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be no impact on businesses. D'Arcy Dixon Pignanelli, Executive Director

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dianne Davis at the above address, by phone at 801-537-9187, by FAX at 801-538-1773, or by Internet E-mail at diannedavis@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 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: Margaret Chambers, Director

R28. Administrative Services, Fleet Operations, Surplus Property.
R28-1. State Surplus Property Disposal.
R28-1-3. Definitions.

A. As used in this section "Personal handheld electronic device":

1. means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and,

2. includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

R28-1-[~~3~~]4. Procedures.

A. State-owned personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of without first submitting a properly completed form SP-1 to and receiving authorization from the USASP.

This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

B. When a department or agency of state government determines that state-owned personal property is in excess to current needs, they will make such declaration using Form SP-1. State-owned personal property shall not be processed by the USASP unless the appropriate form is executed.

C. A standard form SP-3 is required when it is determined that state-owned personal property should be abandoned and destroyed. The SP-3 is generated by the USASP after receiving a form SP-1 and reviewing the property being disposed of by the agency.

D. State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries by the owning agency. However, a form SP-1 must still be completed and forwarded to the USASP to account for the transfer of the equipment. In such cases, the USASP will not assess a fee. Similarly, the USASP is authorized to donate computer equipment received as surplus property from agencies to schools that have submitted requests for computer equipment directly to the USASP.

E. Pursuant to the provisions of section 63A-9-808.1, state-owned information technology equipment may be transferred directly to Non-profit entities for distribution to, and use by, persons with a disability as defined in subsections 62A-5-101(4)(a)(i) and (ii). However, interagency transfers and sales of surplus property to state and local agencies within the 30-day period under section 63A-9-808 shall have priority over transfers under this subsection. The 30-day holding period may be waived if shown to be in the best interest of the state.

F. Requests for state-owned information technology equipment from non-profit entities shall be:

1. Submitted, in writing, on the non-profit entity's official letterhead, to the Department of Human Services, Division of Services for People with Disabilities (DSPD);

2. Reviewed and approved by DSPD and forwarded to the USASP manager to properly track and arrange for distribution.

G. State agencies transferring state-owned information technology equipment to non-profit entities for distribution to, and use by persons with a disability as defined in subsections 62A-5-101(4)(a)(i) and (ii), shall provide the USASP with completed SP-1 forms in order to account for the transfer of said equipment. In such cases, the USASP will not assess a fee to the donating agency.

H. Pursuant to the provisions of subsection 63A-9-808.1(4), the USASP shall prepare an annual report to DSPD containing the names of non-profit entities that received state-owned information technology equipment under subsection 63A-9-808.1(2), and the types and amounts of equipment received.

I. Prior to submitting information technology equipment to Surplus Property, or donating it directly to the public institutions, agencies shall delete all information from all storage devices. Information shall be deleted in such a manner as to not be retrievable by data recovery technologies.

J. Federal surplus property is not available for sale to the general public, on a day-to-day basis. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program. Public auctions of federal surplus property are authorized under certain circumstances and conditions. The USASP Manager shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.

K. This section sets forth policy and procedure, which governs the sale of personal handheld electronic devices to a user who is provided such a device by an agency, and who subsequently leaves or changes employment. These personal handheld electronic devices usually rely on technology that is rapidly changing, resulting in the devices becoming continuously outdated as more capable devices are offered; therefore, their value depreciates significantly over the period of their service. Their usefulness is generally tied to a service contract with a service provider.

1. Personal handheld electronic device and related accessories and software may be purchased by the assigned user upon a change in employment status including termination, retirement, or transfer to another agency within state government; provided that the issuing agency is not obligated to continue the terms of the service contract.

2. Purchase of a handheld device is exempt from the requirements of related party transactions under R28-1-5.

3. Prior to a purchase of a handheld device, the following requirements shall be completed in substantially the following order:

a. the agency that assigned or provided the personal handheld electronic device shall:

i. authorize, in writing to USASP, the sale to the assigned user in lieu of exchange or surplus;

ii. submit an SP-1 to USASP with a description of the items to be included in the sale of the personal handheld electronic device including the make, model, serial number, specifications (if available), list of accessories, software; and

iii. remove, or cause to be removed, from the personal handheld electronic device any:

(A) software owned or licensed by the agency as required by the software license agreement;

(B) information that is classified as protected, private, or controlled under the Title 63, Chapter 2, Government Records Access and Management Act; and

(C) Ensure in writing that the service contract is null and void to the issuing agency or transferable to the purchaser.

b. The USASP shall:

i. have an established fee that has been approved by the Department of Administrative Services Rate Committee;

ii. receive the SP-1 form, and;

iii. generate an invoice for the transaction upon receiving full payment of the fee from the designated purchaser of the device.

c. The designated purchaser of the device shall:

i. make full payment of the fee to the USASP for the item, and;

ii. sign the invoice and return the signed invoice to USASP.

d. The agency may be authorized by the division to transfer ownership of the personal handheld electronic device to the designated purchaser of the device.

L. The USASP Manager or designee may make an exception to the written authorization requirement identified in paragraph A above. Exceptions must be for good cause and must consider:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

R28-1-[4]5. Related Party Transactions.

A. The USASP has a duty to the public to ensure that State-owned surplus property is disposed of at fair market value, in an independent and ethical manner, and that the property or the value of the property has not been misrepresented. A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.

B. A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:

1. Has purchasing authority.
2. Has maintenance authority.
3. Has disposition or signature authority.
4. Has authority regarding the disposal price.
5. Has access to restricted information.
6. Is perceived to be a related party using other criteria which may prohibit independence.

C. Owning state agencies may list any recommended purchasers on the standard form SP-1 Final decision rests with USASP as to selling price and buyer.

D. When a prospective purchaser is identified or determined to be a related party, the USASP will employ one of the following procedures:

1. The USASP may require written justification and authorization from the Department or Division Head or authorized agent. Justification may include reference to maintenance history, purchase price and the absence of conflicts of interest. If the related party is an authorized agent, a higher approval may be sought.

2. The USASP may choose to hold the property for sale by public auction or sealed bid. The prospective buyer may then compete against other bidders.

3. The USASP may hold the property for a 30-day period before allowing the related party the opportunity to purchase the property, thus allowing for purchase of the property in accordance with the priorities listed below. The 30-day holding period may be waived if shown to be in the best interest of the state.

R28-1-[~~5~~]6. Priorities.

A. Public agencies are given priority for the purchase of state-owned surplus property.

B. Property received by the USASP that is determined to be unique, in short supply or in high demand by public agencies shall be held for a period of 30 days before being offered for sale to the general public. The 30-day holding period may be waived if shown to be in the best interest of the state.

C. For this rule, the entities listed below, in priority order, are considered to be public agencies:

1. State Agencies
2. State Universities, Colleges, and Community Colleges
3. Other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies
4. Other tax supported educational entities
5. Non-profit health and educational institutions

D. State-owned personal property that is not purchased by or transferred to public agencies during the 30-day hold period may be offered for public sale. The 30-day holding period may be waived if shown to be in the best interest of the state.

E. The USASP Manager or designee shall make the determination as to whether property is subject to the 30-day hold period. The decision shall consider the following:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

R28-1-[~~6~~]7. Accounting and Reimbursement.

A. The USASP will record and maintain records of all transactions related to the acquisition and sale of all state and federal surplus property. A summary of the total yearly sales of state surplus by agency or department will be provided to the legislature following the close of each fiscal year.

B. Reimbursements to state agencies from the sale of their surplus property will be made through the Division of Finance on interagency transfers or warrant requests. The Surplus Agency is authorized to deduct operating costs from the selling price of all state surplus property. In all cases property will be priced to sale for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.

C. Deposits from cash sales will be made to the State Treasurer in accordance with Title 51, Chapter 7.

D. The USASP may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the Surplus Agency accumulates funds in excess of the allowable working capital reserve, they will reduce their service and handling charge to under recover operating expenses and reduce the Retained Earnings balance accordingly. The only exception is where the USASP is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the USASP must obtain the written approval of the Executive Director of the Department of Administrative Services.

R28-1-[~~7~~]8. Payment.

A. Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank credit cards, and business or personal checks. may not be accepted for amounts exceeding $200. Two-party checks shall not be accepted.

B. Payment received from state subdivisions shall be in the form of agency or subdivision check or purchasing card.

C. Payment made by public purchasers shall be at the time of purchase and prior to removal of the property purchased. Payment for purchases by state subdivisions shall be within 60 days following the purchase and removal of the property.

D. The USASP Manager or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

R28-1-[~~8~~]9. Bad Debt Collection.

A. The USASP shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the USASP for "insufficient funds".

B. In the event that a check is returned to the USASP is returned for "insufficient fund," the USASP may:

1. Prohibit the debtor from making any future purchases from the USASP until the debt is paid in full.

2. Have division accountant send a certified letter to the debtor stating that:

(a) the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and

(b) If the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

C. Debts for which payments have not been received in full within the 15 day period referred to above, shall be assigned to the Office of State Debt Collection in accordance with statute.

R28-1-[~~9~~]10. Public Sales of Surplus Property.

A. State-owned surplus property may be purchased at any time by the general public, subject to any 30-day holding period that may be assigned by USASP management. The 30-day holding period may be waived if shown to be in the best interest of the state.

B. At the discretion of the USASP Manager, any state-owned surplus property may be sold to the general public by auction, sealed bid, or other acceptable method. Property to be auctioned may be consigned out to an auction service. If a consignment approach is considered, the USASP Manager must ensure that the auction service is contracted by and authorized by the Division of Purchasing.

C. Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

D. The frequency of public auctions, for either State-owned or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory at the USASP, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

KEY: state property
Date of Enactment or Last Substantive Amendment: [~~December 20, 2005~~]2006
Notice of Continuation: March 5, 2002
Authorizing, and Implemented or Interpreted Law: 63A-9-801; 63A-9-808.1

Agriculture and Food, Plant Industry
R68-7
Utah Pesticide Control Act

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28769
FILED: 06/01/2006, 07:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In Subsection R68-7-11(16), according to EPA the exception part of this unlawful act is in conflict with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). It will not affect the enforcement program by eliminating this unlawful act. Also, corrects the subnumbering in Section R68-7-7.

SUMMARY OF THE RULE OR CHANGE: This amendment: removes Subsection R68-7-11(16) from Unlawful Acts; moves Subsections R68-7-7(2)(b)(1) and (2) from aerial application to standards for commercial and noncommercial applicators under Subsection R68-7-7(1); and corrects the subnumbering under Section R68-7-7.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-14-6

ANTICIPATED COST OR SAVINGS TO:
- THE STATE BUDGET: There will be no cost or savings to the state budget. The changes being made are to remove a section of the rule that is in conflict with FIFRA and renumber a section.
- LOCAL GOVERNMENTS: There will be no cost or savings to the local government. The changes being made are to remove a section of the rule that is in conflict with FIFRA and renumber a section.
- OTHER PERSONS: There will be no cost or savings to the other persons. The changes being made are to remove a section of the rule that is in conflict with FIFRA and renumber a section.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the changes being made to this rule. The changes are being made to clarify the intent of the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact will be minimal as a result of deleting this section of the rule. The label directions specify how a particular pesticide can be used. Leonard Blackham, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
PLANT INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3034, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marolyn Leetham, Clair Allen, or Clark Burgess at the above address, by phone at 801-538-7114, 801-538-7180, or 801-538-9929, by FAX at 801-538-7126, 801-538-7189, or 801-538-7126, or by Internet E-mail at mleetham@utah.gov, ClairAllen@utah.gov, or cburgess@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 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: Leonard M. Blackham, Commissioner

R68. Agriculture and Food, Plant Industry.
R68-7. Utah Pesticide Control Act.
R68-7-7. Standards of Competence for Certification of Applicators.

Applicators must show competence in the use and handling of pesticides according to the hazards involved in their particular classification by passing the tests and becoming certified as outlined in R68-7-8. Upon their becoming certified, the department will issue a license which will qualify an applicator to purchase and apply pesticides in the appropriate classification.

Standards for certification of applicators as classified in R68-7-4 have been established by the EPA and such standards shall be a minimum for certification of applicators in the State of Utah.

(1) Commercial and Non-Commercial Applicators.

Commercial and non-commercial applicators shall demonstrate practical knowledge by written examination(s) of the principles and practices of pest control and safe use, storage and transportation of pesticides, to include the general standards applicable to all categories and the standards specifically identified for each category or subcategory designated by the applicant, as set forth in 40 CFR, Section 171.4 and the EPA approved Utah State Plan for certification of pesticide applicators. In addition, applicators applying pesticides by aircraft shall be examined on the additional standards specifically identified for this method of application as set forth herein.

(a) Exemptions. The standards for commercial and non-commercial applicators do not apply to the following persons for purposes of these rules:

(1) Persons conducting laboratory-type research involving pesticides; and

(2) Doctors of medicine and doctors of veterinary medicine applying pesticides or drugs or medication during the course of their normal practice and who do not publicly represent themselves as pesticide applicators.

([~~a~~]2) Aerial Application. Additional Standards.

Applicators shall demonstrate by examination practical knowledge of pest control in a wide variety of environments. These may include, but are not limited to, agricultural properties, rangelands, forestlands, and marshlands. Applicators must have the knowledge of the significance of drift and of the potential for non-target injury and the environmental contamination. Applicators shall demonstrate competency as required by the general standards for all categories of certified commercial and non-commercial applicators. They shall

comply with all standards set forth by the Federal Aviation Administration (FAA) and submit proof of current registration by that agency as a requirement for licensing as an aerial applicator.[

~~(b) Exemptions. The standards for commercial and non-commercial applicators do not apply to the following persons for purposes of these rules:~~

~~(1) Persons conducting laboratory-type research involving pesticides; and~~

~~(2) Doctors of medicine and doctors of veterinary medicine applying pesticides or drugs or medication during the course of their normal practice and who do not publicly represent themselves as pesticide applicators.~~]

([~~2~~]3) Private Applicators. Private applicators shall show practical knowledge of the principles and practices of pest control and the safe use of pesticides, to include the standards for certification of private applicators as set forth in 40 CFR Section 171.5. In addition, private applicators applying restricted-use pesticides by aircraft shall show practical knowledge of the additional standards specifically identified for that method of application in R68-7-6(11) of these rules.

([~~3~~]4) Supervision of Non-Certified Applicators by Certified Private Applicators.

(a) A certified private applicator who functions in a supervisory role shall be responsible for the actions of any non-certified applicators under his instruction and control.

(b) A certified private applicator shall provide written or oral instruction for the application of a restricted-use pesticide applied by a non-certified applicator under his supervision when the certified applicator is not required to be physically present. If an applicator cannot read, instructions shall be given in a language understood by the applicator. The instructions shall include procedures for contacting the certified applicator in the event he is needed.

([4]5) The certified applicator shall be physically present to supervise the application of a restricted-use pesticide by a non-certified applicator if such presence is required by the label of the pesticide being applied.

R68-7-11. Unlawful Acts.

Any person who has committed any of the following acts is in violation of the Utah Pesticide Control Act or rules promulgated thereunder and is subject to penalties provided for in Sections 4-2-2 through 4-2-15:

(1) Made false or fraudulent claims through any media misrepresenting the effect of pesticides or methods to be utilized;

(2) Applied known ineffective or improper pesticides;

(3) Operated in a faulty, careless or negligent manner;

(4) Neglected or, after notice, refused to comply with the provisions of the Act, these rules or of any lawful order of the department;

(5) Refused or neglected to keep and maintain records required by these rules, or to make reports when and as required;

(6) Made false or fraudulent records, invoices or reports;

(7) Engaged in the business of applying a pesticide for hire or compensation on the lands of another without having a valid commercial applicator's license;

(8) Used, or supervised the use of, a pesticide which is restricted to use by "certified applicators" without having qualified as a certified applicator;

(9) Used fraud or misrepresentation in making application for, or renewal of, a registration, license, permit or certification;

(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(11) Used or caused to be used any pesticide in a manner inconsistent with its labeling or rules of the department if those rules further restrict the uses provided on the labeling;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of the Act; conspired with such a licensed or an unlicensed person to evade the provisions of the Act; or allowed one's license or permit to be used by another person;

(13) Impersonated any federal, state, county, or other government official;

(14) Distributed any pesticide labeled for restricted use to any person unless such person or his agent has a valid license, or permit to use, supervise the use, or distribute restricted-use pesticide;

(15) Applied pesticides onto any land without the consent of the owner or person in possession thereof; except, for governmental agencies which must abate a public health problem.[

~~(16) Applied pesticides known to be harmful to honeybees on crops on which bees are foraging during the period between two hours after sunrise and two hours before sunset; except, on property owned or operated by the applicator.~~]

([~~17~~]16) For a commercial or a non-commercial applicator to apply a termiticide at less than label rate.

([~~18~~]17) For an employer of a commercial or non-commercial applicator to allow an employee to apply pesticide before that individual has successfully completed the prescribed pesticide certification procedures.

([~~19~~]18) For a pesticide applicator not to have his/her current license in his/her immediate possession at all times when making a pesticide application.

([~~20~~]19) To allow, through negligence, an application of pesticide to run off, or drift from the target area to cause plant, animal, human or property damage.

KEY: inspections
Date of Enactment or Last Substantive Amendment: [~~January 1, 1997~~]2006
Notice of Continuation: March 16, 2006
Authorizing, and Implemented or Interpreted Law: 4-14-6

♦ ♦

Commerce, Occupational and Professional Licensing

R156-22-302d

Qualifications for Licensure - Examination Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28773
FILED: 06/01/2006, 12:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Professional Engineers and Professional Land Surveyors Licensing Board are proposing amendments to clarify that experience must be completed before an applicant is qualified to apply to sit for the respective examination.

SUMMARY OF THE RULE OR CHANGE: In Subsections R156-22-302d(1)(c), (2)(b), and (3)(b), amendments are proposed which clarify that an applicant is not qualified unless the experience is completed before the applicant submits an application to sit for the respective examination. The amendments being proposed are how the Division has been interpreting this requirement for years. However, a recent applicant successfully challenged the rule claiming that the determination date is the date of the exam rather than the date he applied for preapproval to sit for the exam. The model rule does not allow an applicant to anticipate completion of experience, but requires proof of completion on the application. According to the National Council of Examiners for Engineering and Surveying (NCEES), 46 states require the experience to be completed before preapproval to sit for the examination. The proposed amendments will keep Utah consistent with the vast majority of other states. The consistency is important to the engineering/land surveying profession which is quite mobile. Only about 40 percent of Utah licensed engineers/land surveyors are Utah residents. If Utah's requirements were different than other states, it could impair the ability of Utah engineers/land surveyors to become licensed in other states.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-22-101, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs of approximately $75 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. Proposed amendments only apply to potential licensees as either a professional engineer, professional structural engineer, or professional land surveyor.

❖ OTHER PERSONS: Overall the proposed amendments do not appear to substantially affect costs or savings to applicants for licensure as either a professional engineer, professional structural engineer, or professional land surveyor since the clarification is not different than what has been enforced by the Division for years and the impact should be minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Overall the proposed amendments do not appear to substantially affect costs or savings to applicants for licensure as either a professional engineer, professional structural engineer, or professional land surveyor since the clarification is not different than what has been enforced by the Division for years and the impact should be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing clarifies the examination provisions to indicate that an applicant is not eligible to submit an application for preapproval to sit for the examination unless the applicant submits proof with his application that he has completed the experience requirement. The clarification is intended to help the industry understand the Division's historical interpretation of its rule. Therefore, no fiscal impact to businesses is anticipated. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dan S. Jones at the above address, by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@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 07/17/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/19/2006 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (formerly 4A), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rules.
R156-22-302d. Qualifications for Licensure - Examination Requirements.

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(i) the NCEES Fundamentals of Engineering (FE) Examination with a passing score as established by the NCEES except that an applicant who has completed an undergraduate degree from an EAC/ABET accredited program and has completed a Ph.D. or doctorate in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering is not required to take the FE examination;

(ii) the NCEES Principles and Practice of Engineering (PE) Examination other than Structural II with a passing score as established by the NCEES; and

(iii) pass all questions on the open book, take home Utah Law and Rules Examination, which is included as part of the application for licensure forms.

(b) If an applicant was approved by the Utah Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).

(c) [~~An~~]Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant must have successfully completed the qualifying experience requirements set forth in Subsection R156-22-302c(1), and have successfully completed the education requirements set forth in Subsection R156-22-302b(1)[~~ before being eligible to sit for the NCEES PE examination~~].

(d) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are defined, clarified, or established as the following:

(i) the NCEES Fundamentals of Engineering Examination (FE) with a passing score as established by the NCEES;

(ii) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES; and

(iii) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(b) [~~An~~]Prior to submitting an application for pre-approval to sit for the NCEES Structural II examination, an applicant must have successfully completed the experience requirements set forth in Subsection R156-22-302c(2)[~~ before being eligible to sit for the NCEES Structural II Examination~~].

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(g), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES Fundamentals of Land Surveying (FLS) Examination with a passing score as established by the NCEES;

(ii) the NCEES Principles and Practice of Land Surveying (PLS) Examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75.

(b) [~~An~~]Prior to submitting an application for pre-approval to sit for the NCEES PLS examination, an applicant must have successfully completed the education and qualifying experience requirements set forth in Subsections R156-22-302b(2) and 302c(3)[~~ before being eligible to sit for the NCEES PLS examination~~].

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except that the board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 20 years preceding the date of the license application, and who was not required to pass the NCEES PE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the board may waive the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the board may waive either the NCEES FLS Examination or the NCEES PLS Examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FLS Examination or the PLS Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

KEY: engineers, surveyors, professional land surveyors, professional engineers
Date of Enactment or Last Substantive Amendment: [~~April 3,~~]2006
Notice of Continuation: January 13, 2003
Authorizing, and Implemented or Interpreted Law: 58-22-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and Professional Licensing

R156-47b

Massage Therapy Practice Act Rules

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 28748
FILED: 05/18/2006, 12:00

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Board of Massage Therapy are proposing amendments to the rule to: 1) add an additional examination that qualifies an individual for licensure as a massage therapist; 2) clarify the good moral character/disqualifying convictions section; and 3) add that failing to follow the standards and ethics of the occupation is considered unprofessional conduct.

SUMMARY OF THE RULE OR CHANGE: In Section R156-47b-103, the statute citation is updated. In Section R156-47b-302b, an additional examination is added which would qualify an applicant for licensure as a massage therapist. The two examinations are the: National Certification Examinations for Therapeutic Massage and Bodywork (NCETMB) and National Certification Examination for Therapeutic Massage (NCETM). In Section R156-47b-302d, amendments are made to this section with respect to good moral character/disqualifying convictions to soften the existing language to allow the Division and Board the ability to determine if there is a hazard

to the public health, safety or welfare by issuing a license. In Section R156-47b-502, the change adds that failing to conform to the generally accepted and recognized standards of ethics of the profession including those established in the Utah Chapter of the American Massage Therapy Association "Utah Code of Ethics and Standards of Practice", September 17, 2005, edition, is considered unprofessional conduct.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 58-1-106(1)(a) and 58-1-202(1)(a), and Section 58-47b-101

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Adds the Utah Chapter of the American Massage Therapy Association "Utah Code of Ethics and Standards of Practice", September 17, 2005, edition

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs of approximately $75 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. Proposed amendments only apply to licensees and potential licensees as either a massage therapist or massage apprentice.

❖ OTHER PERSONS: Due to proposed amendments with respect to an additional examination being accepted to qualify an applicant for licensure as a massage therapist, an applicant will see no reduction in examination fees since both of the eligible examinations cost $225. Due to proposed amendments with respect to good moral character/ disqualifying convictions, an applicant for licensure as a massage therapist or massage apprentice may now be eligible for licensure depending on circumstances surrounding each individual case. If an applicant were to get licensed sooner as a result of the proposed amendments, the applicant would be able to work sooner thereby creating a positive fiscal impact for the applicant. With respect to the unprofessional conduct amendment, if a licensed massage therapist or massage apprentice violates the proposed standards and ethics of the profession, he could possibly be subject to disciplinary action against his license. The Division is unable to determine if or how many licensed massage therapists or massage apprentices may violate the unprofessional conduct amendment. There will be no cost involved with respect to obtaining a copy of the "Utah Code of Ethics and Standards of Practice" document since it is available on the following website: www.massageutah.org.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Due to proposed amendments with respect to an additional examination being accepted to qualify an applicant for licensure as a massage therapist, an applicant will see no reduction in examination fees since both of the eligible examinations cost $225. Due to proposed amendments with respect to good moral character/disqualifying convictions, an applicant for licensure as a massage therapist or massage apprentice may now be eligible for licensure depending on circumstances surrounding each individual case. If an applicant were to get licensed sooner as a result of the proposed amendments, the applicant would be able to work sooner thereby creating a positive fiscal impact for the applicant. With respect to the unprofessional conduct amendment, if a licensed massage therapist or massage apprentice violates the proposed standards and ethics of the profession, he could possibly be subject to disciplinary action against his license. The Division is unable to determine if or how many licensed massage therapists or massage apprentices may violate the unprofessional conduct amendment. There will be no cost involved with respect to obtaining a copy of the "Utah Code of Ethics and Standards of Practice" document since it is available on the following website: www.massageutah.org.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing is a clarification of various standards for the profession, including the provisions relating to qualifying examinations, good moral character and unprofessional conduct. No fiscal impact to businesses is anticipated as a result of this rule filing. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@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 07/17/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/21/2006 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 4A (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-47b. Massage Therapy Practice Act Rules.
R156-47b-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 47b.

R156-47b-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-47b-302(2)(f) and 58-47b-302(3)(f), the examination requirements for licensure are defined, clarified, or established as follows:

(1) Applicants for licensure as a massage therapist shall:

(a) pass the Utah Massage Law and Rule Examination; and

(b) pass one of the following examinations:

(i) the [~~NCBTMB~~]National Certification Examination for Therapeutic Massage and Bodywork (NCETMB); or

(ii) the National Certification Examination for Therapeutic Massage (NCETM).

(2) Applicants for licensure as a massage therapist who have completed a "Utah Massage Apprenticeship" must:

(a) pass the Utah Massage Theory Exam.

(3) Applicants for licensure as a massage apprentice shall:

(a) pass the Utah Massage Law and Rule Examination.

R156-47b-302d. Good Moral Character - Disqualifying Convictions.

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Subsection 58-47b-302(2)(c) and whether the applicant has been involved in unprofessional conduct as set forth in Subsections 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Part 12 and 13, shall disqualify an applicant from becoming licensed; or

(b) a criminal conviction for the following crimes may disqualify an applicant for becoming licensed:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may [~~not~~]be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may [~~not~~]be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may [~~not~~]be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

R156-47b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in any lewd, indecent, obscene or unlawful behavior while acting as a massage therapist;

(2) as an apprentice supervisor, failing to provide direct supervision to a massage apprentice;

(3) as an apprentice supervisor, failing to provide and document adequate instruction or training as applicable;

(4) as an apprentice supervisor, advising, directing or instructing an apprentice in any instruction or behavior that is inconsistent, contrary or contradictory to established professional or ethical standards of the profession;

(5) failing to notify a client of any health condition the licensee may have that could present a hazard to the client;[~~and~~]

(6) failure to use appropriate draping procedures to protect the client's personal privacy; and

(7) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Utah Chapter of the American Massage Therapy Association "Utah Code of Ethics and Standards of Practice", September 17, 2005 edition, which is hereby incorporated by reference.

KEY: licensing, massage therapy
Date of Enactment or Last Substantive Amendment: [~~March 7, 2005~~]2006
Notice of Continuation: January 31, 2006
Authorizing, Implemented, or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-47b-101

Commerce, Occupational and Professional Licensing

R156-54

Radiology Technologist and Radiology Practical Technician Licensing Act Rules

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 28749
FILED: 05/18/2006, 12:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Radiology Technology Licensing Board are proposing amendments to the rule to define the radiographic procedures that a radiology practical technician can perform based on the training and examinations which they have completed and to update the "Standards of Ethics" from the 1997 edition to the July 1, 2005, edition.

SUMMARY OF THE RULE OR CHANGE: In Section R156-54-102, the "practice of a radiology practical technician" is defined and the American Registry of Radiologic Technologists (ARRT) "Content Specifications for the Examination for the Limited Scope of Practice in Radiography" document which is effective January 2006 is incorporated by reference. In Section R156-54-103, the statute citation is updated. In Section R156-54-502, updated the ARRT "Standards of Ethics" from the June 1997 edition to the July 1, 2005, edition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 58-1-106(1)(a) and 58-1-202(1)(a), and Section 58-54-1

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Adds the American Registry of Radiologic Technologists (ARRT) "Content Specifications for the Examination for the Limited Scope of Practice in Radiography", effective January 2006; and updates the ARRT's "Standards of Ethics" from the June 1997 edition to the July 1, 2005, edition

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs of approximately $75 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. Proposed amendments only apply to licensees and potential licensees as either a radiology technologist or radiology practical technician.

❖ OTHER PERSONS: The Division anticipates no costs or savings to the public as a result of the proposed amendments since the proposed amendments are only clarifying what is included in a radiology practical technician's scope of practice and updating the profession's "Standards of Ethics". The proposed amendments do not add any additional requirements that would affect the public. The proposed amendments will apply to licensed radiology technologists and radiology practical technicians and the Division does not anticipate any increased costs or savings. The two documents which are incorporated by reference in the rule can be found on the American Registry of Radiologic Technologists website at no cost. That website is: www.arrt.org.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division anticipates no costs or savings to the public as a result of the proposed amendments since the proposed amendments are only clarifying what is included in a radiology practical technician's scope of practice and updating the profession's "Standards of Ethics". The proposed amendments do not add any additional requirements that would affect the public. The proposed amendments will apply to licensed radiology technologists and radiology practical technicians and the Division does not anticipate any increased costs or savings. The two documents which are incorporated by reference in the rule can be found on the American Registry of Radiologic Technologists website at no cost. That website is: www.arrt.org.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing contains minor amendments to better define the practice of a radiology practical technician and to update a reference to the profession's code of ethics. No fiscal impact to businesses is anticipated. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@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 07/17/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/21/2006 at 11:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 4A (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-54. Radiology Technologist and Radiology Practical Technician Licensing Act Rules.
R156-54-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 54, as used in Title 58, Chapters 1 and 54 or these rules:

(1) "ARRT" means the American Registry of Radiologic Technologists.

(2) "Practice as a radiology practical technician" means using radiological equipment limited to specific radiographic procedures on specific parts of the human anatomy as contained in the American Registry of Radiologic Technologists (ARRT) "Content Specifications for the Examination for the Limited Scope of Practice in Radiography", effective January 2006, which is hereby incorporated by reference.

([~~2~~]3) "Supervision", "general supervision" or "direct supervision" as used in Subsections 58-54-2(5), (6) and (7) and Section 58-54-8 means that the supervising radiologist or radiology practitioner shall be available for consultation while the radiology technologist or the radiology practical technician is performing any radiographic procedures. Consultation may be in person, by telephone, by radio or any other means of direct verbal communication. The supervising radiologist or radiology practitioner shall be responsible for the radiographic procedures performed by the radiology technologist or the radiology practical technician.

([~~3~~]4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 54, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-54-502.

R156-54-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 54.

R156-54-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) performing mammography when not in compliance with the Utah State Department of Health, Bureau of Health Facility Licensure, Mammography Quality Assurance Rules, R432-950;

(2) performing a radiological procedure without having first passed the appropriate qualifying examination;

(3) performing a radiological procedure when not supervised in accordance with Section R156-54-102(2); and

(4) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the ARRT "Standards of Ethics", [~~June 1997~~]July 1, 2005 edition, which is hereby incorporated by reference.

KEY: licensing, radiology technologists, radiology practical technicians
Date of Enactment or Last Substantive Amendment: [~~January 20, 2004~~]2006
Notice of Continuation: April 8, 2002
Authorizing, and Implemented or Interpreted Law: 58-54-1; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Real Estate
R162-11
Undivided Fractionalized Long-Term Estates

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 28753
FILED: 05/24/2006, 15:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 64 (2005 General Session) requires the Utah Real Estate Commission to make rules concerning: 1) the timing, form and substance of disclosures to be made by real estate licensees who are marketing undivided fractionalized long-term estates; 2) management agreements related to these estates; and 3) requirements for the management and structure of master leases on these estates. (DAR NOTE: S.B. 64 (2005) is found at Chapter 257, Laws of Utah 2005, and was effective 05/02/2005.)

SUMMARY OF THE RULE OR CHANGE: This rule sets forth the disclosures that must be made by real estate licensees when they market undivided fractionalized long-term estates. The rule also sets forth requirements for the structure of the master lease of an undivided fractionalized long-term estate, and prohibits the property manager from being affiliated with the sponsor of the undivided fractionalized long-term estate.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2-5.5(1)(a)(vi) and Section 61-2-26

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The rule implementing S.B. 64 (2005) will have no budgetary impact in addition to that imposed by S.B. 64 itself.

❖ LOCAL GOVERNMENTS: None--Local governments do not act as affiliates, entities, sponsors, or marketing agents of undivided fractionalized long-term estates and thus are not affected by it.

❖ OTHER PERSONS: None--The only persons who are affected by these rules are the sponsors of, and the persons marketing, undivided fractionalized long-term estates. Any cost or savings to these persons would be attributable to S.B. 64 (2005) and not the rules implementing that statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any compliance costs are attributable to S.B. 64 (2005) itself, and not the rules that the Commission is required by S.B. 64 to make.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Pursuant to statute, this rule filing establishes disclosure standards for the sale of undivided fractionalized long-term estates, as well a requirements for the structure and management of master leases on such estates. No additional fiscal impact to businesses is anticipated beyond those already foreseen in passage of the authorizing statute. Francine A. Giani, Executive Director

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

COMMERCE
REAL ESTATE
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:
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@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 07/17/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/21/2006 at 1:30 PM, Heber Wells Bldg, 160 E 300 S, Room 210, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: Derek Miller, Director

R162. Commerce, Real Estate.
R162-11. Undivided Fractionalized Long-Term Estates.
R162-11-1. Authority and Definitions.

11.1.1 The following administrative rules are promulgated under the authority granted by Sections 61-2-5.5 and 61-2-26.

11.1.2 Terms used in these rules are defined as follows:

(a) "Affiliate" means an individual or entity that directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, a specified individual or entity.

(b) "Entity" means any corporation, limited liability company, general or limited partnership, company association, joint venture, business trust, trust, or other organization.

(c) "Sponsor" means the party that is the seller of an undivided fractionalized long-term estate.

(d) "Undivided fractionalized long-term estate" is defined as in Section 61-2-2.

R162-11-2. Marketing Disclosures.

11.2.1 All real estate licensees who market an undivided fractionalized long-term estate shall obtain from the sponsor, and shall provide to investors or prospective investors in the form of written disclosures provided in a reasonable amount of time in advance of closing to allow adequate review by the purchaser, the following information:

11.2.1.1 Information concerning the sponsor and the sponsor's affiliates:

(a) The financial strength of the sponsor and all affiliates, as evidenced by current certified financial statements and current credit reports, and information concerning any bankruptcies or civil suits;

(b) Whether any affiliate of the sponsor is a third party service provider in the transaction, including mortgage brokers, mortgage lenders, loan originators, title service providers, attorneys, appraisers, document preparation services, providers of credit reports, property condition inspectors, settlement agents, real estate brokers or other marketing agents, insurance providers, and providers of any other services for which the investor will be required to pay.

(c) Any use that will be made of investor proceeds.

11.2.1.2 Information concerning the real property in which the undivided fractionalized long-term estate is offered:

(a) Material information concerning any leases or subleases affecting the real property;

(b) Material information concerning any environmental issues affecting the real property;

(c) A preliminary title report on the real property;

(d) If available, financial statements on any tenants for the life of the entity or the last five years, whichever is shorter;

(e) If applicable, rent rolls and operating history;

(f) If applicable, loan documents;

(g) The Tenants in Common agreement, or any agreement that forms the substance of the undivided fractionalized long-term estate, including definition of the undivided fractionalized interest and the rights of presentment;

(h) All third party reports acquired by the sponsor;

(i) A narrative appraisal report, with an effective date no more than 6 months prior to the date the offer of sale is made, that includes at minimum pictures, type of construction, age of building, and site information such as improvements, parking, cross easements, site and location maps;

(j) All material information concerning the market conditions for the property class; and

(k) All material information concerning the demographics of the general market area.

11.2.1.3 Information concerning the asset managers and the property managers of the real property in which the undivided fractionalized long-term estate is offered:

(a) Contact information for any existing or recommended asset managers and property managers;

(b) Any relationship between the asset managers and the sponsor;

(c) Any relationship between the property managers and the sponsor; and

(d) Copies of any existing asset management agreements and any property management agreements.

11.2.2 All real estate licensees who market an undivided fractionalized long-term estate that is subject to a master lease shall obtain from the sponsor and provide to investors or prospective investors financial statements of the master lessee, audited according to generally accepted accounting principles.

11.2.3 All real estate licensees who market an undivided fractionalized long-term estate:

(a) shall disclose in writing to investors or prospective investors:

(i) that there may be tax consequences for a failure to close on the purchase;

(ii) that there may be risks involved in the purchase; and

(b) shall advise investors or prospective investors that they should consult with tax advisors and other professionals for advice concerning these matters.

R162-11-3. Structure of Master Lease.

11.3 The master lease may not be structured so that the master lease tenant is an affiliate of the sponsor or so that the sponsor is an affiliate of the master lease tenant.

R162-11-4. Management Agreement.

11.4 The property manager may not be an affiliate of the sponsor and the sponsor may not be an affiliate of the property manager.

R162-11-5. Regulation D Offerings.

11.5 The Division and the Commission shall consider any offering of a fractionalized undivided long-term estate in real property that is compliant with Securities and Exchange Commission Regulation D, Rule 506, 17 C.F.R. Sec. 230.506 to be in compliance with these rules.

KEY: tenants-in-common interests
Date of Enactment or Last Substantive Amendment: 2006
Authorizing, and Implemented or Interpreted Law: 61-2-26

Community and Culture, Housing and Community Development

R199-11

Community Development Block Grants (CDBG)

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28740
FILED: 05/16/2006, 13:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment changes part of the Community Development Block Grant (CDBG) contract process to make it simpler.

SUMMARY OF THE RULE OR CHANGE: This amendment eliminates the two category contract processing system. It is now the same system whether or not there are other funding sources. The amendment also eliminates multi-purpose types of grants now there are only single year and multi-year grant types.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-4-202 and 24 CFR 570 (1996)

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: There is no anticipated cost or savings to the state budget. This change does not impact the process significantly and will not change the amount of time required to process applications and issue grant contracts.
- LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. This change does not impact the process significantly and will not change the amount of time required to process or prepare applications and issue grant contracts.
- OTHER PERSONS: There is no anticipated cost or savings to any other persons. This change does not impact the process significantly and will not change the amount of time required to prepare applications and grant contracts.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs or changes to individuals or local governments preparing grant applications or contracts.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change only affects internal processing and has no fiscal impact.

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

COMMUNITY AND CULTURE
HOUSING AND COMMUNITY DEVELOPMENT
Room 500
324 S STATE ST
SALT LAKE CITY UT 84111-2388, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Keith Heaton at the above address, by phone at 801-538-8700, by FAX at 801-538-8888, or by Internet E-mail at kheaton@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 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: Richard Bradford, Director

R199. Community and Culture, Housing and Community Development.
R199-11. Community Development Block Grants (CDBG).
R199-11-4. Responsibilities of Grantee, Regions and State.

(1) Grantee Responsibilities

(a) Grantees are allowed to take up to 10% of the contract amount for administration purposes. Administrative cost must be broken out from the rest of the project costs when the application and contract budget are prepared.

(b) The formal contract with the state must include an environmental review, federal labor standards and civil rights.

(2) Regional Responsibilities.

(a) Prioritization - Each RRC shall rate and rank all applications based on a set of criteria available to the public for comment.

(b) Public participation - Each RRC is required to hold at least one public hearing yearly to assist applicants and obtain comments and suggestions regarding the CDBG process.

(c) Application completion - Each RRC has the responsibility to assure that applications are completed in full prior to submission to the state.

(d) Administrative Capacity - The RRC will assess the ability of each applicant to administer a CDBG grant.

(3) State Responsibilities.

(a) Public Participation - The state is required to hold at least one public hearing yearly to notify the public, explain the community development program and to receive comments.

(b) Review of Applications - Upon receipt of the CDBG prioritized applications from the regions, the state staff shall begin a review process.

(c) Timely Distribution of Funds - The state is required by HUD to ensure that CDBG funds are allocated and distributed in a timely manner.

(i) Application - Each applicant shall make their final application decision prior to submitting it to the RRC.[

~~(ii) Contracts - Two separate categories will be used to process contracts:~~

~~Category one:~~]

(A) Contracts will be sent out in April and Grantees will have until June 1, to sign and return all copies of the contract to DCC (The Department of Community and Culture);

(B) On a case by case basis, RRCs may allow a one month extension to grantees experiencing unavoidable delays. Grantees must notify their RRC prior to the deadline;

(C) Funds from all contracts not returned to DCC by July 1, will be returned to the appropriate RRC for reallocation;

(D) Any funds not reallocated by the RRC by August 1, will be returned to the State. The State will reallocate the funds to an approved project;[

~~Category two:~~

~~(A) Applicants in this category must demonstrate that they are actively seeking the additional funds needed for an identified CDBG project;~~

~~(B) Contracts shall be returned by August 1, accompanied by verification of all other funds;~~

~~(C) If additional funds have not been secured by August 1, grantees may, after notifying and receiving the permission of their AOG, (Association of Governments) have the months of August, September, and October to obtain definite commitment from other funding sources;~~

~~(D) There are varying time frames and unexpected delays inherent with the funding agencies. Therefore, after October 31, the RRC, in conjunction with the State, will determine necessary or requested extensions on a case by case basis based on criteria administered by the Policy Committee. If the additional funds cannot be obtained within the time permitted, the RRC must follow the procedure outlined in (C) and (D) of method one.~~]

Grantees may not delay the processing of the current application based on the possibility of receiving an allocation in the following year.

(d) [~~Ten~~]Five Percent Withholding - The state reserves the right to withhold [~~ten~~]five percent of the CDBG grant amount pending a satisfactory final programmatic financial monitoring review of all projects.

(e) Cost Overruns - The state may authorize the funding of project cost overruns requested by the RRC.

(f) Fund Leveraging - One of the state's roles in the CDBG funding process is to provide assistance to grantees in leveraging other available financial resources.

(g) Program Monitoring - During the course of each CDBG contract the state must monitor all grantees.

(h) Grant Close Out - A grant close out packet will be submitted to the state at the completion of each CDBG-funded activity.

R199-11-6. Length of Contract and Type of Grants.

(1) All grantees shall have 18 months depending upon contract execution, or until October 31, of the following year to complete their project.

(2) There are [~~four~~]two types of grants: Single year and multi-year.[

~~(a) Single Year, Single Purpose~~

~~(b) Single Year, Multi Purpose~~

~~(c) Multi Year, Single Purpose~~

~~(d) Multi Year, Multi Purpose~~]

KEY: community development, grants

Date of Enactment or Last Substantive Amendment: [~~December 17, 1996~~]2006

Notice of Continuation: April 19, 2006

Authorizing, and Implemented or Interpreted Law: 9-4-202(2) et seq.

♦ ♦

Health, Epidemiology and Laboratory Services, Environmental Services

R392-101

Food Safety Manager Certification

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28741

FILED: 05/16/2006, 15:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 150 (2005 General Session) requires the Department of Health to define the risk criteria to allow certain food service establishments to become exempt from the requirement of having a Certified Food Safety Manager on staff. (DAR NOTE: S.B. 150 (2005) is found at Chapter 192, Laws of Utah 2005, and was effective 07/01/2005.)

SUMMARY OF THE RULE OR CHANGE: Section R392-101-8 outlining the requirement for those establishments that prepare five or fewer potentially hazardous foods having a Certified Food Safety Manager on staff for every ten establishment sites under common ownership is removed. The risk criteria that outlines which food establishments are exempt from the requirement of having a Certified Food Safety Manager on staff is put in its place. Also adds a definition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 15a

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no affect on the state budget as the local health departments inspect food facilities. This change neither creates nor relieves any state duties.

❖ LOCAL GOVERNMENTS: There will be no affect on local government budgets as the changes will not decrease the number of inspections they are required to perform and does not materially change the inspection.

❖ OTHER PERSONS: Food service facilities that meet the exemption requirements will save some labor costs by not having to hire or train a person who is a Certified Food Safety Manager; however, the costs are variable and difficult to quantify for all possible food service establishments that meet the exemption requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Food service facilities that meet the exemption requirements will save some labor costs by not having to hire or train a person who is a Certified Food Safety Manager.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to the rule will have a positive fiscal impact on regulated businesses. David N. Sundwall, MD, Executive Director

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
ENVIRONMENTAL SERVICES
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:

Ronald Marsden at the above address, by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@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 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: David N. Sundwall, Executive Director

R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-101. Food Safety Manager Certification.
R392-101-2. Definitions.

(1) As used in Title 26, Chapter 15a, and in this rule:

(a) Commercially prepackaged means any food packaged in a regulated food processing plant that does not require temperature control and is stored and used in accordance with the manufacturer's label.

(b) Continental breakfast means a breakfast meal restricted to:

(i) Beverages such as coffee, tea, and fruit juices;

(ii) Pasteurized Grade A milk;

(iii) Fresh fruits;

(iv) Frozen and commercially processed and prepackaged fruits;

(v) Commercially prepackaged baked goods, such as pastries, rolls, breads and muffins that are non-potentially hazardous foods;

(vi) Cereals;

(vii) Commercially prepackaged jams, jellies, honey, and syrup;

(viii) Pasteurized Grade A creams and butters, non-dairy creamers, or similar products;

(ix) Commercially prepackaged hard cheeses, cream cheese and yogurt in unopened packages; and

(x) foods served with single-use articles.

([~~e~~]xi) Single-use article means a utensil designed and constructed to be used once and discarded.

(xii) Heat and serve foods are precooked by the manufacturer and do not require cooking to critical temperatures as required by R392-100, but only require heating to meet the customer's satisfaction.

R392-101-8. [~~Establishments That Prepare Five or Fewer Potentially Hazardous Foods~~|Exempt Establishments.

[~~Food service establishments, under the same ownership, that prepare and serve a total of five or fewer potentially hazardous food items which are intended for immediate consumption shall employ at least one certified food safety manager for every ten establishments sites under the common ownership. For the purposes of this Section, examples of a single potentially hazardous food item in an establishment are hot dogs, nachos, and rotisserie chicken.~~]A local health officer shall exempt a food service establishment from having a Certified Food Safety Manager on staff, if after evaluation by the local health department, the food service establishment:

(1) is classified within the lowest risk category for a local health department utilizing a risk-based assessment system; or

(2) serves a menu of commercially prepackaged, or heat and serve foods, or foods that require limited handling or assembly and does not conduct any of the following food preparation processes as defined in the Food Code, R392-100:

(a) cook ing foods that are required to reach critical temperatures as required by R392-100;

(b) use using foods that must are required to be cooled within a 6 hour time period as required by R392-100; or

(c) use using foods that must be reheated to 165 degrees as required by R392-100.

KEY: public health, food service
Date of Enacement or Last Substantive Amendment: [~~June 10, 1999~~|2006
Notice of Continuation May 24, 2004
Authorizing and Implemented or Interpreted Law: 26-15a-103

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-305
Resources

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28754
FILED: 05/26/2006, 15:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule puts into effect the provisions from Pub. L. No. 109-171 that affect several eligibility criteria for the receipt of Medicaid for nursing home and long-term care services provided under a home and community based waiver program. These provisions became effective on the enactment date of the law and will affect the state's federal financial participation beginning April 1, 2006.

SUMMARY OF THE RULE OR CHANGE: This rulemaking incorporates sections of Pub. L. No. 109-171 that affect the treatment of transfers of assets for less than fair market value. It changes the length of the look back period for transfers of assets. It changes the date the sanction period begins when an individual or the spouse has transferred assets for less than fair market value. It also requires the state to assess sanctions for transfers that are equal to less than the one month average private pay rate for nursing home services.

Pub. L. No. 109-171 also establishes new requirements for annuities for which an institutionalized individual or the individual's spouse has an interest. Annuities will have to name the Utah Medicaid Program as the remainder beneficiary. It sets a limit to the amount of equity an institutionalized individual can have in the individual's principal residence at $500,000 or less and still qualify for Medicaid for long-term care services. In conjunction with these changes, this rulemaking redefines when an individual's home or life estate can be excluded.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Pub. L. No. 109-171, Sections 6011, 6012, 6013, 6014, 6015, and 6016

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There could be some increased administrative costs because of additional staff work in gathering and evaluating information relating to these new eligibility requirements. The agency does not have any data about any savings that may be realized by the state, but the expectation of Congress is that these changes could save Medicaid dollars because some individuals will not qualify for long-term care services.

❖ LOCAL GOVERNMENTS: This rulemaking action does not impact local governments because determining Medicaid eligibility is not a local government function.

❖ OTHER PERSONS: Individuals who are seeking long-term care services from Medicaid may face increased costs if they are determined ineligible for long-term care services as a result of these new provisions. However, the agency does not have data as to the aggregate costs or number of individuals who may be affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals who seek Medicaid to pay for nursing home or other long-term care services may face increased costs because they may be ineligible under these new provisions of the law. However, we do not have data as to the individual costs or number of individuals who may be affected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule reflects changes in federal law that make it more difficult to access Medicaid for long-term care if you have personal assets. Long-term care facilities should not have significant fiscal consequences from this rule. David N. Sundwall, MD, Executive Director

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 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-305. Resources.
R414-305-1. A, B and D Medicaid and A, B and D Institutional Medicaid Resource Provisions.

(1) This section establishes the standards for the treatment of resources to determine eligibility for aged, blind and disabled Medicaid and aged, blind and disabled institutional Medicaid.

([~~1~~]2) To determine eligibility of the aged, blind or disabled, the[~~The~~] Department adopts 42 CFR 435.[~~735~~]725 and 435.726, 435.840 through 435.845, [~~2001~~]2005 ed., and 20 CFR 416.1201 through 416.1202 and 416.1204 through 416.1266, [~~2002~~]2005 ed., which are incorporated by reference. The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department adopts 1917(d) and (e), 404(h)(4) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 1999, which are incorporated by reference. The Department adopts sections 6012, 6014 and 6015(b) of Pub. L. 109-171 which are incorporated by reference. The Department shall not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

([~~2~~]3) The definitions in R414-1 and R414-301 apply to this rule, in addition:

(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers and the cost of opening and closing a grave site.

(b) "Sanction" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a Home and Community Based waiver due to a transfer of assets for less than fair market value.

(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

([~~3~~]4) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

([4]5) Except for the Medicaid Work Incentive Program, the resource limit for aged, blind or disabled Medicaid is $2,000 for a one[~~—~~]-person household[~~,~~] and $3,000 for a two- member household[~~ and $25 for each additional household member~~].

([~~5~~]6) For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is $15,000. This limit applies whether the household size is one or more than one.

([~~6~~]7) The Department bases non-institutional and institutional Medicaid eligibility on all available resources owned by the client, or deemed available to the client from a spouse or parent. Eligibility cannot be granted based upon the client's intent to or action of disposing of non-liquid resources as described in 20 CFR 416.1240, 2005 ed.

([~~7~~]8) Any resource or the interest from a resource held within the rules of the Uniform Transfers to Minors Act is not countable. Any money from the resource that is given to the child as unearned income is countable.

([~~8~~]9) The resources of a ward that are controlled by a legal guardian are counted as the ward's resources.

([~~9~~]10) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days and the purchase is completed within 90 days. The individual shall receive one extension of 90 days[~~,~~] if more than 90 days is needed to complete the actual purchase. Proceeds is defined as all payments made on the principal of the contract. Proceeds does not include interest earned on the principal.

([~~10~~]11) If a resource is potentially available, but a legal impediment to making it available exists, it is not a countable resource until it can be made available. The applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions as determined by a person with established expertise relevant to the resources exists:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

([~~11~~]12) Water rights attached to the home and the lot on which the home sits are exempt providing it is the client's principal place of residence.

([~~12~~]13) For an institutionalized individual, a home or life estate is not considered an exempt resource.[~~ Therefore, a home transferred to a trust becomes a countable resource or constitutes a transfer of a resource. A home or life estate so transferred could continue to be excluded under the provisions of Section 1924 of the Compilation of the Social Security Laws, in effect January 1, 1999.~~]

(14) The Department excludes an institutionalized individual's principal home or life estate from countable resources if the individual's equity in the home or life estate does not exceed the equity limit established in Section 6014 of Pub. L. 109-171, and one of the following conditions is met:

(i) the individual intends to return to the home;

(ii) the individual's spouse resides in the home;

(iii) the individual's child who is under age 21, or who is blind or disabled resides in the home; or

(iv) a reliant relative of the individual resides in the home.

([~~13~~]15) For A, B and D Medicaid, the Department shall not count up to $6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.[

~~(14) For A, B and D Institutional Medicaid where the resources are determined to exceed the limits for Medicaid, eligibility shall not be given conditioned upon disposition of resources as described in 20 CFR 416.1240, 2002 ed.~~]

([~~15~~]16) A previously unreported resource may be retroactively designated for burial and thereby exempted effective the first day of the month in which it was designated for burial or intended for burial. However, it cannot be exempted retroactively prior to November 1982 or earlier than 2 years prior to the date of application. Such resources shall be treated as funds set aside for burial and the amount exempted cannot exceed the limit established for the SSI program.

([~~16~~]17) One vehicle is exempt if it is used at least four times per calendar year to obtain necessary medical treatment.

([~~17~~]18) The Department allows SSI recipients[~~,~~] who have a plan for achieving self support approved by the Social Security Administration[~~,~~] to set aside resources that allow them to purchase work-related equipment or meet self support goals. These resources are excluded.

([~~18~~]19) An irrevocable burial trust is not counted as a resource. However, if the owner is institutionalized or on home and community based waiver Medicaid, the value of the trust, which exceeds $7,000, is considered a transferred resource.

([~~19~~]20) Business resources required for employment or self-employment are not counted.[

~~(20) The Department shall exclude as a resource the contributions made by an individual into and the interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No. 105-285 effective October 27, 1998.~~]

(21) For the Medicaid Work Incentive Program, the Department [~~shall~~]excludes the following additional resources of the eligible individual:

(a) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or an Individual Retirement Account, even if such funds are available to the individual.

(b) A second vehicle when it is used by a spouse or child of the eligible individual living in the household to get to work.

(22) After qualifying for the Medicaid Work Incentive Program, these resources described in R414-305-1(21) will continue to be excluded throughout the lifetime of the individual to qualify for A, B or D Medicaid programs other than the Medicaid Work Incentive, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

(23) Assets 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. 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.

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

(25) Life estates.

(a) For non-institutional Medicaid, life estates shall be counted as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, life estates are countable resources even if no market exists for the sale of the life estate, unless the life estate can be excluded as defined in paragraph 14 of this section.

(c) The client may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the client and the current market value of the property.

(d) The following table lists the life estate figure corresponding to the client's age. This figure is used to establish the value of a life estate:

TABLE

Age	Life Estate Figure
0	.97188
1	.98988
2	.99017
3	.99008
4	.98981
5	.98938
6	.98884
7	.98822
8	.98748
9	.98663
10	.98565
11	.98453
12	.98329
13	.98198
14	.98066
15	.97937
16	.97815
17	.97700
18	.97590
19	.97480
20	.97365
21	.97245
22	.97120
23	.96986
24	.96841
25	.96678
26	.96495
27	.96290
28	.96062
29	.95813
30	.95543
31	.95254
32	.94942
33	.94608
34	.94250
35	.93868
36	.93460
37	.93026
38	.92567
39	.92083
40	.91571
41	.91030
42	.90457
43	.89855
44	.89221
45	.88558
46	.87863
47	.87137
48	.86374
49	.85578
50	.84743
51	.83674
52	.82969
53	.82028
54	.81054
55	.80046
56	.79006
57	.77931
58	.76822
59	.75675
60	.74491
61	.73267
62	.72002
63	.70696
64	.69352
65	.67970
66	.66551
67	.65098
68	.63610
69	.62086
70	.60522
71	.58914
72	.57261
73	.55571
74	.53862
75	.52149
76	.50441
77	.48742
78	.47049
79	.45357
80	.43659
81	.41967
82	.40295
83	.38642
84	.36998
85	.35359
86	.33764
87	.32262
88	.30859
89	.29526
90	.28221
91	.26955
92	.25771
93	.24692
94	.23728
95	.22887
96	.22181
97	.21550
98	.21000
99	.20486
100	.19975
101	.19532
102	.19054
103	.18437
104	.17856
105	.16962
106	.15488
107	.13409
108	.10068
109	.04545

R414-305-2. Family Medicaid and Family Institutional Medicaid Resource Provisions.

(1) This section establishes the [~~rules~~]standards for the treatment of resources to determine eligibility for Family Medicaid and Family Institutional Medicaid programs.

(2) The Department adopts 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4) and (6), and 233.20(a)(3)(vi)(A), 2004 ed., which are incorporated by reference. The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department adopts 1917(d) and (e), Subsection 404(h) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 2003, which are incorporated by reference. The Department adopts sections 6012, 6014 and 6015(b) of Pub. L. 109-171 which are incorporated by reference. The Department does not count as an available resource retained funds from sources that federal laws specifically prohibit from being counted as a resource to determine eligibility for federally-funded medical assistance programs. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

(4) Except for pregnant women who meet the criteria under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 2003, the resource limit is $2,000 for a one person household, $3,000 for a two person household and $25 for each additional household member. For pregnant women defined above, the resource limit is defined in R414-303-11.

(5) Except for the exclusion for a vehicle, the agency uses the same methodology for treatment of resources for all medically needy and categorically needy individuals.

(6) To determine countable resources for Medicaid eligibility, the agency considers all available resources owned by the client. The agency does not consider a resource unavailable based upon the client's intent to or action of disposing of non-liquid resources.

(7) The agency counts resources of a [~~sanctioned~~]household member who has been disqualified from Medicaid for failure to cooperate with third party liability or duty of support requirements.

(8) If a legal guardian, conservator, authorized representative, or other responsible person controls any resources of an applicant or recipient, the agency counts the resources as the applicant's or recipient's. The arrangement may be formal or informal.

(9) If a resource is potentially available, but a legal impediment to making it available exists, the agency does not count the resource until it can be made available. Before an applicant can be made eligible, or to continue eligibility for a recipient, the applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(10) Except for determining countable resources for 1931 Family Medicaid, the agency excludes a maximum of $1,500 in equity value of one vehicle.

(11) The agency does not count as resources the value of household goods and personal belongings that are essential for day-to-day living. Any single household good or personal belonging with a value that exceeds $1000 must be counted toward the resource limit. The agency does not count as a resource the value of any item that a household member needs because of the household member's medical or physical condition.

(12) The agency does not count the value of one wedding ring and one engagement ring as a resource.

(13) For a non-institutionalized individual, the[~~The~~] agency does not count the value of a life estate as an available resource if the life estate is the applicant's or recipient's principal residence. If the life estate is not the principal residence, the rule in Subsection R414-305-1(25) applies.

(14) The agency does not count the resources of a child who is not counted in the household size to determine eligibility of other household members.

(15) For a non-institutionalized individual, the[~~The~~] agency does not count as a resource, the value of the lot on which the excluded home stands if the lot does not exceed the average size of residential lots for the community in which it is located. The agency counts as a resource the value of the property in excess of an average size lot. If the individual is institutionalized, the provisions of R414-305-1(13), (14) and (25) apply to the individual's home or life estate. In addition, the provisions of section 6014 of Pub. L. 109-171 apply.

(16) The agency does not count as a resource the value of water rights attached to an excluded home and lot.

(17) The agency does not count any resource, or interest from a resource held within the rules of the Uniform Transfers to Minors Act. The agency counts as a resource any money from such a resource that is given to the child as unearned income and retained beyond the month received.

(18) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days and the purchase is completed within 90 days. The individual shall receive one extension of 90 days, if more than 90 days is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(19) Retroactive benefits received from the Social Security Administration and the Railroad Retirement Board are not counted as a resource for the first 9 months after receipt.

(20) The agency excludes from resources, a burial and funeral fund or funeral arrangement up to $1500 for each household member who is counted in the household size. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial. All such funds must be separated from non-burial funds and clearly designated as burial funds. Interest earned on exempt burial funds and left to accumulate does not count as a resource. If exempt burial funds are used for some other purpose, remaining funds will be counted as an available resource as of the date funds are withdrawn.

(21) Assets 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. 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.

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

(23) Business resources required for employment or self employment are not counted.

(24) For 1931 Family Medicaid households, the agency will not count as a resource either the equity value of one vehicle that meets the definition of a "passenger vehicle" as defined in 26-18-2(6), or $1,500 of the equity of one vehicle, whichever provides the greatest disregard for the household.

(25) For eligibility under Family-related Medicaid programs, the agency will not count as a resource retirement funds held in an employer or union pension plan, retirement plan or account including 401(k) plans and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage.[

~~(26) The agency will not count as a resource the contributions made by an individual and the interest accrued on funds held in an Individual Development account as defined in Sections 404-416 of Pub. L. No. 105-285, effective October 27, 1998.~~]

([~~27~~]26) The agency will not count as a resource, funds received from the Child Tax credit or the Earned Income Tax credit

for nine months following the month received. Any remaining funds will count as a resource in the 10th month after being received.

R414-305-3. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.

(1) This section establishes the standards for the treatment of resources for married couples when one spouse is institutionalized and the other spouse is not institutionalized.

([~~1~~]2) To determine the countable resources of an institutionalized individual who has a community spouse, the[~~The~~] Department adopts Section 1924(a), (c) and (f) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference. The Department adopts section 6013 of Pub. L. 109-171 which is incorporated by reference. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

([~~2~~]3) The resource limit for an institutionalized individual is $2,000.[

~~(3) The Department shall determine the joint owned resources of married couples as available to each other. One half of the joint owned resources shall count towards the institutional client's resource eligibility determination.~~]

(4) [~~When~~]If a client is otherwise eligible for institutional Medicaid, but is unable to comply with spousal impoverishment rules and claims undue hardship because of an uncooperative spouse or because the spouse cannot be located, [~~assignment of~~]the client may obtain institutional Medicaid by assigning support rights to the State of Utah[~~shall be done by signing the Form 048~~].

(5) "Undue hardship" in regard to counting a spouse's resources as available to the institutionalized client means:

(a) The client [~~completes the Form 048~~]assigns support rights to the State.

(b) The client will not be able to get the medical care needed without Medicaid.

(c) The client is at risk of death or permanent disability without institutional care.

(6) The agency will determine the client's [~~may be eligible~~]eligibility for institutional Medicaid without regard to the spouse's resources if both of the following conditions are met:

(a) The spouse cannot be located or will not provide information needed to determine eligibility.

(b) The client meets the undue hardship criteria including assigning support rights to the State[~~signs the Form 048~~].

(7) The assessed spousal share of resources shall not be less than the minimum amount nor more than the maximum amount mandated by section 1924(f) of the Compilation of the Social Security Laws in effect January 1, 1999.

(8) Any resource owned by the community spouse in excess of the assessed spousal share is counted to determine the institutionalized client's initial Medicaid eligibility.

(9) A protected period, after eligibility is established, lasting until the time of the next regularly scheduled eligibility redetermination is allowed for an institutionalized client to transfer resources to the community spouse.

(10) After eligibility is established for the institutionalized client, those resources held in the name of the community spouse will not be considered available to the institutionalized client to determine the countable resources of the institutionalized client.

R414-305-4. Medicaid Qualifying Trusts.

The Department adopts Section 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference.

R414-305-5. Transfer of Resources for A, B and D Medicaid and Family Medicaid.

There is no sanction for the transfer of resources.

R414-305-6. Transfer of Resources for Institutional Medicaid.

(1) This section establishes the standards for the treatment of transfers of assets for less than fair market value to determine eligibility for nursing home or other long-term care services under a home and community based services waiver.

([~~1~~]2) The Department adopts Subsection 1917(c) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference. The Department adopts sections 6011, 6012, and 6016 of Pub. L. 109-171 which are incorporated by reference. In so far as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) If an individual or the individual's spouse transfers the home or life estate, the transfer requirements of Section 1917(c) of the Compilation of the Social Security Act apply.

(4) If an individual or the individual's spouse transfers assets in more than one month on or after February 8, 2006, the uncompensated value of all transfers including fractional transfers are combined to determine the sanction period. The Department applies partial month sanctions for transferred amounts that are less than the monthly average private pay rate for nursing home services.

(5) If assets are transferred during any sanction period, the sanction period for those transfers will not begin until the previous sanction has expired.

(6) If a transfer occurs after an individual has been approved for Medicaid for nursing home or home and community based services, the sanction begins on the first day of the month after the month the asset is transferred.

([~~2~~]7) The average private-pay rate for nursing home care in Utah is $[~~3,618~~]4,526 per month.

([~~3~~]8) To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual, a binding written agreement must be in place which establishes that the resource transferred can only be used to benefit the spouse, disabled child, or disabled individual, and is actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in such agreement that would benefit another person at any time nullifies the sole benefit provision except for exempt trusts established under section 1917(d) of the Compilation of the Social Security Laws, January 1, 1999 ed., that provide for repayment of the state Medicaid agency or provide for a pooled trust to retain a portion of the remainder.

([~~4~~]9) No sanction is imposed when the total value of a whole life insurance policy is irrevocably assigned to the state; and the recipient is the owner of and the insured in the policy; and no further premium payments are necessary for the policy to remain in effect. At the time of the client's death, the state shall distribute the benefits of the policy as follows:

(a) Up to $7,000 can be distributed to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and/or the burial and funeral funds for the client can not exceed $7,000.

(b) An amount to the state that is not more than the total amount of previously unreimbursed medical assistance correctly paid on behalf of the client.

(c) Any amount remaining after payments are made as defined in a. and b. will be made to a beneficiary named by the client.

(10) If the agency determines that a sanction period applies for an otherwise eligible institutionalized person, the agency shall notify the individual that the individual is ineligible for nursing home or other long-term care services because of the sanction. The notice shall include when the sanction period begins and ends. The individual may request a waiver of the sanction period based on undue hardship. The individual must send a written request to the agency within 30 days after the mailing date of the sanction notice.

([~~5~~]11) Clients that claim an undue hardship as a result of a transfer of resources must meet both of the following conditions:

(a) The client or the person who transferred the resources has exhausted all reasonable [~~legal~~]means including legal remedies to regain possession of the transferred resource. It is considered unreasonable to require the client to take action if a knowledgeable source confirms that it is doubtful those efforts will succeed. It is unreasonable to require the client to take action more costly than the value of the resource[~~.~~], and

(b) Application of the sanction for a transfer of resources would deprive the client of medical care such that the client's life or health would be endangered, or would deprive the client of food, clothing, shelter or other necessities of life.[~~The client is at risk of death or permanent disability if not admitted to a medical institution or Waiver service.~~]

(12) The Department bases its[~~This~~] decision that undue hardship exists[~~will be based~~] upon the client's medical condition and the financial situation of the client. The Department will consider [~~I~~]income and resources of the client, client's spouse, and parents of an unemancipated client [~~shall be used~~]to decide if the financial situation creates undue hardship. The agency shall send a written notice of its decision on the undue hardship request. The client has 90 days from the date of mailing of the decision concerning the request for an undue hardship waiver to request a fair hearing.[

~~(6) After Institutional Medicaid eligibility is determined, the client's spouse, not living in the institution, may transfer any resource to any person without impacting the Medicaid eligibility of the institutionalized spouse.~~]

([~~7~~]13) The portion of an irrevocable burial trust that exceeds $7,000 is considered a transfer of resources. The value of any fully paid burial plot, as defined in R414-305-1([~~2~~]3)(a), shall be deducted from such burial trust first before determining the amount transferred.

([~~8~~]14) If more than one transfer has occurred and the sanction periods would overlap, the sanctions will be applied consecutively[~~,~~] so that they do not overlap. If a resource was transferred before February 8, 2006, the[~~A~~] sanction begins on the first day of the month in which the resource was transferred unless a previous sanction is in effect, in which case the sanction begins on the first day of the month immediately following the month the previous sanction ends.[~~If resources were transferred before August 11, 1993, applicable sanction periods for those transfers may overlap.~~]

R414-305-7. Home and Community-Based Services Waiver Resource Provisions.

(1) The resource limit is $2,000.

(2) Following the initial month of eligibility, continued eligibility is determined by counting only the resources that belong to the client.

(3) For married clients, spousal impoverishment resource rules apply as defined in R414-305-3.

R414-305-8. QMB, SLMB, and QI[~~-1~~] Resource Provisions.

(1) The Department adopts Subsection 1905(p) of the Compilation of the Social Security Laws, 1999 ed., which is incorporated by reference.

(2) The resource limit is the same for all medically needy individuals.

(3) The QMB, SLMB, and QI[~~-1~~] resource limit is $4,000 for an individual and $6,000 for a couple.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~July 2, 2005~~]2006
Notice of Continuation: January 31, 2003
Authorizing and Implemented or Interpreted Law: 26-18

♦ ♦

Human Services, Child and Family Services
R512-308
Out of Home Services, Guardianship Services and Placements

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 28750
FILED: 05/18/2006, 13:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to create this rule in order to clarify its guardianship services and placements.

SUMMARY OF THE RULE OR CHANGE: The Division will offer guardianship services to families who have custody of a minor child transferred to them from the state.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-4a-105 and 78-3a-103

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: After careful analysis by the Finance Director for the Division, it was determined that this new rule will not increase costs or savings to the Division because this is clarifying conditions under which a subsidy can be given. Services will be provided within the current budget.

❖ LOCAL GOVERNMENTS: After a careful review by the Finance Director for the Division of possible impact on local government, it was determined that there will be no increased

costs or savings because this is clarifying conditions under which a subsidy can be given.

❖ OTHER PERSONS: After careful analysis by the Finance Director for the Division, it was determined that the families affected by this new rule will not see an increase in costs or savings because this is clarifying conditions under which a subsidy can be given.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Finance Director for the Division determined that affected persons involved with the Division should not see an increase in costs or savings because this is clarifying conditions under which a subsidy can be given.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on businesses. Lisa-Michele Church, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Miller or Adam F Trupp at the above address, by phone at 801-538-4451 or 801-538-4462, by FAX at 801-538-3993 or 801-538-4016, or by Internet E-mail at CAROLMILLER@utah.gov or AFTRUPP@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 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.
R512-308. Out of Home Services, Guardianship Services and Placements.
R512-308-1. Purpose and Authority.

A. Guardianship services and placements provide a permanent, safe living arrangement for a child in the court-ordered custody of the Division or Department when it is not appropriate for the child to return home or be adopted, and continuing agency custody is not in the child's best interest.

B. Guardianship services are authorized by Sections 62A-4a-105(6) and 78-3a-103.

R512-308-2. Definitions.

A. "Child and Family Team" means a group that meets together as often as needed and works to support the family and assist them in meeting their needs. This may include the referent or other concerned individuals identified by the family as support persons.

B. "Guardianship" has the same meaning as defined in Section 78-3a-103.

C. "Division" means the Division of Child and Family Services.

R512-308-3. General Guardianship Qualifying Factors.

A. General qualifying factors apply for both relative and non-relative guardianship, and all factors must be met.

1. The child cannot safely return home. This requirement is met if the court determines that reunification with the child's parents is not possible or appropriate and the Child and Family Team and regional screening committee agree that adoption is not an appropriate plan for the child.

2. The parent and child have a significant bond but the parent is unable to provide ongoing care for the child, such as an emotional, mental, or physical disability, and the child's current caregiver has committed to raising the child to the age of majority and to facilitate visitation with the parent.

3. The prospective guardian must:

a. Be able to maintain a stable relationship with the child;

b. Have a strong commitment to providing a safe and stable home for the child on a long-term basis;

c. Have a means of financial support and connections to community resources; and

d. Be able to care for the child without Division supervision.

4. The child has no ongoing care or financial needs beyond basic maintenance and does not require the services of a case manager.

5. There are compelling reasons why the child cannot be adopted, such as when the child's tribe has exclusive jurisdiction or the tribe has chosen to intervene in the adoption proceedings. Under the Indian Child Welfare Act (ICWA) of 1978, Public Law No. 95-608, 92 Stat. 3069 codified at 25 U.S.C. 1901-63, a tribe has the right to determine the child's permanency. For this reason, the tribe has the authority to approve guardianship with the current caregiver.

R512-308-4. Non-Relative Qualifying Factors.

A. In addition to general qualifying factors in R512-308-3, all of the following factors apply to non-relative guardianship and must be met.

1. The child is in the Division's legal custody and has been in custody for at least 12 consecutive months. If this is a sibling group, at least one child must have been in custody for 12 consecutive months.

2. The prospective guardian is a licensed foster parent.

3. The child has lived for at least six months in the home of the prospective guardian. The regional director or designee may waive the six-month placement requirement for sibling groups if at least one sibling has been in the home for six months and meets all other eligibility criteria.

4. A Child and Family Team has formally assessed the placement and found that continuation with the caregiver is in the child's best interest and supports the safety, permanency, and well-being of the child.

5. The Division has no concerns with the care the child has received in the home.

6. The child has a stable and positive relationship with the prospective guardian.

7. The child has reached the age of 12 years. The regional director or designee may waive the age requirement for members of

a sibling group placed with a non-relative if at least one sibling is 12 years of age or older and meets all other guardianship criteria and adoption is not the best permanency option for the younger children.

R512-308-5. Relative Qualifying Factors.

A. In addition to general qualifying factors found in R512-308-3, all of the following factors apply for relative guardianship and must be met.

1. The child's prospective guardian is a relative who meets the relationship requirements of the Department of Workforce Services Specified Relative Program, which currently includes:

a. Grandfather or grandmother;

b. Brother or sister;

c. Uncle or aunt;

d. First cousin;

e. First cousin once removed (a first cousin's child);

f. Nephew or niece;

g. Persons of preceding generations as designated by prefixes of grand, great, great great, or great great great;

h. Spouses of any relative mentioned above even if the marriage has been terminated;

i. Persons that meet any of the above-mentioned relationships by means of a step relationship; or

j. Relatives that meet one of these relationships by legal adoption.

2. If not licensed as a foster parent, the relative has completed kinship screening, including a home study and background checks, in accordance with kinship practice guidelines.

3. The child's needs may be met without continued Division funding. In order to be considered for a guardianship subsidy, the prospective relative guardian must be a licensed foster parent and demonstrate that they cannot qualify for a Specified Relative Grant through the Department of Workforce Services as outlined in R512-308-6.

R512-308-6. Guardianship Subsidy Availability, Scope, Duration.

A. Guardianship subsidies are available to meet the care and maintenance needs for children in foster care:

1. For whom guardianship has been determined as the most appropriate primary goal.

2. Who do not otherwise have adequate resources available for their care and maintenance.

3. Who meet the qualifying factors described in R512-308-4 Non-Relative Qualifying Factors and who cannot qualify to receive a Specified Relative Grant from the Department of Workforce Services.

a. The caseworker must be provided with a copy of a denial letter from the Department of Workforce Services or written proof that the relationship requirements do not apply, such as through relevant birth certificates.

b. Approval from the regional guardianship screening committee and regional administration is required in making this determination.

B. If a prospective guardian is found to be receiving both a Specified Relative Grant and guardianship subsidy for the same child, the caseworker will notify the Department of Workforce Services and appropriate actions may be taken for repayment.

C. Guardianship subsidies are available through the month in which the child reaches age 18.

D. Each region may establish a limit to the number of eligible children who may receive guardianship subsidies.

E. Guardianship subsidies are subject to the availability of state funds designated for this purpose.

R512-308-7. Regional Guardianship Subsidy Screening Committee.

A. Each region shall establish at least one regional guardianship subsidy screening committee. This committee may be combined with another appropriate committee, such as the adoption subsidy committee or placement committee.

B. The regional guardianship subsidy screening committee shall be comprised of at least five members. A minimum of three members must be present for making decisions regarding a guardianship subsidy. Decisions shall be made by consensus.

C. The regional guardianship subsidy screening committee is responsible to:

1. Verify that a child qualifies for a guardianship subsidy.

2. Approve the level of need and amount of monthly subsidy for initial requests, changes, and renewals.

3. Document the committee's decisions.

4. Coordinate supportive services to prevent disruptions and preserve permanency.

R512-308-8. Determining Guardianship Subsidy Amounts.

A. The regional guardianship subsidy screening committee will determine the subsidy amount by considering the special needs of the child and the circumstances of the guardian family. The caseworker presents to the committee information regarding the special needs of the child, the guardian family income and expenses, and/or the guardian family's special circumstances.

B. All of the following factors must be considered when determining the amount of the monthly subsidy to be granted:

1. All sources of financial support for the child including Supplemental Security Income, Social Security benefits, and other benefits. The regional guardianship subsidy committee may require verification of financial support.

a. If a child is receiving benefit income and the income can continue after guardianship is granted, this amount will be deducted from the guardianship subsidy amount.

b. The guardianship subsidy should not replace other available income, such as Supplemental Security Income.

C. A guardianship subsidy will not exceed the levels indicated in Level I and Level II below, and may be less based upon the ongoing needs of the child and the needs of the guardian family.

1. Guardianship Level I (Basic): Guardianship Level I is for a child who may have mild to moderate medical needs, psychological, emotional, or behavioral problems, and who requires parental supervision and care. The amount of guardianship subsidy for a child whose needs are within Level I may be any amount up to the lowest basic foster care rate.

2. Guardianship Level II (Specialized): Guardianship Level II is for a child who may be physically disabled, developmentally delayed, medically needy or medically fragile, or have a serious emotional disorder. The amount of the guardianship subsidy may range from the lowest basic foster care rate to the lowest specialized foster care rate.

D. Children who are receiving the structured foster care rate in foster care or who are in a group or residential setting are considered for the Guardianship Level II rate.

E. Guardianship subsidies may not exceed the Guardianship Level II rate.

F. Guardianship subsidies are funded with state general funds within regional foster care budgets. A region has the discretion to limit the number of guardianship subsidies or reduce guardianship subsidy rates based on the availability of funds.

G. Changing the amount of the guardianship subsidy.

1. The amount of a guardianship subsidy does not automatically increase when there is a foster care rate change or as the child ages.

2. A guardian may request a guardianship subsidy review when seeking an increase in the guardianship subsidy amount, not to exceed the maximum amount allowable for the child's level of need. The guardian must complete the Request for Subsidy Increase Form to provide documentation to justify the request.

3. The request must be reviewed and approved by the regional guardianship subsidy screening committee. If approved, a new Guardian Subsidy Agreement will be completed.

4. The Division must provide written notice of agency action by certified mail at least 30 days in advance if a guardianship subsidy rate is going to be reduced.

R512-308-9. Guardianship Subsidy Agreement.

A. A Guardianship Subsidy Agreement specifies the terms for financial support for the child's basic needs.

B. A guardianship subsidy worker will complete the Guardianship Subsidy Agreement.

C. The effective date of the initial agreement is the date of the court order granting guardianship.

D. A Guardianship Subsidy Agreement must:

1. Be signed by the guardian and the Division prior to any payments being made.

2. Identify the reason a subsidy is needed.

3. List the amount of the monthly payment.

4. Identify dates the agreement is in effect.

5. Identify responsibilities of the guardian.

6. Identify under what circumstances the agreement may be amended or terminated and the time period for agreement reviews.

7. Include a provision for a reduction or termination in the amount of the guardianship subsidy in the event a legislative or executive branch action affects the Division's budget or expenditure authority, making it necessary for the Division to reduce or terminate guardianship subsidies or if a regional office determines that reduction is necessary due to regional budget constraints.

8. Include a provision for assignment of benefits to the Office of Recovery Services in accordance with the Office of Recovery Services requirements.

9. Include a provision for re-payment of any financial entitlement made by the Department or Division to the guardian that was incorrectly paid.

R512-308-10. Notification Regarding Changes.

A. The guardian must notify the Division if:

1. There is no longer a need for a guardianship subsidy.

2. The guardian is no longer legally responsible for the support of the child.

3. The guardian is no longer providing any financial support to the child or is providing reduced financial support for the child.

4. The child no longer resides with the guardian.

5. The guardian has a change in address.

6. The child has run away.

7. The guardian is planning to move out-of-state.

R512-308-11. Reviews, Renewals, and Recertifications.

A. Reviews:

1. A guardianship subsidy worker will review each Guardianship Subsidy Agreement annually. The family situation, child's needs, and amount of the guardianship subsidy payment may be considered.

2. Prior to review, the guardian must complete the Guardianship Subsidy Recertification form provided by the Division to verify that the guardian continues to support the child. If the Recertification form is not received after adequate notice, the guardianship subsidy may be delayed or face possible termination.

B. Renewals:

1. In order for guardianship assistance payments to continue, this agreement shall be renewed at intervals of up to three years until the child's 18th birthday.

2. The Department or Division shall provide written notification to the guardians before the next renewal date and shall supply the guardian with the appropriate forms.

3. The Department, the Division, and the guardian may negotiate the terms of a new agreement at any time. In order to be effective, all new agreements shall be in writing, on a form approved by the Department or the Division, and signed by the parties. Oral modifications or agreements shall bind the Department, the Division, and the guardian.

C. Recertification:

1. In order for guardianship assistance payments to continue, the guardian must recertify annually by completing and submitting the Annual Guardianship Assistance Recertification form to the Department or the Division.

R512-308-12. Appeals/Fair Hearings.

A. When a decision is made to deny, reduce, or terminate a guardianship subsidy, the Division shall send by certified mail a written Notice of Agency Action. The notice shall also include information about how to request a fair hearing.

R512-308-13. Termination.

A. A Guardianship Subsidy Agreement will be terminated if any of the following circumstances occur:

1. The terms of the agreement are concluded.

2. The guardian requests termination.

3. The child reaches age 18 years.

4. The child dies.

5. The guardian parent dies or, in a two parent family, if both guardian parents die.

6. The guardian parents' legal responsibility for the child ceases.

7. The Department or Division determines that the child is no longer receiving financial support from the guardian parent.

8. The child marries.

9. The child enters the military.

10. The child is adopted.

11. The child is placed in foster care.

12. The Department or Division determines that funding restrictions prevent continuation of subsidies for all guardians.

B. A guardianship subsidy payment may be terminated or suspended, as appropriate, if any of the following occur. The decision to terminate or suspend must be made by the regional guardianship subsidy screening committee.

1. The child is incarcerated for more than 30 days.
2. The child is out of the home for more than a 30-day period or is no longer living in the home.
3. The guardian fails to return the annual Recertification form or to complete the renewed Guardianship Subsidy Agreement within five working days of the renewal date.
4. There is a supported finding of child abuse or neglect against the guardian.

KEY: foster care, guardianship
Date of Enactment or Last Substantive Amendment: July 25, 2006
Authorizing, Implemented, or Interpreted Law: 62A-4a-105, 78-3a-103

♦ ♦

Insurance, Administration
R590-220
Submission of Accident and Health Insurance Filings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28767
FILED: 05/31/2006, 15:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Some changes were made at the request of the insurance industry. Some requirements were deleted as a result of changes to Rule R590-167, Individual and Small Employer Health Insurance Rule. Other changes were made to comply with the National Association of Insurance Commissioners' (NAIC) Speed to Market Standards.

SUMMARY OF THE RULE OR CHANGE: Section R590-220-3 updates the publication date for the NAIC filing documents and removes the Utah Accident and Health Filing Transmittal document. Section R590-220-4 redefines "Alternate Information" to be called "Filing Status Information." Section R590-220-5 clarifies what is a "Filing Correction." Section R590-220-6 includes changes resulting from the elimination of the Utah Accident and Health Filing Transmittal document. Sections R590-220-8 and R590-220-11 clarify filing types for rate and rate documentation submissions. Section R590-220-9 requires discretionary groups to be reauthorized if they choose to market additional insurance products. Section R590-220-10 removes reports no longer required as a result of changes to Rule R590-167. Section R590-220-12 is changed to provide instructions for filings submitted on paper or electronically. Section R590-220-13 eliminates obsolete information about the transmittal form and is replaced with specific instructions for filing long-term care products, which are already a part of other sections of the rule. Section R590-220-15 added requirements for submitting documents when responding to a department order.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-2-201.1, 31A-2-202, 31A-22-605, 31A-22-620, and 31A-30-106

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Insurers will be required to file an additional form with their health and accident rate and form filings. This will not create any significant change to the workload of the department personnel or its revenues. As a result, the state budget will not be affected.
❖ LOCAL GOVERNMENTS: The changes to this rule will have no fiscal impact on local governments since it deals solely with the relationship between the licensee and the department.
❖ OTHER PERSONS: Insurers will have to file an additional "Filing Status Information" form with their rate and form filings. This is a one-page document. If filed electronically, insurers will not have the expense of printing and storing this document. There are approximately 260 companies that file anywhere from one to ten filings a year. Insurers will also be required to file a two-page reauthorization request if they want to offer additional insurance products to discretionary groups. Since cost to the insurer is negligible, there should be no cost to the consumer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Insurers will have to file an additional "Filing Status Information" form with their rate and form filings. This is a one-page document. If filed electronically, insurers will not have the expense of printing and storing this document. There are approximately 260 companies that file anywhere from one to ten filings a year. Insurers will also be required to file a two-page reauthorization request if they want to offer additional insurance products to discretionary groups. Since cost to the insurer is negligible, there should be no cost to the consumer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Cost to businesses will be negligible. D. Kent Michie, Commissioner

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 07/17/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/06/2006 at 10:00 AM, State Office Building (behind the Capitol), Room 3112, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-220. Submission of Accident and Health Insurance Filings.
R590-220-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule shall be used for all filings. Actual copies may be used or you may adapt them to your word processing system. If adapted, the content, size, font, and format must be similar.

(2) The following filing documents are hereby incorporated by reference and are available on the department's web site, www.insurance.utah.gov[~~/RF-Flgs.html~~]:

(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," effective January 1, [~~2003~~]2006;

(b) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document," effective January 1, [~~2003~~]2006;

(c) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document Form Filing Attachment and Rate Filing Attachment," effective January 1, [~~2003~~]2006;

(d) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," effective January 1, [~~2003~~]2006;

(e) [~~"Utah Accident and Health Insurance Filing Transmittal," version April 1, 2004;~~

~~(f)~~]"Utah Accident and Health Insurance Filing Certification," version [~~April 1, 2004~~]September 1, 2006;

[~~(g)~~](f) "Utah Accident and Health Insurance Group Questionnaire," version [~~April 1, 2004~~]September 1, 2006; and

[~~(h)~~](g) "Utah Accident and Health Insurance Request for Discretionary Group Authorization," version [~~April 1, 2004~~]September 1, 2006.

R590-220-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purposes of this rule.

(1) [~~"Alternate information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.~~

~~(2)~~]"Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

[~~(3)~~](2) "Discretionary group" means a group that has been specifically authorized by the commissioner under Subsection 31A-22-701(1)[~~(c)~~](b).

[~~(4)~~](3) "Eligible group" means a group that meets the definition in Subsection 31A-22-701(1)(a).

[~~(5)~~](4) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

[~~(6)~~](5) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.

[~~(7)~~](6) "File For Acceptance" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was accepted.

[~~(8)~~](7) "File for Approval" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was approved.

[~~(9)~~](8) "Filer" means a person or entity who submits a filing.

[~~(10)~~](9) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;
(b) a rate, rate manual, or rate methodologies;
(c) a form;
(d) a document;
(e) a plan;
(f) a manual;
(g) an application;
(h) a report;
(i) a certificate;
(j) an endorsement;
(k) an actuarial certification;
(l) a licensee annual statement;
(m) a licensee renewal application; or
(n) an advertisement.

(10) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(11) "Letter of authorization" means a letter signed by an officer of the insurer on whose behalf the filing is submitted that designates filing authority to the filer.

(12) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(13) "Order to Prohibit Use" means an order issued by the commissioner that forbids the use of a filing.

(14) "Rating methodology change" for the purpose of a health benefit plan means:

(a) a change in the number of case characteristics used by a covered carrier to determine premium rates for health benefit plans in a class of business;

(b) a change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(c) a change in the method of allocating expenses among health benefit plans in a class of business; or

(d) a change in a rating factor, with respect to any case characteristic, if the change would produce a change in premium for any individual or small employer that exceeds 10%. A change in a rating factor shall mean the cumulative change with respect to such factor considered over a 12-month period. If a covered carrier changes rating factors with respect to more than one case characteristic in a 12-month period, the carrier shall consider the cumulative effect of all such changes in applying the 10% test.

(15) "Rejected" means a filing is:

(a) not submitted in accordance with Utah laws and rules;

(b) returned to the filer by the department with the reasons for rejection; and

(c) not considered filed with the department.

(16) "Type of insurance" means a specific accident and health product including dental, health benefit plan, long-term care, Medicare supplement, income replacement, specified disease, or vision.

R590-220-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) An insurer and filer are responsible for assuring compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing is not considered filed with the department.

(4) Prior filings will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, an Order To Prohibit Use will be issued to the filer. The commissioner may require the insurer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing correction.

(a) No [~~filing~~]transmittal is required when [~~clerical or typographical corrections are made to a filing previously filed if the corrected filing is submitted within 30 days of the date "Filed" with the department. The filer will need to reference the original filing~~]making a correction to misspelled words and punctuation in a filing. This filing will be considered informational.

(b) No transmittal is required when a clerical correction is made to a previous filing if submitted within 15 days of the date "Filed" with the department. The filer must reference the original filing or include a copy of the original transmittal.

(c) A new filing is required if[~~the~~] a clerical [~~or typographical corrections are~~]is made more than [~~30~~]15 days after the [~~filed date of the original filing~~]date "Filed" with the department. The filer [~~will need to~~]must reference the original filing or include a copy of the original transmittal.

(7) Filing withdrawal. A filer must notify the department when [~~the filer withdraws~~]withdrawing a previously filed form, rate, or supplementary information.

R590-220-6. Filing Submission Requirements.

A filing must be submitted by market type and type of insurance. A filing may not include more than one type of insurance, or request filing for more than one insurer. A complete filing consists of the following documents submitted in the following order:

(1) Transmittal. The NAIC Life, Accident and Health, Annuity, Credit Transmittal Document[~~A transmittal~~], as provided in R590-220-3(2), must be on the top of the filing. The transmittal form must be properly completed.

(a) Complete the transmittal by using the following:

(i) NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document Form Filing Attachment and Rate Filing Attachment;

(ii) NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document Form Filing Attachment and Rate Filing Attachment; and

(iii) NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix.

(b) Do not submit the document described in sections (a)(i),(ii), and (iii) with the filing.

(2) Filing Description. A cover letter should not be submitted. Instead, the[~~The~~] following information must be included in[~~a cover letter or in~~] the Filing Description on the [~~NAIC~~]transmittal and presented in the order shown below.[~~If using a cover letter, the letter must be on company letterhead and properly identify the insurer.~~

~~(a) List of Forms. All form numbers being filed or affected by the filing must be listed in the "Regarding" line of the cover letter, or on an attached list, which includes the form number, and title or name. This information does not need to be included if submitting the NAIC transmittal form.~~

~~(b)~~] Description of Filing.

(i) Indicate if the filing is new, replacing a previous filing, or contains forms that have been previously filed and are included for informational purposes.

(ii) Provide a brief description of each component's purpose, benefits and provisions.

(iii) Identify any new, unusual, or controversial provision.

(iv) Identify any unresolved previously prohibited provision and explain why the provision is included in the filing.

(v) Explain any change in benefits or premiums that may occur while the contract is in force.

(vi) If the filing is replacing or modifying a previous submission, provide information that identifies the filing being replaced or modified, the Utah filed date, and a detailed description of the changes made.

(vii) If the filing includes forms for informational purposes, provide the dates the forms were filed.

(viii) If filing a certificate, outline of coverage, application, or endorsements, and the filing does not contain a policy, identify the affected policy form number, the Utah filed date, and describe the effect of the submitted forms on the base policy.

[~~(c)~~](b) Marketing Facts.[~~If the NAIC transmittal is used, the company must:~~]

(i) [~~list~~]List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued;

(ii) [~~identify~~]Identify the intended market, such as senior citizens, nonprofit organizations, association members, etc; and

(iii) [~~describe~~]Describe marketing and advertising in detail, i.e., through a marketing association, mass solicitation, electronic media, financial institutions, internet, telemarketing, or individually through licensed producers.

[~~(d)~~](c) Underwriting Methods. Provide a general explanation of the underwriting applicable to the filing.

(3) Certification. The Utah Accident and Health Insurance Filing Certification must be properly completed and signed. A filing will be rejected if the certification is missing or incomplete. A certification that is inaccurate may subject the filer to administrative action.[~~If the NAIC transmittal is being submitted, the Utah Accident and Health Insurance Filing Certification must also be included.~~]

(4) Domicile Approval and Filing Status Information. A foreign insurer and filer must first submit filings to their domicile state. All filings must include domicile status and filing status information:

(a) [~~If a filing was submitted to the domicile state, provide~~]Provide a stamped copy of the approval letter from the domicile state for the exact same filing[~~,~~] and;

(b) [~~If a filing was not submitted to the domicile state, or the domicile state did not provide specific approval for the filing, then alternate~~]Filing status information which includes;

(i) a list of the states to which the filing was submitted,

(ii) the date submitted, and

(iii) the states' actions and their responses,[~~must be provided~~].

(c) If the filing is specific to Utah and only filed in Utah, then section 14 of the transmittal must be completed stating, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(5) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must identify the type of group, and include either a signed and fully completed "Utah Accident and Health Insurance Group Questionnaire," or a copy of the "Utah Accident and Health Insurance Discretionary Group Authorization" letter.

(6) Letter of Authorization. When the filer is not the insurer, a letter of authorization from the insurer must be included. The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(7) Items being submitted for filing. Refer to each applicable subsection of this rule for general procedures and additional procedures on how to submit forms, rates, and reports.

(8) Return Notification Materials.

(a) Return notification materials are limited to:

(i)[~~- a copy of the cover letter if submitted;~~

~~(ii)~~] a copy of the transmittal; and

[~~(iii)~~](ii) a self addressed, stamped envelope.

(b) Any additional documents submitted for return will be discarded.

(c) Notice of filing will not be provided unless return notification materials are submitted.

R590-220-8. Additional Procedures for Individual Market Filings.

(1) This section does not apply to filings for individual health benefit plans that are subject to 31A-30 and Rule R590-167. Health benefit plan filings are discussed in R590-220-10.

(2) Rates and rate documentation submitted with a new form filing are a "File and Use" filing. A rate revision filing [~~addressed in this section~~]is a "File for Acceptance" filing.

(3) A filer submitting an individual accident and health filing is advised to review 31A-22, Part VI, and Rules R590-85, R590-126, and R590-131.

(4) Every individual accident and health policy, or endorsement affecting benefits shall be accompanied by a rate filing with an actuarial memorandum signed by a qualified actuary. A rate filing need not be submitted if the filing does not require a change in premiums, however the reason why there is not a change in premium must be explained in the Filing Description. Rates must be filed in accordance with the requirements of Section 31A-22-602, Rule R590-85, and this rule.

(5) A filer submitting a long term care filing, including an endorsement attached to a life insurance policy, is advised to review 31A-22 Part XIV and Rule R590-148.

(6) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620 and Rule R590-146.

R590-220-9. Additional Procedures for Group Market Form Filings.

A filer submitting a group accident and health filing is advised to review 31A-8, 31A-22 Parts VI and VII, 31A-30, Rules R590-76, R590-131, R590-146 and R590-148. A filer submitting a group health benefit plan filing should also review R590-220-10 in addition to this section.

(1) Determine whether the group is an eligible group or a discretionary group.

(2) Eligible Group. A filing for an eligible group must include a completed "Utah Accident and Health Insurance Group Questionnaire."

(a) A questionnaire must be completed for each eligible group under Section 31A-22-503 through 507.

(b) When a filing applies to multiple employee-employer groups under Section 31A-22-502, only one questionnaire is required to be completed.

(3) Discretionary Group. If the group is not an eligible group, then specific discretionary group authorization must be obtained prior to filing.

(a) To obtain discretionary group authorization a Utah Accident and Health Insurance Request for Discretionary Group Authorization must be submitted and include all required information.

(b) Evidence or proof of the following items are some factors considered in determining acceptability of a discretionary group:

(i) the existence of a verifiable group;

(ii) that granting permission is not contrary to public policy;

(iii) the proposed group would be actuarially sound;

(iv) the group would result in economies of acquisition and administration which justify a group rate; and

(v) the group would not present hazards of adverse selection.

(c) A discretionary group filing that does not provide authorization documentation will be rejected.

(d) A change to an authorized discretionary group, such as change of name, trustee or domicile state, must be submitted to the department within 30 days of the change.

(e) To add additional types of insurance products to be offered, requires that the discretionary group to be re-authorized. The discretionary group authorization will specify the types of products that a discretionary group may offer.

(f) The commissioner may periodically re-evaluate the group's authorization.

(4) A filer may not submit a rate or form filing prior to receiving discretionary group authorization. If a rate or form filing is submitted without discretionary group authorization, the filing will be rejected.

(5) A filer submitting a long-term care filing, including a long-term care endorsement attached to a life insurance policy, is advised to review 31A-22 Part XIV, Rule R590-148, and section 13 of this rule.

(6) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620, Rule R590-146, and section 11 of this rule.

R590-220-10. Additional Procedures for Individual, Small Employer, and Group Health Benefit Plan Filings.

This section contains instructions for filings subject to 31A-30. A filer submitting health benefit plan filings that are subject to 31A-30 is advised to review 31A-8, 31A-22 Parts VI and VII, 31A-30, Rules R590-76, R590-131, R590-167, R590-175 and R590-176.

(1) General requirements.

(a) Letter of Intent. A filing must include a copy of the letter filed with the commissioner declaring the carrier's intention as required by R590-167-10.

(b) Class of Business. The Filing Description must describe the class of business, as provided in Section 31A-30-105.

(c) Rate Manual. A health benefit plan form filing must include a rate manual. If the rate manual was previously filed, provide a copy of the transmittal and documentation indicating the department's receipt.

(2) Rate Manual Filing.

(a) A rate manual that does not request a change in rating methodology is a "File Before Use" filing.

(b) A change in rating methodology filing is a "File for Approval" filing.

(c) A new and revised rate manual.

(i) A filing must include an actuarial certification signed by a qualified actuary.

(ii) A rate manual and subsequent change must be filed 30 days prior to use.

(iii) A rate manual must list the case characteristics and rate factors to be used. A rating manual must be applied in the same manner for all health benefit plans in a class. The area factor and industry factor must contain the specific schedules applicable in Utah. Any case characteristic not listed in Subsection 31A-30-106(1)(h) requires prior approval of the commissioner.

(iv) The rating manual shall describe the method of calculating the risk load, including the method used to determine any experience factors. The rating manual must clearly describe how the overall rate is reviewed for compliance with the rate restrictions.

(3) Health Benefit Plan Report.[~~ A report must be filed separately and be properly identified.~~]

(a) Reports due April 1 each year:

(i) "Actuarial Certification." An actuarial certification as described in Section 31A-30-106 and Rule R590-167-11.A.

(ii) [~~"List of Health Benefit Plan Policy Forms." A list of every health benefit plan policy form to which 31A-30 applies and a description of how to find each form in the rating manual, as required by R590-167-11.C.~~

~~(iii) "Statistical Report." The statistical report, as required by R590-167-11.D, in the required format provided in Appendix I of that rule.~~

~~(iv) ~~]"Small Employer Index Rates Report." All small employer carriers must file their index rates as of March 1 of the current year and preceding year, as required by Subsection 31A-29-117(2). The report must include the actual index rates, and calculate the percentage change in these rates between the two years.

(b) [~~Report due August 15 each year, "Covered Lives Counts as of June 30." Carriers must submit the number of natural lives covered under individual market health benefit plans and small employer market health benefit plans, as required by R590-167-11.E.~~]A report must be filed separately and be properly identified.

R590-220-11. Additional Procedures for Medicare Supplement Filings.

A filer submitting Medicare supplement filings is advised to review Section 31A-22-620 and Rule R590-146. A Medicare supplement form filing that affects rates must be filed with all required rating documentation.

(1) An insurer must file its Medicare Supplement Buyers Guide.

(2) Rates.

(a) [~~Medicare supplement rates are "File for Acceptance" filings.~~]Rates and rate documentation submitted with a new form filing are a "File and Use" filing. A rate revision filing is a "File for Acceptance" filing.

(b) Medicare supplement rates must comply with Section 31A-22-602, Rules R590-146 and R590-85.

(c) An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed.

(d) A rate revision request may not be used to satisfy the annual filing requirements of Rule R590-146-14.C.

(3) Annual Medicare Supplement Report.

(a) Medicare supplement reports are "File and Use" filings.

(b) Report due March 1 each year, "Report of Multiple Policies." As required by R590-146-22, an issuer of Medicare supplement policies shall annually submit a report of multiple policies the insurer has issued to a single insured. The report is required each year listing each insured with multiple policies or stating that no multiple policies were issued.

(c) Reports due May 31 each year.

(i) "Annual Filing of Rates and Supporting Documentation." An issuer of Medicare supplement policies and certificates shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by policy duration, in accordance with R590-146-14.C. The NAIC Medicare Supplement Insurance Model Regulations Manual details what should be included in the annual rate filing. Annual reports submitted with a request or any type of reference to a rate revision will be rejected.

(ii) "Refund Calculation and Benchmark Ratio." An issuer shall file the "Medicare Supplement Refund Calculation Form" and "Reporting Form for the Calculation of Benchmark Ratio Since Inception for Group Policies" reports according to R590-146-14.B.

(d) A report must be filed separately and be properly identified.

R590-220-12. Additional Procedures for Combination Policies or Endorsements Providing Life and Accident and Health Benefits.

A filer submitting health and life combination policies, or health endorsements to life policies, are advised to review Rule R590-226.

(1) A combination filing is a policy or endorsement, which creates a product that provides both life and accident and health insurance benefits. The two types of acceptable filings are an endorsement or an integrated policy. Combination filings take considerable time to process, and will be processed by both the Life Insurance Division and the Health Insurance Division.

(2) A combination filing submitted via paper must include transmittals and certifications for both the Life and Property and casualty Insurance Division and the Health Insurance Division. A combination filing submitted electronically must be submitted separately to both the Health Insurance Division and the Life and Property and Casualty Division.

(3)(a) For an integrated policy, the filing must be submitted to the appropriate division based on benefits provided in the base policy.

(b) For an endorsement, the filing must be submitted to the appropriate division based on benefits provided in the endorsement.

(4) The Filing Description must identify the filing as having a combination of insurance types, such as:

(a) term policy with a long-term care benefit rider; or

(b) major medical policy that includes a life insurance benefit.

R590-220-13. Additional Procedures for [~~Completing the NAIC Transmittal~~]Long Term Care Products.

[~~If a filer uses the transmittal in R590-220-3(2)(a), the requirements of this section must be met.~~

~~(1) The transmittal must be completed using the documents provided under Subsections R590-220-3(2)(b), (c), and (d).~~

~~(2) Do NOT submit the documents described in Subsections R590-220-3(2)(b), (c), and (d) with a filing.~~

~~(3) The transmittal and its related documents can be viewed at www.naic.org/rates_forms/ or www.insurance.utah.gov/RF-Flgs.html.~~

~~(4)(a) A filing will be prohibited and subject to a forfeiture if the certification in Section 15 of the transmittal is false.~~

~~(b) The filer is also required to submit the Utah Accident and Health Insurance Filing Certification.~~]A filer submitting long-term care product filings is advised to review Section 31A-22-1400, Rule R590-148, and section 12 of this rule. A long-term care form filing that affects rates must be filed with all required rating documentation.

(1) Rates.

(a) Rates and rate documentation submitted with a new form filing are a "File and Use" filing. A rate revision filing is a "File for Acceptance" filing.

(b) Long-term care rates must comply with Rules R590-148 and R590-85.

(c) An insurer shall not use or change premium rates for a long-term care policy or certificate unless the rates, rating schedule and supporting documentation have been filed.

(3) Reports. All reports required by Rule R590-148-25 must be filed separately, with a transmittal and be properly identified.

R590-220-15. Correspondence, Status Checks, and Responses.

(1) Correspondence. When corresponding with the department, a filer must provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers; and

(d) copy of the original transmittal.

(2) Status Checks.

(a) A filer can request the status of its filing by telephone or email 60 days after the date of submission.

(b) A complete filing is usually processed within 45 days of receipt. If a filing includes all return notification materials, a response should be received within that time.

(3) Response to an Order. A response to an order must include:

(a) a response cover letter identifying the changes made;

(b) a copy of the Protected Correspondence that was included with the Order to Prohibit Use;

(c) one copy of the revised documents with all changes highlighted;[~~and~~]

(d) one copy of the revised documents incorporating all changes without highlights; and

[~~(d)~~](e) return notification materials, which consist of a copy of the response cover letter and a self-addressed stamped envelope.

(4) Rejected Filing.

(a) A rejected filing is NOT considered filed. If resubmitted it is considered a new filing.

(b) If resubmitting a previously rejected filing, the new filing must include a copy of the rejection notice.

R590-220-17. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule [~~April 1, 2004~~]September 1, 2006.

KEY: health insurance filings
Date of Enactment or Last Substantive Amendment: [~~March 24, 2004~~]2006
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-201.1; 31A-2-202; 31A-22-605; 31A-22-620; 31A-30-106

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Insurance, Administration
R590-236
HIPAA Eligibility Following Receipt of a Certificate of Insurability or Denial by an Individual Carrier

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 28768
FILED: 05/31/2006, 15:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide interpretation of the interplay between federal and state statutes that affect the protections provided by the federal Health Insurance Portability and Accountability Act (HIPAA) to applicants that apply for coverage from the Utah Comprehensive Health Insurance Pool (HIPUtah) and receive a certificate of insurability or denial of eligibility from the pool or are denied coverage by an insurance carrier providing individual coverage in the Utah Insurance market. It also addresses the effective dates of coverage for applicants for pool coverage that are HIPAA eligible.

SUMMARY OF THE RULE OR CHANGE: The rule includes definitions of terms used in the rule, and sets guidelines for insurers in the individual health insurance market and individuals applying for and being denied health insurance coverage by a health insurance company or HIPUtah and at the same time maintaining HIPAA eligibility.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-29-106, and 31A-30-104

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule simply clarifies how the HIPAA law interacts with Utah law. Companies are not required to make changes in their filings with the department or anything else that would change the workload of department personnel or its revenues.

❖ LOCAL GOVERNMENTS: This rule deals with the relationship between the department and their licensees and will have no effect on local government.

❖ OTHER PERSONS: The rule informs HIPAA eligible persons about how to preserve their eligibility when applying to the high risk pool and the rules applicable to insurance companies in denying health insurance coverage. This rule is informative only and puts into state law what is already being enforced by the federal government. It will have no fiscal impact on insurers or consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule informs HIPAA eligible persons about how to preserve their eligibility when applying to the high risk pool and the rules applicable to insurance companies in denying health insurance coverage. This rule is informative only and puts into state law what is already being enforced by the federal government. It will have no fiscal impact on insurers or consumers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule should impose minimal, if any fiscal impact on insurance companies and employers. The rule should streamline the application process for insurers and individuals. D. Kent Michie, Commissioner

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 07/17/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/06/2006 at 9:00 AM, State Office Building (behind the Capitol), Room 3112, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-236. HIPAA Eligibility Following Receipt of a Certificate of Insurability or Denial by an Individual Carrier.
R590-236-1. Authority.

This rule is promulgated and adopted pursuant to Subsections 31A-2-201(3), 31A-29-106(1)(f), and 31A-30-104(7).

R590-236-2. Purpose and Scope.

(1) The purpose of this rule is to provide interpretation of the interplay between federal and state statutes that affect the protections provided by the federal Health Insurance Portability and Accountability Act, Pub.L. 104-191, 110 Stat. 1962, to applicants that apply for coverage with HIPUtah and receive a certificate of insurability, or denial of eligibility from HIPUtah or are denied coverage by an individual carrier in the Utah insurance market.

(2) The rule addresses the effective dates of coverage for individual and HIPUtah coverage that are HIPAA eligible applicants.

(3) The rule provides guidance for actual and potential interplay between HIPAA, and Sections 31A-22-605.1, Section 31A-30-108, and Section 31A-29-111 to:

(i) individual carriers,

(ii) the HIPUtah pool administrator; and

(iii) HIPUtah applicants.

R590-236-3. Definitions.

As used in this rule:

(1) "Certificate of insurability" means a certificate issued by HIPUtah pursuant to Subsection 31A-29-111(5)(c).

(2) "HIPAA" means the federal Health Insurance Portability and Accountability Act, Pub.L. 104-191, 110 Stat. 1962.

(3) "HIPAA eligible" means an individual who is eligible for coverage under the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub.L. 104-191, 110 Stat. 1962.

(4) "HIPAA eligibility" means the eligibility required by the federal Health Insurance Portability and Accountability Act, Pub.L. 104-191, 110 Stat. 1962.

(5) "HIPUtah" means the Utah Comprehensive Health Insurance Pool established by Section 31A-29-104.

(6) "Individual carrier" has the same meaning as defined in Subsection 31A-30-103(15).

(7) "PEC" means preexisting condition as defined in Subsection 31A-1-301(127).

(8) "Waiting period" means the period of time beginning on the date the individual submits a substantially complete application for coverage and ends on the date:

(a) coverage is effective;

(b) the application is denied by the insurer; or

(c) which the offer of coverage lapses without being accepted by the individual.

R590-236-4. HIPAA and Subsection 31A-22-605.1, Eligibility and Creditable Coverage.

(1) To qualify as HIPAA eligible under HIPUtah or an individual carrier, an otherwise eligible individual must submit a substantially complete application no later than 63 consecutive days, excluding waiting periods, following termination of any preceding HIPAA qualified coverage.

(2) A HIPAA eligible cannot have a break in qualifying coverage of 63 or more consecutive days, except for applicable waiting periods to preserve HIPAA rights.

(3) The effective date of coverage will be the first day of the month following receipt of a substantially completed application.

(4) Applicants applying within the time period in R590-236-4(1) will receive creditable coverage toward a PEC waiting period.

(5) An affiliation or waiting period does not count in determining whether a break in qualifying coverage occurred.

R590-236-5. HIPAA and Subsection 31A-29-111(4)(a), 30-Day Provision.

(1) This section applies to a HIPAA eligible that has been denied by an individual carrier and is approved by HIPUtah.

(2) When a HIPAA eligible submits a substantially completed application to an individual carrier within the HIPAA 63-day time period and is denied coverage, to preserve HIPAA rights, the HIPAA eligible must make application to HIPUtah no later than:

(a) the remainder of the 63 consecutive day time period under HIPAA; or

(b) 30 consecutive days after denial by the individual carrier.

(3) Effective Dates.

(a) A HIPAA eligible applying within the time period in R590-236-5(2)(a), shall have an effective date with HIPUtah on the first day of the month following the submission of a substantially completed application, if the required premium is paid.

(b) A HIPAA eligible applying within the time period in R590-236-5(2)(b), shall have an effective date with HIPUtah on the first day of the month following the date of submission of a substantially completed application to the individual carrier who denied coverage immediately prior to the application to HIPUtah, if the required premium is paid.

(c) When a HIPAA eligible applies within both time periods in R590-236-5(2)(a) and (b), the effective date with HIPUtah is the date most beneficial to the HIPAA eligible.

R590-236-6. HIPAA and Subsection 31A-30-108(3)(e)(i), 30-Day Provision.

(1) This section applies to a HIPAA eligible who is denied by HIPUtah for not meeting its health underwriting criteria, after denial by an individual carrier, and is issued a certificate of insurability under Section 31A-29-111(5)(c).

(2)(a) A HIPAA eligible must reapply with the individual carrier who denied coverage immediately prior to HIPUtah's issuance of a certificate of insurability to preserve HIPAA rights, no later than:

(i) the remainder of the 63 consecutive day time period under HIPAA; or

(ii) 30 consecutive days after the date of issuance of a certificate of insurability.

(b) R590-236-6(2)(a) applies only to a HIPAA eligible that has:

(i) submitted a substantially completed application to an individual carrier within the HIPAA 63-day time period;

(ii) is denied coverage; and

(iii) makes application to HIPUtah no later than:

(I) the remainder of the 63 consecutive day time period under HIPAA; or

(II) 30 consecutive days after denial by the individual carrier.

(3) Effective Dates.

(a) A HIPAA eligible applying within the time period in R590-236-6(2)(a)(i), shall have an effective date with the individual carrier on the first day of the month following the submission of a substantially completed application, if the required premium is paid.

(b) A HIPAA eligible applying within the time period in R590-236-6(2)(a)(ii), shall have an effective date with the individual carrier on the first day of the month following the original submission of a substantially completed application to the individual carrier who denied coverage immediately prior to the application to HIPUtah, if the required premium is paid.

(c) When a HIPAA eligible applies within both time periods in R590-236-6(2)(a)(i) and (ii), the effective date with the individual carrier is the date most beneficial to the HIPAA eligible.

R590-236-7. HIPAA and Subsection 31A-30-108(3)(e)(ii)(B), 45-Day Provision.

(1) This section applies to a HIPAA eligible who applies with HIPUtah first and is denied for not meeting its health underwriting criteria and is issued a certificate of insurability under Section 31A-29-111(5)(c).

(2) When a HIPAA eligible submits a substantially completed application to HIPUtah within the HIPAA 63-day time period and is denied coverage, to preserve HIPAA rights, the HIPAA eligible must make application to an individual carrier no later than:

(a) the remainder of the 63 consecutive day time period under HIPAA; or

(b) 45 consecutive days after the date of issuance of a certificate of insurability by HIPUtah.

(3) Effective Dates.

(a) A HIPAA eligible qualifying under option R590-236-7(2)(a) shall have an effective date of the first of the month following the submission of the substantially completed application to an individual carrier, if the required premium is paid.

(b) A HIPAA eligible qualifying under R590-236-7(2)(b) shall have an effective date of the day following the submission of the substantially completed application to HIPUtah, if the required premium is paid.

(c) When a HIPAA eligible applies within both time periods in R590-236-7(2)(a) and (b), the effective date is the date most beneficial to the HIPAA eligible.

R590-236-8. Severability.

If any provision of this rule or the application of the rule to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the rule to other persons or circumstances shall not be affected by such a determination.

R590-236-9. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule immediately upon the effective date of the rule.

KEY: HIPAA eligibility
Date of Enactment or Last Substantive Amendment: 2006
Authorizing, and Implemented or Interpreted Law: 31A-29-106, 31A-30-104, 31A-2-201

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Natural Resources, Forestry, Fire and State Lands

R652-123

Exemptions to Wildland Fire Suppression Fund

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 28770
FILED: 06/01/2006, 09:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to enact the provisions of S.B. 65 of the 2006 General Session which changes the formula for calculating the county's payment into the fund and allows for exempt areas based on criteria developed in rule by the Division. (DAR NOTE: S.B. 65 (2006) is found at Chapter 152, Laws of Utah 2006, and was effective 05/01/2006.)

SUMMARY OF THE RULE OR CHANGE: This rule develops criteria and a process that a county can use to nominate and evaluate areas to be declared exempt from the calculations used in determining the county's payment into the Wildland Fire Suppression Fund. This rule also provides for reporting by the county, notification and validation and final determination procedures by the Division and an appeal process for the county.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 65A-8-6.4(1) and 65A-8-6.2(2)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The intent of the bill is to be revenue neutral. The increase in the mil levy for the value of property protected is to be offset by the subsequent exempt areas not contributing to the Wildand Fire Suppression Fund. The state's matching contribution to the fund depends on the level of participation by the counties.

❖ LOCAL GOVERNMENTS: The intent of the bill is to be revenue neutral. The increase in the mil levy for the value of property protected is to be offset by the subsequent exempt areas not contributing to the Wildand Fire Suppression Fund.

❖ OTHER PERSONS: There is no impact to other persons. The Wildland Fire Suppression Fund gets its funding from the county's assessments and state general funds to match. No private funds are used.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is anticipated that some county's assessment will go up, while other county's assessment will go down.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this rule affects the counties and state only, there will be no fiscal impact on businesses. Michael R. Styler, Executive Director

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@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 08/20/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 09/30/2006

AUTHORIZED BY: Joel Frandsen, Director

R652. Natural Resources; Forestry, Fire and State Lands
R652-123. Exemptions to Wildland Fire Suppression Fund.
R652-123-100. Authority.

This rule implements Subsection 65A-8-6.4(1) which authorizes the Division of Forestry, Fire and State Lands to make rules to administer the Wildland Fire Suppression Fund, including rules to determine whether an acres or real property is eligible for the exemption provided in Subsection 65A-8-6.2(2)(b).

R652-123-200. Definitions.

1. "Accessible" - an area is considered accessible if the roads are paved, and are 20 feet wide, and has a overhead clearance of 13 1/2 feet and has a maximum slope of 10%. A Type I fire engine, as defined in this rule, must be able to access and negotiate the roads and work safely throughout the entire area.

2. "Hydrant system" - A water distribution system consisting of pipes, hydrants, and pumps used for fire suppression, with the following specifications:

a. A six inch supply feed

b. A capacity of delivering 1000 gallons per minutes at 20 pounds per square inch for two hours at each hydrant. Flow will be verified with flow test documentation.

c. Maximum hydrant spacing is no greater than 500 lineal feet.

3. "Fire Barrier" - continuous, delineated, unbroken separation of land between the wildland and the nominated area, clear of wildland vegetation where wildland fire will not carry, and that is a permanent, definable, and substantial separation. Such barriers can include but is not limited to irrigated golf courses, lakes, highways, rivers and others deemed adequate by the Division.

4. "Predominant Vegetation" - type of vegetation that provides the majority of plant cover in an area such as woody shrubs, grass, trees.

5. "Type I fire engine" - A vehicle used for fire suppression that meets National Fire Protection Association (NFPA) 1901 Standard for Automotive Fire Apparatus.

6. "Urban Vegetation" - vegetation that is managed, maintained, and irrigated in a manner that will not allow for the propagation and spread of a fire over the landscape during anytime of the year.

7. "Wildland" - an area in which development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.

8. "Wildland Vegetation" - naturally occurring vegetation that is not managed, maintained and irrigated or vegetation that when cured (low live foliar moisture content), may be capable of carrying fire over the landscape.

9. "Wildland Urban Interface" -A geographical area where structures and other human development meets or intermingles with undeveloped wildland.

R652-123-300. Nomination of Exempt Areas.

For the covered year of 2007, a county may request that an area be exempt from its assessed payment into the Wildland Fire Suppression Fund by petitioning the Division on a Division approved form (Petition for Area Exemption) by September 1, 2006. For all subsequent years, the county's petition must be filed by July 1 of the year prior to the March 15 payment date. The petition shall include:

a. A description of the area including:
i. an ortho-photo quad of the area to be considered
ii. A topographic map of the area to be considered
b. An explanation with supporting documentation indicating the area meets the criteria to be exempt, with fuels, response time, access, and water availability addressed.
c. Detailed documentation of the taxable value of real property in the area to be exempt.
d. A signature of a county commissioner.

R652-123-400. Qualifying and Evaluating Exempt Areas.
1. The Division shall check for completeness of the Petition for Area Exemptions and acknowledge the receipt of the petition by date stamp.
2. The Division shall inspect the area in the petition and evaluate the nomination using the following criteria:
a. The area must be in the unincorporated area of the county, and
b. The predominant vegetation in the area is considered urban vegetation or if the predominant vegetation is wildland vegetation, there exists a fire barrier as defined in this rule between the nominated area and the wildlands, and
c. The response time of the local fire department having jurisdiction is fifteen minutes or less, and
d. The area is accessible as defined in this rule throughout the entire area such that a Type I fire engine can maneuver and work safely anywhere in the nominated area, and
e. The area is serviced by a hydrant system as defined in this rule.

R652-123-500. Notification of Exempt Areas.
1. The Division will make a final determination of exempt areas.
2. For all requests made by September 1, 2006 for the following year, the Division will notify the county commission by November 30, 2006 of those areas that were determined to be exempt, and which areas were determined to be non-exempt. For all subsequent years, the Division will give such notification by September 30.
3. The county may appeal the decision as defined in R652-8 Adjudicative Proceedings.
4. County expenditures for fire suppression that occur within areas that have been designated as exempt, are not considered Normal Fire Suppressions Costs as defined in R652-121-200(2) and will not be calculated as part of the county's approved fire suppression budget.

R652-123-600. Reporting.
Counties shall provide an annual report to the Division by March first listing:
a. A detailed listing of the taxable value of real property (land and buildings) in the exempt area of the county,
b. The total acreage of unincorporated land and the total exempt acreage of unincorporated land.
c. Any annexations of unincorporated lands by a town or city
d. County expenditures for fire suppression that occur within areas that have been approved by the Division as exempt
e. Existing exemptions from previous years

KEY: exemptions to wildland fire suppression fund, administrative procedures

Date of Enactment or Last Substantive Amendment: 2006
Authorizing, and Implemented or Interpreted Law: 65A-8-6.4(1); 65A-8-6.2(2)(b)

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Public Service Commission, Administration
R746-200
Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28765
FILED: 05/31/2006, 10:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division of Public Utilities was contacted by Questar requesting changes to the Deferred Payment Agreement rule. The Division scheduled meetings with representatives from Questar, Utah Power, and Utah Electric Cooperatives. The proposed rule amendments agreed to by the representatives were submitted to the Commission. The Commission held a technical conference to provide an opportunity to discuss the changes with all interested parties, including customer group representatives. This proposed amendment is a result of those discussions. Utility companies no longer disconnect service on Friday, and existing rule language addressing arrangements to receive service over the weekend are no longer useful. Some utility companies no longer have business offices for customers to visit. Most communication is done over the phone and deferred payment agreements are negotiated at the time of the customer's call. Payments can be made by check, debit, or credit cards over the phone. The customer can make a payment immediately without going into an office. Changes to Subsection R746-200-5(B) were made because some customers would initially choose a term shorter than 12 months, then default; necessitating a second deferred payment arrangement.

SUMMARY OF THE RULE OR CHANGE: The Commission proposes changes to Section R746-200-5 by moving language pertaining to reconnection of service into a separate section. The new Section R746-200-6 requires reconnections to be completed no later than the utility's next business day if the customer has complied with reconnection requirements. This change results in a renumbering of subsequent rule sections. Section R746-200-5's Deferred Payment Agreement language is restated to clarify that a customer will have the opportunity to pay a delinquent account balance over a 12-month period through the payment of 12 equal payments. The proposed change also clarifies that a customer may prepay a monthly installment, or a portion of, or the entire balance of a deferred payment agreement at any time during the 12-month payment period.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 54-4-1, 54-4-7, 54-7-9, and 54-7-25

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--There will be no substantive changes to state agency activities as a result of the proposed rule change. Some savings could occur as there may be fewer disputes between utilities and their customers concerning deferred payment agreements; this may result in fewer requests for customer complaint hearings before the Commission.
❖ LOCAL GOVERNMENTS: None--No local government entities are affected by this rule. Municipal utilities are not subject to Commission regulations.
❖ OTHER PERSONS: No over-all-change--Utilities have already implemented processes to reconnect service within the time frame contemplated by the proposed rule change. The proposed changes to the deferred payment agreement provisions are similarly consistent with existing utility practices and procedures. Some billing and payment review processes may change, but it is anticipated that these activities will be similar to review activities which are already occurring. Customers, paying through deferred agreements, may see some slight cost decrease as they now need to negotiate only one 12-month agreement, rather than the current possibility of an initial shorter period agreement, with subsequent default and renegotiation of an additional agreement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is anticipated that there will be no change in a utility's costs as the proposed rule changes follow current utility practice and processes regarding reconnection of service and negotiation of deferred payment agreements. Individual customers likely will also see no change in costs as the current rule provides for deferred payment arrangements and the proposed change standardizes these agreements to a 12 month period with unambiguous ability to make early payment which may shorten the actual payment period.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Changes in utility practices and other Commission rules have made some of the existing rule irrelevant. The proposed changes are not anticipated to have a fiscal impact on affected utilities as the proposed changes follow existing practice or are similar to existing utility account review practices regarding delinquent accounts and negotiation of deferred payment agreements. Ric Campbell, Chairman

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Barbara Stroud or Sandy Mooy at the above address, by phone at 801-530-6714 or 801-530-6708, by FAX at 801-530-6796 or 801-530-6796, or by Internet E-mail at bstroud@utah.gov or smooy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: Barbara Stroud, Paralegal

R746. Public Service Commission, Administration.
R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.
R746-200-1. General Provisions.

A. Title -- These rules shall be known and may be cited as the Residential Utility Service Rules.

B. Purpose -- The purpose of these Rules is to establish and enforce uniform residential utility service practices and procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

C. Policy --

1. The policy of these rules is to assure the adequate provision of residential utility service, to restrict unreasonable termination of or refusal to provide residential utility service, to provide functional alternatives to termination or refusal to provide residential utility service, and to establish and enforce fair and equitable procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

2. Nondiscrimination -- Residential utility service shall be provided to qualified persons without regard to employment, occupation, race, handicap, creed, sex, national origin, marital status, or number of dependents.

D. Requirement of Good Faith -- Each agreement or obligation within these rules imposes an obligation of good faith, honesty, and fair dealings in its performance and enforcement.

E. Customer Information -- When residential service is extended to an account holder, a public utility shall provide the consumer with a consumer information pamphlet approved by the Commission which clearly describes and summarizes the substance of these rules. The utility shall mail or deliver a copy of this pamphlet, or a summarized version approved by the Commission, to its residential customers annually in September or October. Copies of this pamphlet shall be prominently displayed in the business offices maintained by the utility and furnished to consumers upon request. The utility has a continuing obligation to inform its consumers of significant amendments to these rules. Each utility with over 10,000 customers receiving service shall print and make available upon request a Spanish edition of a consumer information pamphlet. The English edition of the pamphlet shall contain a prominent notice, written in Spanish and English, that the utility has a Spanish edition of its pamphlet and whether or not it has qualified personnel available to help Spanish-speaking customers. In this section, utilities with fewer than 10,000 users may use the pamphlets printed by the Division of Public Utilities for the distribution and availability requirements.

F. Scope --

1. These rules shall apply to gas, water, sewer, and electric utilities that are subject to the regulatory authority of the

Commission. Except as provided in R746-200-[~~6~~]7(G)(4), Notice of Proposed Termination, these rules do not apply to master metered apartment dwellings. Commercial, industrial, government accounts and special contracts are also excluded from the requirements of these rules.

2. Upon a showing that specified portions of these rules impose an undue hardship and provide limited benefit to its customers, a utility may petition the Commission for an exemption from specified portions of these rules.

G. Customer's Statement of Rights and Responsibilities -- When utility service is extended to an account holder, annually, and upon first notice of an impending service disconnection, a public utility shall provide a copy of the "Customer's Statement of Rights and Responsibilities" as approved by the Commission. The Statement of Rights and Responsibilities shall be a single page document. It shall be prominently displayed in each customer service center.

R746-200-3. Deposits, Eligibility for Service, and Shared Meter or Appliance.

A. Deposits and Guarantees --

1. Each utility shall submit security deposit policies and procedures to the Commission for its approval before the implementation and use of those policies and procedures. Each utility shall submit third-party guarantor policies and procedures to the Commission.

2. Each utility collecting security deposits shall pay interest thereon at a rate as established by the Commission. For electric cooperatives and electric service districts, interest rates shall be determined by the governing board of directors of the cooperative or district and filed with the Commission and shall be deemed approved by the Commission unless ten percent or more of the customers file a request for agency action requesting an investigation and hearing. The deposit paid, plus accrued interest, is eligible for return to the customer after the customer has paid the bill on time for 12 consecutive months.

3. A residential customer shall have the right to pay a security deposit in at least three equal monthly installments if the first installment is paid when the deposit is required.

B. Eligibility for Service --

1. Residential utility service is to be conditioned upon payment of deposits, where required, and of any outstanding debts for past utility service which are owed by the applicant to that public utility, subject to Subsections R746-200-3(B)(2), and R746-200-[~~6~~]7(B)(2), Reasons for Termination. Service may be denied when unsafe conditions exist, when the applicant has furnished false information to get utility service, or when the customer has tampered with utility-owned equipment, such as meters and lines. An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, whose utility service was previously disconnected for non-payment, and the applicant and delinquent account holder also cohabited while the delinquent account holder received the utility's service, whether the service was received at the applicants present address or another address.

2. When an applicant cannot pay an outstanding debt in full, residential utility service shall be provided upon execution of a written, deferred payment agreement as set forth in Section R746-200-5.

C. Shared Meter or Appliance - In rental property where one meter provides service to more than one unit or where appliances provide service to more than one unit or to other occupants at the premises, and this situation is known to the utility, the utility will recommend that service be in the property owner's name and the property owner be responsible for the service. However, a qualifying applicant will be allowed to put service in their own name provided the applicant acknowledges that the request for services is entered into willingly and he has knowledge of the account responsibility.

R746-200-4. Account Billing.

A. Billing Cycle -- Each gas, electric, sewer and water utility shall use a billing cycle that has an interval between regular periodic billing statements of not greater than two months. This section applies to permanent continuous service customers, not to seasonal customers.

B. Estimated Billing --

1. A gas, electric, sewer or water public utility using an estimated billing procedure shall try to make an actual meter reading at least once in a two-month period and give a bill for the appropriate charge determined from that reading. When weather conditions prevent regular meter readings, or when customers are served on a seasonal tariff, the utility will make arrangements with the customer to get meter reads at acceptable intervals.

2. If a meter reader cannot gain access to a meter to make an actual reading, the public utility shall take appropriate additional measures in an effort to get an actual meter reading. These measures shall include, but are not limited to, scheduling of a meter reading at other than normal business hours, making an appointment for meter reading, or providing a prepaid postal card with a notice of instruction upon which an account holder may record a meter reading. If after two regular route visits, access has not been achieved, the utility will notify the customer that he must make arrangements to have the meter read as a condition of continuing service.

3. If, after compliance with Subsection R746-200-4(B)(2), a public utility cannot make an actual meter reading it may give an estimated bill for the current billing cycle in accordance with Subsection R746-200-[~~6~~]7(B)(1)(f), Reasons for Termination.

C. Periodic Billing Statement -- Except when a residential utility service account is considered uncollectible or when collection or termination procedures have been started, a public utility shall mail or deliver an accurate bill to the account holder for each billing cycle at the end of which there is an outstanding debit balance for current service, a statement which the account holder may keep, setting forth each of the following disclosures to the extent applicable:

1. the outstanding balance in the account at the beginning of the current billing cycle using a term such as "previous balance";

2. the amount of charges debited to the account during the current billing cycle using a term such as "current service";

3. the amount of payments made to the account during the current billing cycle using a term such as "payments";

4. the amount of credits other than payments to the account during the current billing cycle using a term such as "credits";

5. the amount of late payment charges debited to the account during the current billing cycle using a term such as "late charge";

6. the closing date of the current billing cycle and the outstanding balance in the account on that date using a term such as "amount due";

7. a listing of the statement due date by which payment of the new balance must be made to avoid assessment of a late charge;

8. a statement that a late charge, expressed as an annual percentage rate and a periodic rate, may be assessed against the account for late payment;

9. the following notice: "If you have any questions about this bill, please call the Company."

D. Late Charge --

1. Commencing not sooner than the end of the first billing cycle after the statement due date, a late charge of a periodic rate as established by the Commission may be assessed against an unpaid balance in excess of new charges debited to the account during the current billing cycle. The Commission may change the rate of interest.

2. No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date. This section does not apply to reconnection charges or return check service charges.

E. Statement Due Date -- An account holder shall have not less than 20 days from the date the current bill was prepared to pay the new balance, which date shall be the statement due date.

F. Disputed Bill --

1. In disputing a periodic billing statement, an account holder shall first try to resolve the issue by discussion with the public utility's collections personnel.

2. When an account holder has proceeded pursuant to Subsection R746-200-4(F)(1), the public utility's collections personnel shall investigate the disputed issue and shall try to resolve that issue by negotiation.

3. If the negotiation does not resolve the dispute, the account holder may obtain informal and formal review of the dispute as set forth in Section R746-200-[~~7~~]8, Informal Review, and R746-200-[~~8~~]9, Formal Review.

4. While an account holder is proceeding with either informal or formal review of a dispute, no termination of service shall be permitted if amounts not disputed are paid when due.

G. Unpaid Bills - Utilities transferring unpaid bills from inactive or past accounts to active or current accounts shall follow these limitations:

1. A utility company may only transfer bills between similar classes of service, such as residential to residential, not commercial to residential.

2. Unpaid amounts for billing cycles older than four years before the time of transfer cannot be transferred to an active or current account.

3. The customer shall be provided with an explanation of the transferred amounts from earlier billing cycles and informed of the customer's ability to dispute the transferred amount.

4. The customer may dispute the transferred amount pursuant to R746-200-4(F).

R746-200-5. Deferred Payment Agreement.

A. Deferred Payment Agreement --

1. An applicant or account holder who cannot pay a delinquent account balance on demand shall have the right to receive residential utility service under a deferred payment agreement subject to R746-200-5(B)[~~, Breach.~~] unless the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service. If the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service, the use of a deferred payment agreement is at the utility's discretion.

2. [~~Gas and electric utilities shall have personnel available 24 hours each day to reconnect utility service, if, before reconnection, the account holder agrees to negotiate and execute a deferred payment agreement and to pay the first installment by visiting the utility's business office within 48 hours after service has been reconnected. A water utility shall have personnel available so that service can be restored before 6:00 p.m. on the next generally recognized business day.~~

~~3. The~~]An applicant or account holder shall have the right to[~~set the amount of the equal monthly installment of~~] a deferred payment agreement, consisting of 12 months of equal monthly payments, if the full amount of the delinquent balance plus interest shall be paid within the 12 months and if the applicant or account holder agrees to [~~make an~~]pay the initial[~~payment not less than the amount of the~~] monthly installment. The account holder shall have the right to pre-pay a monthly installment, pre-pay a portion of, or the total amount of the outstanding balance due under a deferred payment agreement at any time during the term of the agreement. The account holder also has the option, when negotiating a deferred payment agreement, to include the amount of the current month's bill plus the reconnection charges in the total amount to be paid over the term of the deferred payment agreement.

[~~4~~]3. Payment Options

a. If a utility has a budget billing or equal payment plan available, it shall offer the account holder the option of:

I. agreeing to pay [~~the current~~]monthly bills for future residential utility service as they become due, plus the monthly [~~installment necessary to liquidate the delinquent bill~~]deferred payment installment, or

ii. [~~of~~]agreeing to pay a budget billing or equal payment plan amount set by the utility for future residential utility service plus the monthly deferred payment installment.

b. When negotiating a deferred payment agreement with a utility that does not offer a budget billing or equal payment plan, the account holder shall agree to pay the [~~current~~]monthly bills for future residential utility service plus the monthly deferred payment installment necessary to liquidate the delinquent bill.

[~~5~~]4. The terms of the deferred payment agreement shall be set forth in a written agreement, a copy of which shall be provided to the customer.

[~~6~~]5. A deferred payment agreement may include a finance charge as [~~established~~]approved by the Commission. If a finance charge is assessed, the deferred payment agreement shall contain notice of the charge.

B. Breach -- If an applicant or account holder breaches a condition or term of a deferred payment agreement, the public utility may treat that breach as a delinquent account and shall have the right to disconnect service pursuant to these rules, subject to the right of the customer to seek review of the alleged breach by the Commission, and the account holder shall not have the right to a renewal of the deferred payment agreement. Renewal of deferred payment agreements after the breach shall be at the utility's [~~option~~]discretion.

R746-200-6. Reconnection of Discontinued Service.

A. Public utilities shall have personnel available 24 hours each day to reconnect utility service. Service shall be reconnected as soon as possible, but no later than the next generally recognized business day after the customer has requested reconnection and complied with all necessary conditions for reconnection of service;

which may include payment of reconnection charges and compliance with deferred payment agreement terms.

B. If a customer requests reconnection or other services outside of the utility's normal business days or hours of operation, the utility shall inform the customer of any additional charges or terms, as specified in the utility's tariff provisions, applicable to the customer's request.

R746-200-7.[~~6.~~] Termination of Service.

A. Delinquent Account --

1. A residential utility service bill which has remained unpaid beyond the statement due date is a delinquent account.

2. When an account is a delinquent account, a public utility, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. A statement that the account is a delinquent account and should be paid promptly;

b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if he has a question concerning the account;

c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other action shall be taken to disconnect the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate utility service pursuant to R746-200-[~~6~~]7(F), Termination of Service Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of these rules shall be issued to the account holder with the first notice of impending service disconnection.

B. Reasons for Termination of Service --

1. Residential utility service may be terminated for the following reasons:

a. Nonpayment of a delinquent account;

b. Nonpayment of a deposit when required;

c. Failure to comply with the terms of a deferred payment agreement or Commission order;

d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;

e. Subterfuge or deliberately furnishing false information; or

f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;

b. Cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;

c. When the delinquent account balance is less than $25.00, unless no payment has been made for two months;

d. Failure to pay an amount in bona fide dispute before the Commission;

e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

C. Restrictions upon Termination of Service During Serious Illness --

1. Residential gas, water, sewer and electric utility service may not be terminated and will be restored if terminated when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence. Utility service will be restored or continue for one month or less as stated in Subsection R746-200-[~~6~~]7(C)(2).

2. Upon receipt of a statement, signed by an osteopathic physician, a physician, a surgeon, a naturopathic physician, a physician assistant, a nurse, or a certified nurse midwife, as the providers are defined and licensed under Title 58 of the Utah Code, either on a form obtained from the utility or on the health care provider's letterhead stationery, which statement legibly identifies the health infirmity or potential health hazard, and how termination of service will injure the person's health or aggravate their illness, a public utility will continue or restore residential utility service for the period set forth in the statement or one month, whichever is less; however, the person whose health is threatened or illness aggravated may petition the Commission for an extension of time.

3. During the period of continued service, the account holder is liable for the cost of residential utility service. No action to terminate the service may be undertaken, however, until the end of the period of continued service.

D. Restrictions upon Termination of Service to Residences with Life-Supporting Equipment -- No public utility shall terminate service to a residence in which the account holder or a resident is known by the utility to be using an iron lung, respirator, dialysis machine, or other life-supporting equipment whose normal operation requires continuation of the utility's service, without specific prior approval by the Commission. Account holders eligible for this protection can get it by filing a written notice with the utility, which notice form is to be obtained from the utility, signed and supported by a statement consistent with that required in part C.2. above, and specifically identifying the life-support equipment that requires the utility's service. Thereupon, a public utility shall mark and identify applicable meter boxes when this equipment is used.

E. Payments for HEAT, Home Energy Assistance Target, Program -- The Commission approves the provision of the Department of Human Service's standard contract with public utility suppliers in Utah that suppliers will not discontinue utility service to a low-income household for at least 30 days after receipt of utility payment from the state program on behalf of the low-income household.

F. Termination of Service Without Notice -- Any provision contained in these rules notwithstanding, a public utility may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the utility. The utility shall immediately try to notify the customer of the termination of service and the reasons therefor.

G. Notice of Proposed Termination of Service --

1. At least 10 calendar days before a proposed termination of residential utility service, a public utility shall give written notice of disconnection for nonpayment to the account holder. The 10-day time period is computed from the date the bill is postmarked. The notice shall be given by first class mail or delivery to the premises and shall contain a summary of the following information:

a. a Statement of Customer Rights and Responsibilities under existing state law and Commission rules;

b. the Commission-approved policy on termination of service for that utility;

c. the availability of deferred payment agreements and sources of possible financial assistance including but not limited to state and federal energy assistance programs;

d. informal and formal procedures to dispute bills and to appeal adverse decisions, including the Commission's address and telephone number;

e. specific steps, printed in a conspicuous fashion, that may be taken by the consumer to avoid termination of service;

f. the date on which payment arrangements must be made to avoid termination of service; and

g. subject to the provision of Subsection R746-200-1(E), Customer Information, a conspicuous statement, in Spanish, that the notice is a termination of service notice and that the utility has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.

2. At least 48 hours before termination of service is scheduled, the utility shall make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone or by a personal visit to the residence. If personal notification has not been made either directly by the utility or by the customer in response to a mailed notice, the utility shall leave a written termination of service notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination of service.

If termination of service is not accomplished within 15 business days following the 48-hour notice, the utility company will follow the same procedures for another 48-hour notice.

3. A public utility shall send duplicate copies of 10-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs, if the third party resides within its service area. A utility shall inform its account holders of the third-party notification procedure at the time of application for service and at least once each year.

4. In rental property situations where the tenant is not the account holder and that fact is known to the utility, the utility shall post a notice of proposed termination of service on the premises in a conspicuous place and shall make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice shall contain the information listed in Subsection R746-200-[~~6~~]7(G)(1). This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If nonpayment is the basis for the termination of service, the utility shall also advise the tenants that they may continue to receive utility service for an additional 30 days by paying the charges due for the 30-day period just past.

H. Termination of Service -- Upon expiration of the notice of proposed termination of service, the public utility may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the utility's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.

I. Customer-Requested Termination of Service --

1. A customer shall advise a public utility at least three days in advance of the day on which he wants service disconnected to his residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer.

2. A customer who is not an occupant at the residence for which termination of service is requested shall advise the public utility at least 10 days in advance of the day on which he wants service disconnected and sign an affidavit that he is not requesting termination of service as a means of evicting his tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon the disconnection may occur within four days of the requested disconnection date.

J. Restrictions Upon Termination of Service Practices -- A public utility shall not use termination of service practices other than those set forth in these rules. A utility shall have the right to use or pursue legal methods to ensure collections of obligations due it.

K. Policy Statement Regarding Elderly and Handicapped -- The state recognizes that the elderly and handicapped may be seriously affected by termination of utility service. In addition, the risk of inappropriate termination of service may be greater for the elderly and handicapped due to communication barriers which may exist by reason of age or infirmity. Therefore, this section is specifically intended to prevent inappropriate terminations of service which may be hazardous to these individuals. In particular, Subsection R746-200-[~~6~~]7(G), requiring adequate notice of impending terminations of service, including notification to third parties upon the request of the account holder, Subsection R746-200-[~~6~~]7(C), restricting termination of service when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence, and Subsection R746-200-[~~6~~]7(D), restricting terminations of service to residences when life-supporting equipment is in use, are intended to meet the special needs of elderly and handicapped persons, as well as those of the public in general.

L. Load Limiter as a Substitute for Termination of Service, Electric Utilities --

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.

2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-[~~7~~]8.

3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use of those policies.

R746-200-[~~7~~]8. Informal Review.

A. A person who is unable to resolve a dispute with the utility concerning a matter subject to Public Service Commission jurisdiction may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request. Upon receipt of a request for informal review, the Division employee shall, within one business day, notify the utility that an informal complaint has been filed. Absent unusual circumstances, the utility shall attempt to resolve the complaint within five business days. In no circumstances shall the utility fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the utility's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The utility shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days. A proposed solution may be that the utility request that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The utility shall inform the Division employee of the utility's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the receipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the utility, the complaint shall be presumed to be unresolved.

B. Mediation -- If the utility or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the other party within five business days of the mediation request. The other party shall either accept or reject the mediation request within ten business days after the date of the mediation request, and so advise the mediation-requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the utility's response, their past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the utility. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. Division Access to Information During Informal Review or Mediation -- The utility and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint, within five business days of the Division's request, if reasonably possible or as expeditiously as possible, if they cannot be provided within five business days.

D. Commission Review -- If the utility has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, the Division in all cases shall inform the complainant of the right to petition the Commission for a review of the dispute, and shall make available to the complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a complainant is proceeding with an informal or a formal review or mediation by the Division or a Commission review of a dispute, no termination of service shall be permitted, if any amounts not disputed are paid when due, subject to the utility's right to terminate service pursuant to R746-200-[~~6~~]7(F), Termination of Service Without Notice.

R746-200-[8]9. Formal Agency Proceedings Based Upon Complaint Review.

The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints.

R746-200-[~~9~~]10. Penalties.

A. A residential account holder who claims that a regulated utility has violated a provision of these customer service rules, other Commission rules, company tariff, or other approved company practices may use the informal and formal grievance procedures. If considered appropriate, the Commission may assess a penalty pursuant to Section 54-7-25.

B. Fines collected shall be used to assist low income Utahns to meet their basic energy needs.

KEY: public utilities, rules, utility service shutoff
Date of Enactment or Last Substantive Amendment: [~~February 25, 2005~~]2006
Notice of Continuation: December 6, 2002
Authorizing, and Implemented or Interpreted Law: 54-4-1; 54-4-7; 54-7-9; 54-7-25

♦ ♦

Public Service Commission, Administration
R746-360-4
Application of Fund Surcharges to Customer Billings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28771
FILED: 06/01/2006, 09:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this proposed amendment is to reduce the Universal Public Telecommunications Service Support Fund surcharge from 0.9 to 0.5 percent. This will more closely match future anticipated funds to future expenditures.

SUMMARY OF THE RULE OR CHANGE: The retail surcharge will be reduced from 0.9 to 0.5 percent.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-8b-15

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There will be a reduction in costs. The surcharge is assessed on all retail intrastate telecommunications services. A reduction in the surcharge will necessarily result in a decrease in the amount paid by state government for retail intrastate telecommunications services. While the Commission has information concerning the periodic surcharge amounts collected by telecommunications carriers, it does not have the ability to disaggregate those amounts into the specific classifications of state government, local government, or other persons. The overall reduction in the surcharge funds is expected to be $2,000,000 over a 5-year period.
❖ LOCAL GOVERNMENTS: There will be a reduction in costs. The surcharge is assessed on all retail intrastate telecommunications services. A reduction in the surcharge will necessarily result in a decrease in the amount paid by state government for retail intrastate telecommunications services. While the Commission has information concerning the periodic surcharge amounts collected by telecommunications carriers, it does not have the ability to disaggregate those amounts into the specific classifications of state government, local government, or other persons. The overall reduction in the surcharge funds is expected to be $2,000,000 over a 5-year period.
❖ OTHER PERSONS: There will be a reduction in costs. The surcharge is assessed on all retail intrastate telecommunications services. A reduction in the surcharge will necessarily result in a decrease in the amount paid by state government for retail intrastate telecommunications services. While the Commission has information concerning the periodic surcharge amounts collected by telecommunications carriers, it does not have the ability to disaggregate those amounts into the specific classifications of state government, local government, or other persons. The overall reduction in the surcharge funds is expected to be $2,000,000 over a 5-year period.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be a reduction in costs. The surcharge is assessed on all retail intrastate telecommunications services. A reduction in the surcharge will necessarily result in a decrease in the amount paid for retail intrastate telecommunications services. While the Commission has information concerning the periodic surcharge amounts collected by telecommunications carriers, it does not have the ability to disaggregate those amounts into the specific classifications of state government, local government, or other persons. The overall reduction in the surcharge funds is expected to be $2,000,000 over a 5-year period. For an individual customer, the reduction will equal 0.4 percent of the charges paid for intrastate retail telecommunications services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Although there will be a reduction in the amount of the surcharge, the exact impact upon businesses is difficult to project beyond the percentage reduction, 0.4 percent, that will be made on intrastate retail public telecommunications services' charges. The individual dollar amount of the reduction will be dependent upon the amount an entity expends for such services. Ric Campbell, Chairman

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sandy Mooy or Barbara Stroud at the above address, by phone at 801-530-6708 or 801-530-6714, by FAX at 801-530-6796 or 801-530-6796, or by Internet E-mail at smooy@utah.gov or bstroud@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 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: Barbara Stroud, Paralegal

R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed shall equal [~~0.9~~]0.5 percent of billed intrastate retail rates.

KEY: public utilities, telecommunications, universal service
Date of Enactment or Last Substantive Amendment: [~~August 8, 2005~~]2006
Notice of Continuation: November 25, 2003
Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-7-25; 54-7-26; 54-8b-12; 54-8b-15

Technology Services, Administration
R895-1
Access to Records

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 28747
FILED: 05/18/2006, 11:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Technology Services (DTS) is developing rules required and/or authorized by the Utah Technology Governance Act (Section 63F-1-101, et seq.) and/or the Utah Administrative Rulemaking Act (Section 63-46a-1, et seq.). The department has determined that a rule defining the process for handling requests for access to DTS records is necessary and will better serve customers.

SUMMARY OF THE RULE OR CHANGE: This proposed new rule lists criteria for accessing DTS records.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-46a-3, 63-2-904, and 63F-1-206

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule will not result in an increase cost or savings to the state, however, there may be a de minimis costs to the state for work performed by the department's Records Officer. Any costs to the department for work performed by the department's Records Officer will be allocated to the department's administrative operations budget.

❖ LOCAL GOVERNMENTS: None--This rule does not impose a mandatory fee upon a local governmental entity. Additionally, local government entities may choose a no-cost or de minimis cost method for submitting a records request to the department. Therefore, it is anticipated that there will be no costs or savings to local government.

❖ OTHER PERSONS: None--This rule does not impose a mandatory fee upon a person. Additionally, a person may choose a no-cost or de minimis cost method for submitting a records request to the department. Therefore, it is anticipated that there will be no costs or savings to any person.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not impose a mandatory fee for a request for records, nor does it directly impose a costs to persons who submit a request for records. Additionally, affected persons may choose a no-cost or de minimis cost method for submitting a record request to the department. Therefore, it is anticipated that there will not be a compliance costs to any person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no fiscal impact on business. J. Stephen Fletcher, CIO/Executive Director

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

TECHNOLOGY SERVICES
ADMINISTRATION
Room 6000 STATE OFFICE BUILDING
450 N MAIN ST
SALT LAKE CITY UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Randy Hughes or William Shiflett at the above address, by phone at 801-537-9071 or 801-538-3548, by FAX at 801-538-1547 or 801-538-9787, or by Internet E-mail at randyhughes@utah.gov or williams@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 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: J Stephen Fletcher, CIO and Executive Director

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R895. Technology Services, Administration.
R895-1. Access to Records.
R895-1-1. Purpose and Authority.

Under authority of Sections 63-2-204, and 63-2-904, and Title 63, Chapter 46a, this rule provides procedures for access and denial of access to government records.

R895-1-2. Definitions.

(1) "Department" means the Department of Technology Services.
(2) "Division" means a division of the Department of Technology Services.
(3) "Non-Department Record" means a record that is maintained for another entity by the department but is not the property of the department.
(4) "Records officer" means the individual appointed by the executive director to fulfill the function of Subsection 63-2-103.

R895-1-3. Records Officer.

(1) The executive director shall appoint a records officer to perform the following functions:
(a) The duties set forth in Section 63-2-903; and
(b) Review and respond to requests for access to department records.

R895-1-4. Requests for Access.

(1) Request for access to records shall be on a form provided by the department or in another legible written document which contains the following information: the requester's name, mailing address, daytime telephone, a description of the records requested that identifies the record with reasonable specificity, and if the record is not public, information regarding requester's status.
(2) The request shall be submitted to the department records officer. The response to the request may be delayed if not properly directed.
(3) The department shall deny a request for access to non-department records. The records officer, with written permission from the executive director, may redirect a request for non-department records to the owner of the records.
(4) The department shall deny a request for private, controlled, protected or limited access records if the request is not made in writing and does not contain information required in this section.
(5) Notwithstanding the provision of subsection 63-2-204, the department may, at its discretion, waive the requirement for a written request if the records requested are public, the records are readily

accessible and the request is filled promptly by providing access or copying at the time the request is made.

R895-1-5. Appeal of Agency Decision.

(1) If a requester is dissatisfied with the department's initial decision, the requester may appeal the decision to the executive director under the procedures of Section 63-2-401 et seq.

(2) An individual may contest the accuracy or completeness of a document pertaining to that individual pursuant to Section 63-2-603. The request should be made to the records officer.

R895-1-6. Fees.

(1) A fee schedule for the direct costs of duplicating or compiling a record may be obtained from the department by contacting the records officer.

(2) Fees for duplication and compilation of a record may be waived under certain circumstances described in Subsection 63-2-203. Requests for this waiver of fees may be made to the records officer.

R895-1-7. Forms.

Request forms are available from the records officer of the department.

KEY: freedom of information, public information, confidentiality of information, access to information
Date of Enactment or Last Substantive Amendment: 2006
Authorizing, and Implemented or Interpreted Law: 63-46a-3; 63F-1-206; 63-2-101 et seq.

♦ ♦

Technology Services, Administration
R895-2
Americans With Disabilities Act (ADA) Complaint Procedure

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 28744
FILED: 05/18/2006, 11:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The department is developing rules required and/or authorized by the Utah Technology Governance Act (Section 63F-1-101, et seq.) and/or the Utah Administrative Rulemaking Act (Section 63-46a-1, et seq.). The department has determined that a rule defining the process for handling complaints filed in accordance with Title II of the Americans With Disabilities Act (ADA) is necessary and will better serve customers.

SUMMARY OF THE RULE OR CHANGE: This proposed new rule lists criteria for a process that provides for the prompt and equitable resolution of complaints filed in accordance with Title II.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-46a-3 and 28 CFR 35.107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule itself will not result in an increase cost or savings to the state. Any costs to the department for work performed by the department's ADA Coordinator will be allocated to the department's administrative operations budget.

❖ LOCAL GOVERNMENTS: None--The investigation and resolution of ADA complaints are under the jurisdiction of the State of Utah and the federal government. Therefore, this rule will not affect local government and it is anticipated that there will be no costs or savings to local government.

❖ OTHER PERSONS: None--This rule does not directly impose costs or savings to others. The investigation and resolution of Americans with Disabilities Act complaints are currently addressed by the ADA State Coordinating Committee and/or the federal government. It is anticipated that any costs to the ADA State Coordinating Committee and/or the federal government for work performed will be allocated to the committee's administrative operations budget and/or the federal government's administrative operations budget.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule will neither increase nor decrease the cost for filing an ADA complaint with the department, the ADA State Coordinating Committee and/or the federal government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no fiscal impact on business. J. Stephen Fletcher, CIO/Executive Director

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

TECHNOLOGY SERVICES
ADMINISTRATION
Room 6000 STATE OFFICE BUILDING
450 N MAIN ST
SALT LAKE CITY UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Randy Hughes or William Shiflett at the above address, by phone at 801-537-9071 or 801-538-3548, by FAX at 801-538-1547 or 801-538-9787, or by Internet E-mail at randyhughes@utah.gov or williams@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 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: J Stephen Fletcher, CIO and Executive Director

R895. Technology Services, Administration.
R895-2. Americans With Disabilities Act (ADA) Complaint Procedure.
R895-2-1. Authority and Purpose.

(1) This rule is promulgated pursuant to Section 63-46a-3 of the State Administrative Rulemaking Act. The Department of Technology Services hereby adopts and defines a complaint procedure to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, pursuant to 28 CFR 35.107, 1992 edition.

(2) No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of this department, or be subjected to discrimination by this department.

R895-2-2. Definitions.

(1) "Department" mean the Utah Department of Technology Services.

(2) "Department ADA Coordinator" means an individual, appointed by the executive director of the Department of Technology Services', who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

(3) "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(a) Governor's Office of Planning and Budget;

(b) Department of Human Resource Management;

(c) Division of Risk Management;

(d) Division of Facilities Construction Management; and

(e) Office of the Attorney General.

(4) "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

(5) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(6) "Individual with a disability" (hereinafter "individual") means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Department of Technology Services, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

R895-2-3. Filing of Complaints.

(1) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between March 8, 2006 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

(2) The complaint shall be filed with the department's ADA Coordinator in writing or in another accessible format suitable to the individual.

(3) Each complaint shall:

(a) include the individual's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the individual or by his or her legal representative.

(4) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R895-2-4. Investigation of Complaint.

(1) The ADA Coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Subsection 3(3) of this rule if it is not made available by the individual.

(2) When conducting the investigation, the coordinator may seek assistance from the department's legal, human resource and administrative services staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

(a) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;

(b) facility modifications; or

(c) reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R895-2-5. Issuance of Decision.

(1) Within 15 working days after receiving the complaint, the ADA Coordinator shall issue a decision outlining in writing or another acceptable suitable format stating what action, if any, shall be taken on the complaint.

(2) If the coordinator is unable to reach a decision within the 15 working day period, the coordinator shall notify the individual with a disability in writing or by another acceptable suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R895-2-6. Appeals.

(1) The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

(2) The appeal shall be filed in writing with the department's executive director or a designee other than the department's ADA Coordinator.

(3) The filing of an appeal shall be considered as authorization by the individual to allow review of all information classified as private or controlled, by the department's executive director or designee.

(4) The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(5) The executive director or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making a decision that would involve the executive director or designee to:

(a) an expenditure of funds which is not absorbable and would require appropriation authority;

(b) facility modifications; or

(c) reclassification or reallocation in grade; the executive director or designee shall also consult with the State ADA Coordinating Committee.

(6) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

(7) If the executive director or designee is unable to reach a decision within the ten working day period, the executive director or designee shall notify the individual in writing or by another acceptable suitable format why the decision is being delayed and the additional time needed to reach a decision.

R895-2-7. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section (67-19-32); the Federal ADA Complaint Procedures (28 CFR Part 35.170, 1992 edition); or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, disabilities act
Date of Enactment or Last Substantive Amendment: 2006
Authorizing, and Implemented or Interpreted Law: 63-46a-3; 63F-1-206

♦ ♦

Transportation, Program Development
R926-2
Evaluation Of Proposed Additions to the State Highway System

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 28775
FILED: 06/01/2006, 16:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This repeal and reenactment is meant to implement recent changes to Section 72-4-102.5 (S.B. 25 in the 2005 General Session). (DAR NOTE: S.B. 25 (2005) is found at Chapter 245, Laws of Utah 2005, and was effective 05/02/2005.)

SUMMARY OF THE RULE OR CHANGE: This rule incorporates statutory changes requiring that the Utah Department of Transportation (UDOT) develop a process to evaluate state highway changes that involves the public and the legislature. The old rule did not provide for public or legislative involvement. The new rule has a provision requiring that local highway authorities and members of the Transportation Interim Commission be notified before highway designations, and de-designations, occur. This notification must occur by certain dates or the designation will not be evaluated. The new rule also contains changes in wording, grammar, and structure.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-4-102.5

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The only cost to the state would be costs of holding public and legislative hearings since that is the only substantive change in the rule. It is impossible to know what those costs will be.

❖ LOCAL GOVERNMENTS: Local governments will incur costs under this rule only if they voluntarily choose to participate in the public involvement process.

❖ OTHER PERSONS: This rule imposes no requirements on third parties and no additional costs. However, third parties may incur costs if they voluntarily choose to participate in the public process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule imposes no requirements on third parties and no additional costs. However, third parties may incur costs if they voluntarily choose to participate in the public process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should have no fiscal impact on business unless they choose to participate in the public involvement process. John Njord, Executive Director

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

TRANSPORTATION
PROGRAM DEVELOPMENT
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5998, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: John R. Njord, Executive Director

R926. Transportation, Program Development.
[~~R926-2. Evaluation Of Proposed Additions to the State Highway System.~~
~~R926-2-1. Authority.~~

~~This rule establishes the procedure and criteria by which highways shall be considered for inclusion in the state highway system as required by Utah Code Ann. Section 72-4-102.5.~~

~~**R926-2-2. Purpose.**~~

~~The purpose of this rule is to provide the following:~~

~~(1) a procedure for requesting additions to the state highway system;~~

~~(2) a procedure for evaluating requested additions to the state highway system;~~

~~(3) a set of criteria by which proposed additions shall be consistently checked.~~

~~**R926-2-3. Procedure for Requesting an Addition to the State Highway System.**~~

~~A written request for the addition of a highway to the state highway system shall be made by the government agency currently responsible for the highway, a member of the Utah Transportation Commission or the Department of Transportation. The request shall be conveyed to the Utah Department of Transportation region director responsible for the area where the highway is primarily located.~~

~~**R926-2-4. Procedure for Evaluating Proposed Additions to the State System.**~~

~~The procedure for evaluating proposed additions to the state highway system is as follows:~~

~~(1) The region director shall make a preliminary review of the proposed addition and may request the highway be evaluated for inclusion on the state highway system.~~

~~(2) The engineer for statewide planning shall review the request from the region director and shall determine if the road qualifies for inclusion on the state highway system.~~

~~(3) The engineer for statewide planning shall forward the request and evaluation, regardless of the outcome, to the program development director.~~

~~(4) The program development director shall present the evaluation to the Transportation Commission with a recommendation whether the route qualifies for inclusion on the state highway system.~~

~~(5) The Transportation Commission shall review the recommendation and shall approve or reject the route as part of the state highway system.~~

~~(a) Review the recommendation,~~

~~(b) Provide opportunity for the government agency currently responsible for the highway to comment on the proposal during a Transportation Commission meeting, and~~

~~(c) Approve or reject the route as part of the state highway system.~~

~~(6) The Transportation Commission shall, if it approves the route, add the route to the state highway system by resolution.~~

~~(7) The State Legislature shall review the addition to the state highway system and shall approve or disapprove the addition.~~

~~**R926-2-5. Criteria for Inclusion of Highways in the State Highway System.**~~

~~Highways requested to be added to the state highway system shall be evaluated as follows:~~

~~(1) Rural Criteria:~~

~~(a) Interstate routes - interstate routes shall be state highways.~~

~~(b) U.S. numbered routes - U.S. numbered routes should be state highways.~~

~~(c) Principal arterials - highways functionally classified as principal arterial shall be state highways.~~

~~(d) Minor arterials - highways functionally classified as minor arterial shall be state highways.~~

~~(e) Major collectors - major collector highways should be city or county highways. Rural highways functionally classified as major collector that cross county lines and are significant intercounty routes may be state highways provided the areas are not served by another state highway.~~

~~(f) Major rural traffic generators - major rural traffic generators are county seats, incorporated cities or towns with 1,500 or greater population, or traffic generators that produce traffic equivalent to 1,500 population. State highways should serve major rural traffic generators.~~

~~(i) Major rural traffic generators shall be considered served if within ten miles of a state highway.~~

~~(ii) Rural traffic generators that do not meet these criteria shall be city or county highways.~~

~~(g) Minor Collectors - highways functionally classified as minor collector shall be city or county highways.~~

~~(h) Local - public streets and roads functionally classified as local shall be city or county highways.~~

~~(2) Urban Criteria:~~

~~(a) Interstate routes - interstate highways shall be state highways.~~

~~(b) U.S. numbered routes - U.S. numbered routes should be state highways.~~

~~(c) Principal arterials - highways functionally classified as principal arterial should be state highways.~~

~~(d) Minor Arterials - urban highways functionally classified as minor arterial should be city or county highways.~~

~~(i) Minor arterial highways that connect to a state highway at the urbanized area boundary shall continue as a state highway to a logical connection with another state highway. Minor arterial highways that do not meet this criterium shall be city or county highways.~~

~~(e) Collectors - highways functionally classified as collectors shall be city or county highways.~~

~~(f) Locals - public streets or roads functionally classified as local shall be city or county highways.~~]

R926-2. Evaluation of Proposed Additions to or Deletions from the State Highway System.

R926-2-1. Authority.

This rule establishes the procedure and criteria by which highways shall be considered for the addition to or deletion from the state highway system as required by Utah Code Ann. Section 72-4-102.5.

R926-2-2. Purpose.

The purpose of this rule is to establish the following:

(1) a process for a highway authority to propose additions to or deletions from the state highway system;

(2) a procedure for evaluating requested additions to or deletions from the state highway system; and

(3) a set of criteria by which proposed changes shall be consistently evaluated.

R926-2-3. Definitions.

The terms used in this rule to describe different types of highways shall have the same meaning as provided in Utah State Code under Section 72-4-102.5 which is the same as provided under the Federal Highway Administration Functional Classification Guidelines.

(1) "commission" means the Utah Transportation Commission;

(2) "department" means the Utah Department of Transportation;

(3) "local highway authority" means the local political subdivision, such as town, city or county responsible for the highway system in that jurisdiction;

(4) "tourist area" means an area of the state frequented by tourists for the purpose of visiting national parks, national recreation areas, national monuments, or state parks;

(5) "transfer" means the process of adding or deleting a segment of roadway from one government's highway system to or from another government's highway system;

(6) "urban area" has the same meaning as provided under the Federal Highway Administration Functional Classification Guidelines.

R926-2-4. Notifications.

The following notifications shall be made regarding the transfer of highways.

(1) The department will annually, on or before September 1st, notify the local highway authorities of its intent to collect proposed changes to the state system with the responding proposals requested to be returned to the department by December 1st.

(2) The department shall no later than June 30th of each year notify the Transportation Interim Committee of the Legislature of any proposed transfers.

(3) The commission shall notify the public and any affected local highway authority of any transfer under consideration and provide the opportunity to discuss that proposal at an open public meeting of the commission.

(4) The commission shall no later than November1st of each year notify and provide to the Transportation Interim Committee of the Legislature:

(a) a list of the highways recommended for transfer;

(b) a list of potential transfers that are currently under consideration; and

(c) a list of transfers that were proposed but not agreed to by the department or local highway authority.

R926-2-5. Procedure for Requesting an Addition to or a Deletion from the State Highway System.

A request for the addition to or deletion of a highway from the state highway system shall be made by the government agency currently responsible for the highway, a member of the Utah Transportation Commission or the Utah Department of Transportation. The request shall be conveyed to the Utah Department of Transportation and will be directed to the region director responsible for the area where the highway is primarily located.

R926-2-6. Procedure for Evaluating Proposed Changes to the State System.

The procedure for evaluating proposed changes to the state highway system is as follows:

(1) The region director shall:

(a) notify all impacted local government agencies of the proposed change;

(b) make a preliminary review of the proposed change that may include but not be limited to:

(i) determine of what, if any funding will accompany the road transfer;

(ii) determine of what, if any, physical improvements may be necessary on the roadway before the transfer is completed;

(iii) secure a written statement from the local government agency regarding the proposed transfer;

(iv) make a judgment as to which highway agency has the best operational abilities for maintenance and construction activities on the proposed route; and

(v) determine if the highway continuity and the efficiency of state highway system operation and maintenance activities is impacted by the proposed change.

(c) forward the proposed transfer along with the results of the preliminary review to the Systems Planning and Programming Director; and

(d) present and discuss potential road transfers at the regularly scheduled monthly Transportation Commission meetings.

(2) The Systems Planning and Programming Director shall review the request from the region director and shall:

(a) determine if the proposed transfer meets the criteria to qualify for inclusion on the state highway system and is consistent with statewide practice;

(b) with the Director of Program Financing, identify the source of funds, if any, proposed to accompany the transfer; and

(c) shall present the evaluation to the commission with a recommendation whether the route qualifies for inclusion on the state highway system and any proposed funding considerations;

(3) The commission shall review the recommendation and shall:

(a) consider the proposed transfer at a public meeting where the affected local officials are invited to discuss and comment on the proposed change;

(b) discuss any funding considerations and the circumstances under which the proposed transfer will take place;

(c) take into account any other factors considered appropriate in consultation with the department and local highway authority impacted;

(d) approve or reject the proposed change in the state highway system;

(e) if it approves the transfer, make the required changes to the state highway system by resolution; and

(f) report to the Transportation Interim Committee of the Legislature as detailed in section (4).

(4) The commission may continue to process proposed transfers that are currently under consideration by using the same notification and evaluation criteria as presented in this rule.

(5) The State Legislature will review the addition to or deletions from the state highway system and shall approve or disapprove the changes.

R926-2-7. Criteria for Inclusion of Highways in the State Highway System.

Highways requested to be added to or to remain on the state highway system shall be evaluated as follows:

(1) General Criteria:

(a) The primary function of state highways is to provide for the safe and efficient movement of traffic, while providing access to property is a secondary function.

(b) The primary function of county and municipal highways is to provide safe and efficient access to property.

(c) For purposes of this rule, if a highway is within ten miles of a location identified under this section, the location is considered to be served by that highway.

(2) A state highway shall:

(a) serve a statewide purpose by accommodating interstate movement of traffic or interregion movement of traffic within the state;

(b) primarily move higher traffic volumes over longer distances than highways under local jurisdiction;

(c) connect major population centers;

(d) be spaced so that:

(i) all developed areas in the state are within a reasonable distance of a state highway; and

(ii) duplicative state routes are avoided.

(e) provide state highway system continuity and efficiency of state highway system operation and maintenance activities;

(f) include all interstate routes, all expressways, and all highways on the National Highway System as designated by the Federal Highway Administration under 23 C.F.R. Section 470, Subpart A, as of January 1, 2005; and

(g) exclude parking lots, driving ranges, and campus roads.

(3) In addition to the provisions of Subsection (1), in rural areas a state highway shall:

(a) include all minor arterial highways;

(b) include a major collector highway that:

(i) serves a county seat;

(ii) serves a municipality with a population of 1,000 or more;

(iii) serves a major industrial, commercial, or recreation areas that generate traffic volumes equivalent to a population of 1,000 or more;

(iv) provides continuity for the state highway system by providing major connections between other state highways;

(v) provides service between two or more counties; or

(vi) serves a compelling statewide public safety interest; and

(c) exclude all minor collector streets and local roads.

(4) In addition to the provisions of Subsection (1), in urban areas a state highway shall:

(a) include all principal arterial highways;

(b) include a minor arterial highway that:

(i) provides continuity for the state highway system by providing major connections between other state highways;

(ii) is a route that is expected to be a principal arterial highway within ten years; or

(iii) is needed to provide access to state highways; and

(c) exclude all collector highways and local roads.

(5) In addition to the provisions of Subsections (2) and (3), in tourist areas, a state highway:

(a) shall include a highway that:

(i) serves a national park or a national recreational area; or

(ii) serves a national monument with visitation greater than 100,000 per year; or

(b) may include a highway that:

(i) serves a state park with visitation greater than 100,000 per year; or

(ii) serves a recreation site with a visitation greater than 100,000 per year.

KEY: transportation planning, highway planning, highways, transportation

Date of Enactment or Last Substantive Amendment: [~~May 29, 1998~~]2006

Notice of Continuation: January 21, 2002

Authorizing, and Implemented or Interpreted Law: 72-4-102.5

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Transportation, Preconstruction

R930-6

Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28774

FILED: 06/01/2006, 15:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment is made necessary to include text inadvertently omitted from previous editions and to include procedures for replacement of the Utah Department of Transportation (UDOT) fiber optic lines if someone accidentally cuts into it. The rule change was also made to incorporate minor editing changes.

SUMMARY OF THE RULE OR CHANGE: Section 5.14.1 of the incorporated manual is totally new, and identifies replacement procedures when someone cuts into UDOT fiber optic lines. This was a policy maintained by the Traffic Operations Center (TOC), and is now being moved into rule. No new costs are incurred to anyone per se, but this section does require that anyone breaking UDOT fiber pay for the replacement of that line. This was already being done by the TOC. This practice follows accepted industry standards and best practices. Section 5.22 of the manual was modified to include text that was in previous editions but had been inadvertently removed in the 2003 edition. This requires that parties that desire to attach conduits or other items to UDOT bridges take into account both a threshold cost, and a multiplier for the detour cost. No additional cost is imposed, but there may be future applicants that will be unable to attach items to UDOT structures. Chapter 7, Access management, received several editing changes, and several substantial ones. An option to allow for permit applicants to use the recommendations of the region traffic engineer was added, which would incur no additional costs to applicants. Spacings for additional categories were added, and physical spacing of accesses was clarified, which will aid in permit processing, but do not increase costs to permit applicants. Requirements for sidewalks were changed to reflect current UDOT standard drawings, no costs expected.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way, January 2006

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The amendment may reduce state costs by creating a method by which the state can impose costs on third parties who break UDOT fiber optic lines. There should not be additional costs or savings to the state as a result.
❖ LOCAL GOVERNMENTS: Local governments will incur only costs resulting from breaks into UDOT fiber optic lines, attaching fiber optic conduit to UDOT structures. It is unknown what those costs may be or if they will even ever occur. UDOT does not charge local governments under the access provisions.
❖ OTHER PERSONS: It is unknown what costs may result from breakages into UDOT lines since those costs can only be calculated when, or if, they occur. The same is true for attachment of conduit to UDOT structures. Costs to obtain a permit for access stay the same.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs to obtain a permit will not change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes attempt to fix costs for damage to fiber optic lines and for attachment of conduit to UDOT structures to those entities causing the cost. The fiscal impact is unknowable at this time, but should not be borne by the public. John R. Njord, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PRECONSTRUCTION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5998, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: John R. Njord, Executive Director

R930. Transportation, Preconstruction.
R930-6. Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way.
R930-6-1. Incorporation by Reference.

In order to implement its federally-mandated responsibility to ensure the safe use and protection of federal-aid highways, the department incorporates by reference the Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way, [~~November, 2005~~]January 2006 edition, copies of which are available at the department's headquarters, 4501 South 2700 West, Salt Lake City, Utah 84114, and on the department's Internet site, http://www.udot.utah.gov/dl.php/tid=674/Utility_Accomodation_and_Access_Management.pdf[~~http://www.udot.utah.gov/index.php/m=c/tid=423/item=3825/d=full/type=1~~]. The provisions of this Manual also apply to non-federal aid state highways.

KEY: utility rules, utilities access
Date of Enactment or Last Substantive Amendment: [~~January 27~~], 2006
Notice of Continuation: January 22, 2002
Authorizing, and Implemented or Interpreted Law: 72-3-109; 72-6-116; 72-7-102; 72-7-108

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Workforce Services, Employment Development
R986-100
Employment Support Programs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28756
FILED: 05/30/2006, 13:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department is in the process of rewriting all its rules. Many of these changes are nonsubstantive. Some changes are necessary to reflect changes in legislation.

SUMMARY OF THE RULE OR CHANGE: The Department has decided to go to simplified reporting. Clients will no longer be required to report all material changes within ten days of the change but will rather report some changes at the time of review or recertification. The change is to align all programs with simplified reporting as allowed by food stamp regulations. H.B. 37 (2006 general session) was passed to make this possible. The Department is also changing the process for who can hear a request to set aside a default in an overpayment case. Presiding officers will no longer hear those motions. (DAR NOTE: H.B. 37 (2006) is found at Chapter 89, Laws of Utah 2006, and was effective 05/01/2006.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-1-104(4) and 35A-3-302(5)(b), and Section 35A-1-303

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: All of the programs affected by this change are federally-funded so there are no costs or savings to the state budget.
❖ LOCAL GOVERNMENTS: All of the programs affected by this change are federally-funded so there are no costs or savings to local government.

❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with the federally-funded programs affected but these changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with these changes and the changes affect only federally funded programs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes. There will be no fiscal impact on any business. Tani Downing, Executive Director

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2006

AUTHORIZED BY: Tani Downing, Executive Director

R986. Workforce Services, Employment Development.
R986-100. Employment Support Programs.
R986-100-102. Scope.

(1) These rules establish standards for the administration of the following programs, for the collection of overpayments as defined in 35A-3-602(7) and/or disqualifications from any public assistance program provided under a state or federally funded benefit program;

(a) Food Stamps
(b) Family Employment Program (FEP)
(c) Family Employment Program Two Parent (FEPTP)
(d) Refugee Resettlement Program (RRP)
(e) Working Toward Employment (WTE)
(f) General Assistance (GA)
(g) Child Care Assistance (CC)
(h) Emergency Assistance Program (EA)
(i) Adoption Assistance Program (AA)
(ii) Activities funded with TANF monies

(2) The rules in the 100 section (R986-100 et seq.) apply to all programs listed above. Additional rules which apply to each specific program can be found in the section number assigned for that program. Nothing in R986 et seq. is intended to apply to Unemployment Insurance.

R986-100-103. Acronyms.

The following acronyms are used throughout these rules:

(1) "AA" Adoption Assistance Program
(2) "ALJ" Administrative Law Judge
(3) "CC" Child Care Assistance
(4) "CFR" Code of Federal Regulations
(5) "DCFS" Division of Children and Family Services
(6) "DWS" Department of Workforce Services
(7) "EA" Emergency Assistance Program
(8) "FEP" Family Employment Program
(9) "FEPTP" Family Employment Program Two Parent
(10) "GA" General Assistance
(11) "INA" Immigration and Nationality Act[
~~(12) "INS" Immigration and Naturalization Service~~]
(1[~~3~~]2) "IPV" intentional program violation[
~~(14) "IRCA" Immigration Reform and Control Act~~]
(1[~~5~~]3) "ORS" Office of Recovery Service, Utah State Department of Human Services
(1[~~6~~]4) "PRWORA" the Personal Responsibility and Work Opportunity Reconciliation Act of 1996[
~~(17) "PL" Public Law as enacted the United States Congress~~]
(1[~~8~~]5) "RRP" Refugee Resettlement Program
(1[9]6) "SNB" Standard Needs Budget
([~~20~~]17) "SSA" Social Security Administration
([~~21~~]18) "SSDI" Social Security Disability Insurance
([~~22~~]19) "SSI" Supplemental Security Insurance
([~~23~~]20) "SSN" Social Security Number
(21) "TANF" Temporary Assistance for Needy Families
([~~24~~]22) "UCA" Utah Code Annotated
([~~25~~]23) "UI" Unemployment Compensation Insurance
(24) "USCIS" United States Citizenship and Immigration Services.
([~~26~~]25) "VA" US Department of Veteran Affairs
([~~27~~]26) "WTE" Working Toward Employment Program
([~~28~~]27) "WIA" Workforce Investment Act
(28) "WSL" Work Site Learning

R986-100-104. Definitions of Terms Used in These Rules.

In addition to the definitions of terms found in 35A Chapter 3, the following definitions apply to programs listed in R986-100-102:

(1) "Applicant" means any person requesting assistance under any program in Section 102 above.

(2) "Assistance" means "public assistance."

(3) "Certification period" is the period of time for which public assistance is presumptively approved. At the end of the certification period, the client must cooperate with the Department in providing any additional information needed to continue assistance for another certification period. The length of the certification period may vary between clients and programs depending on circumstances.

(4) "Client" means an applicant for, or recipient of, public assistance services or payments, administered by the Department.

(5) "Confidential information" means information that has limited access as provided under the provisions of UCA 63-2-201 or 7 CFR 272.1. The name of a person who has disclosed information about the household without the household's knowledge is confidential and cannot be released. If the person disclosing the information states in writing that his or her name and the information may be disclosed, it is no longer considered confidential.

(6) "Department" means the Department of Workforce Services.

(7) "Education or training" means:
(a) basic remedial education;
(b) adult education;
(c) high school education;
(d) education to obtain the equivalent of a high school diploma;
(e) education to learn English as a second language;
(f) applied technology training;
(g) employment skills training;
(h) [~~on-the-job training~~]WSL; or
(i) post high school education.

(8) "Employment plan" consists of two parts, a participation agreement and an employment plan. Together they constitute a written agreement between the Department and a client that describes the requirements for continued eligibility[~~-for financial assistance~~] and the result if an obligation is not fulfilled.

(9) "Executive Director" means the Executive Director of the Department of Workforce Services.

(10) "Financial assistance"[~~- or "cash assistance"~~] means payments, other than for food stamps, child care or medical care, to an eligible individual or household under FEP, FEPTP, RRP, GA, or WTE and which is intended to provide for the individual's or household's basic needs.

(11) "Full-time education or training" means education or training attended on a full-time basis as defined by the institution attended.

(12) "Group Home." The Department uses the definition of group home as defined by the state Department of Human Services.

(13) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued. For all programs except [~~F~~]food [~~S~~]stamps and CC, the individuals included in the household assistance unit must be related to each other as described in R986-200- 205.

(14) "Income match" means accessing information about an applicant's or client's income from a source authorized by law. This includes [~~S~~]state and [~~F~~]federal sources.

(15) "Local office" means the Employment Center which serves the geographical area in which the client resides.

(16) "Material change" means anything that might affect household eligibility, participation levels or the level of any assistance payment including a change in household composition, eligibility, assets and/or income.

(17) "Minor child" is a child under the age of 18, or under 19 years of age and in school full time and expected to complete his or her educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.

(18) "Parent" means all natural, adoptive, and step[-]parents.

(19) "Public assistance" means:
(a) services or benefits provided under UCA 35A Chapter 3, Employment Support Act;
(b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;
(c) foster care maintenance payments provided with the General Fund or under Title IV-E of the Social Security Act;
(d) food stamps; and
(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

(20) "Recipient" means any individual receiving assistance under any of the programs listed in Section 102.

(21) Review or recertification. Client's who are found eligible for assistance are given a date for review or recertification at which point continuing eligibility is determined.

(2[~~1~~]2) "Standard needs budget" is determined by the Department based on a survey of basic living expenses.

(23) "Work Site Learning" or "WSL" means work experience or training program.

R986-100-105. Availability of Program Manuals.

(1) Program manuals for all programs are available for examination[~~- or review upon request at each local office. The manuals are also available~~] on the Department's Internet [~~web~~]site. If an interested party cannot obtain a copy from the [~~web~~]Internet site, a copy will be provided by the Department upon request. Reasonable costs of copying may be assessed if more than [~~10~~]ten pages are requested.

(2) For the Food Stamp Program, copies of additional information available to the public, including records, regulations, plans, policy memos, and procedures, are available for examination upon request by members of the public, during office hours, at the Department's administrative offices, as provided in 7 CFR 272.1(d)(1) (1999).

R986-100-106. Residency Requirements.

(1) To be eligible for assistance for any program listed in R986-100-102, a client must be living in Utah voluntarily and not for a temporary purpose. There is no requirement that the client have a fixed place of residence. An individual is not eligible for public assistance in Utah if they are receiving public assistance in another [~~S~~]state.

(2) The Department may require that a household live in the area served by the local office in which they apply.

(3) Individuals are not eligible if they are:
(a) in the custody of the criminal justice system;
(b) residents of a facility administered by the criminal justice system;
(c) residents of a nursing home;
(d) hospitalized; or
(e) residents in an institution.

(4) Individuals who reside in a temporary shelter, including shelters for battered women and children, for a limited period of time are eligible for public assistance if they meet the other eligibility requirements.

(5) Residents of a substance abuse or mental health facility may be eligible if they meet all other eligibility requirements. To be eligible for [~~F~~]food [~~S~~]stamps, the substance abuse or mental health facility must be an approved facility. Approval is given by the Department. Approved facilities must notify the Department and give a "change report form" to a client when the client leaves the facility and tell the client to return it to the local office. The change report form serves to notify the Department that the client no longer lives in the approved facility.

(6) Residents of a group home may be eligible for food stamps provided the group home is an approved facility. The state Department of Human Services provides approval for group homes.

R986-100-107. Client Rights.

(1) A client may apply or reapply at any time for any program listed in R986-100-102 by completing and signing an application and turning it in, in person or by mail, at the local office.

(2) If a client needs help to apply, help will be given by the local office staff.

(3) No individual will be discriminated against because of race, color, national origin, sex, age, religion or disability.

(4) A client's home will not be entered without permission.

(5) Advance notice will be given if the client must be visited at home outside Department working hours.

(6) A client may request an agency conference to reconcile any dispute which may exist with the Department.

(7) Information about a client obtained by the Department will be safeguarded.

(8) If the client is physically or mentally incapable or has demonstrated an inability to manage funds, the Department may make payment to a protective payee.

R986-100-109. Release of Information to the Client or the Client's Representative.

(1) Information obtained by the Department from any source, which would identify the individual, will not be released without the individual's consent or, if the individual is a minor, the consent of his or her parent or guardian.

(2) A client may request, review and/or be provided with copies of anything in the case record unless it is confidential. This includes any records kept on the computer, in the file, or somewhere else.

(3) Information that may be released to the client may be released to persons other than the client with written permission from the client. All such requests must include:

[~~(4) All requests for information must include:~~

] (a) the date the request is made;

(b) the name of the person who will receive the information;

(c) a description of the specific information requested including the time period covered by the request; and

(d) the signature of the client.

([~~5~~]4) The client is entitled to a copy of his or her file at no cost. Duplicate requests may result in[~~The first 10 pages will be copied without cost to the client. If the client requests copies of more than 10 pages, the Department will charge~~] an appropriate fee for the copies in accordance with Department policy which will not be more than the cost to the Department for making copies.

([~~6~~]5) The original case file will only be removed from the office as provided in R986-100-110(6) and cannot be given to the client.

([~~7~~]6) Information that is not released to the client because it is confidential, cannot be used at a hearing or to close, deny or reduce assistance.

([~~8~~]7) Requests for information[~~ which is~~] intended to be used for a commercial or political reason will be denied.

R986-100-110. Release of Information Other Than at the Request of the Client.

(1) Information obtained from or about a client will not be published or open to public inspection in any manner which would reveal the client's identity except:

(a) unless there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only provide information available in the public record on the criminal charge; or

(b) if an abstract has been docketed in the district court on an overpayment, the Department can provide information that is a matter of public record in the abstract.

(2) Any information obtained by the Department pursuant to an application for or payment of public assistance may not be used in any court or admitted into evidence in an action or proceeding, except:

(a) in an action or proceeding arising out of the client's receipt of public assistance, including fraudulently obtaining or retaining public assistance, or any attempt to fraudulently obtain public assistance; or

(b) where obtained pursuant to a court order.

(3) If the case file, or any information about a client in the possession of the Department, is subpoenaed by an outside source, legal counsel for the Department will ask the court to quash the subpoena or take such action as legal counsel deems appropriate.

(4) Information obtained by the Department from the client or any other source, except information obtained from an income match, may be disclosed to:

(a) an employee of the Department in the performance of the employee's duties unless prohibited by law;

(b) an employee of a governmental agency that is specifically identified and authorized by federal or [~~S~~]state law to receive the information;

(c) an employee of a governmental agency to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against public assistance programs, or the recovery of overpayments of public assistance funds;

(d) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or to aid a felony criminal investigation except no information regarding a client receiving food stamps can be provided under this paragraph;

(e) to a law enforcement officer when the client is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation or when the client has information which will assist a law enforcement officer in locating or apprehending an individual who is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation and the officer is acting in his official capacity. The only information under this paragraph which can be released on a client receiving food stamps is the client's address, SSN and photographic identification;

(f) to a law enforcement official, upon written request, for the purpose of investigating an alleged violation of the Food Stamp Act 7 USCA 2011 or any regulation promulgated pursuant to the [~~A~~]act. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person being investigated. Under this paragraph, the Department can release to the law enforcement official, more than just the client's address, SSN and photo identification;

(g) an educational institution, or other governmental entity engaged in programs providing financial assistance or federal needs-based assistance, job training, child welfare or protective services, foster care or adoption assistance programs, and to individuals or other agencies or organizations who, at the request of the Department, are coordinating services and evaluating the effectiveness of those services;

(h) to certify receipt of assistance for an employer to get a tax credit; or

(i) information necessary to complete any audit or review of expenditures in connection with a Department public assistance

program. Any information provided under this part will be safeguarded by the individual or agency receiving the information and will only be used for the purpose expressed in its release.

(5) Any information released under paragraph (4) above can only be released if the Department receives assurances that:

(a) the information being released will only be used for the purposes stated when authorizing the release; and

(b) the agency making the request has rules for safeguarding the information which are at least as restrictive as the rules followed by the Department and that those rules will be adhered to.

(6) Case records or files will not be removed from the local office except by court order, at the request of authorized Department employees, the Department's Information Disclosure Officer, the Department's Quality Control office or ORS.

(7) In an emergency, as determined to exist by the Department's Information Disclosure Officer, information may be released to persons other than the client before permission is obtained.

(8) For clients receiving CC, the Department may provide limited additional[~~the following~~]information to the child care provider identified by the client as the provider as provided in R986-700-703.[~~:~~]

[~~(a) the date on which the CC payment was issued by the Department; and~~

~~(b) the amount of the check issued by the Department.~~

] (9) Taxpayer requests to view public assistance payrolls will be denied.

R986-100-111. How to Apply For Assistance.

(1) To be eligible for assistance, a client must complete and sign an application for assistance.

(2) The application is not complete until the applicant has provided complete and correct information and verification as requested by the Department so eligibility can be determined or re-established at the time of review at the end of the certification period. The client must agree to provide correct and complete information to the Department at all times to remain eligible. This includes:

(a) property or other assets owned by all individuals included in the household unit;

(b) insurance owned by any member of the immediate family;

(c) income available to all individuals included in the household unit;

(d) a verified SSN for each household member receiving assistance. If any household member does not have a[~~n~~] SSN, the client must provide proof that the number has been applied for. If a client fails to provide a SSN without good cause, or if the application for a[~~n~~] SSN is denied for a reason that would [~~not~~]be disqualifying, assistance will not be provided for that household member. Good cause in this paragraph means the client has made every effort to comply. Good cause does not mean illness, lack of transportation or temporary absence because the SSA makes provisions for mail-in applications in lieu of applying in person. Good cause must be established each month for continued benefits;

(e) the identity of all individuals who are living in the household regardless of whether they are considered to be in the household assistance unit or not;

(f) proof of relationship for all dependent children in the household. Proof of relationship is not needed for food stamps or child care; and

(g) a release of information, if requested, which would allow the Department to obtain information from otherwise protected sources when the information requested is necessary to establish eligibility or compliance with program requirements.

(3) All clients, including those not required to participate in an employment plan, will be provided with information about applicable program opportunities and supportive services.

R986-100-112. Assistance Cannot Be Paid for Periods Prior to Date of Application.

(1) Assistance payments for any program listed in Section 102 above cannot be made for any time period prior to the day on which the application for assistance was received by the Department.

(2) If an application for assistance is received after the first day of the month, and the client is eligible to receive assistance, payment for the first month is prorated from the date of the application.

(3) If additional verifying information is needed to complete an application, it must be provided within 30 days of the date the application was received. If the client is at fault in not providing the information within 30 days, the first day the client can be eligible is the day on which the verification was received by the Department.

(4) If the verification is not received within 60 days of the date the application was received by the Department, a new application is required and assistance payments cannot be made for periods prior to the date the new application is received.

(5) If an application for assistance was denied and no appeal taken within 90 days, or a decision unfavorable to the client was issued[~~rendered~~] on appeal, assistance cannot be claimed, requested, or paid for that time period.

R986-100-113. A Client Must Inform the Department of All Material Changes.

[~~(1) A client must report all material changes which might affect household eligibility to the local office within 10 days of the day the change becomes known. A material change is any change which might affect eligibility and includes:~~

~~(a) change in income source, both unearned and earned;~~

~~(b) change of more than $25 in gross monthly unearned income for GA, WTE, FEP or FEPTP. For food stamps and child care a change of more than $50 in gross monthly unearned income;~~

~~(c) change in employment status including a change from full time to part time or from part time to full time and/or a change in wage rate, salary or income from employment;~~

~~(d) change in household size or marital status;~~

~~(e) change in residence and resulting change in shelter costs;~~

~~(f) gain of a licensed vehicle;~~

~~(g) change in available assets including an unlicensed vehicle. Under this paragraph (g), for food stamps a client need only report a change in cash on hand, stocks, bonds, and money in a bank account or savings institution which reach or exceed a total of $2,000;~~

~~(h) change in the legal obligation to pay child support; and~~

~~(i) for all programs except food stamps, changes of more than $25 in total allowable deductions.~~](1) A material change is any change which might affect eligibility.

(2) Households receiving assistance must report all material changes to the Department as follows:

(a) households receiving food stamps in which all household members are elderly or disabled as defined by food stamp regulations, and the household has no earned income, must report the following material changes to the local office within ten days of the day the change becomes known by a household member:

(i) change in income source, both unearned and earned;
(ii) change of more than $50 in gross monthly unearned income;
(iii) change in employment status including a change from full time to part time or from part time to full time and/or a change in wage rate, salary or income from employment;
(iv) change in household size or marital status;
(v) change in residence and resulting change in shelter costs;
(vi) gain of a licensed vehicle;
(vii) change in available assets including an unlicensed vehicle. A household under this subsection need only report a change in cash on hand, stocks, bonds, and money in a bank account or savings institution which reach or exceed a total of $3,000;
(viii) change in the legal obligation to pay child support; and
(b) households receiving food stamps that do not meet the requirements of paragraph (2)(a) of this section must report the following changes within ten days of the change occurring:
(i) if the household's gross income exceeds 130% of federal poverty level;
(ii) a change of address; and
(iii) if an ABAWD's work hours fall below 20 hours per week.
(c) households receiving GA, WTE, FEP, FEPTP, AA and RRP that do not meet the requirements of paragraph (2)(a) must report the following changes within ten days of the change occurring:
(i) if the household's gross income exceeds 185% of the adjusted standard needs budget;
(ii) a change of address; and
(iii) if the only eligible child leaves the household and the household receives FEP, FEPTP or AA.
(3) Households that do not meet the requirements of paragraph (2)(a) of this section will be assigned a review month. In addition to the ten-day reporting requirements listed in paragraphs (2)(b) and (c) of this section, the household must report, by the last day of the review month, all material changes that have occurred since the last review, or the date of application if it is the first review. The household is also required to accurately complete all review forms and reports as requested by the Department.

([~~2~~]4) Most changes which result in an increase of assistance will become effective the month following the month in which the report of the change was made. If verification is necessary, verification and changes will be made in the month following the month in which verification was received. If the change is to add a person to the household, the person will be added effective on the date reported, provided necessary verification is received within 30 days of the change. If verification is received after 30 days, the increase will be made effective the date verification was received.

R986-100-115. Underpayment Due to an Error on the Part of the Department.

(1) If it is determined that a client was entitled to assistance but, due to an error on the part of the Department, assistance was not paid, the Department will correct its error and make retroactive payment.

(2) If a client receives assistance payments and it is later discovered that due to Department error the assistance payment should have been made at a higher level than the client actually received, retroactive payment will be made to correct the Department's error.

(3) If the client's public assistance was terminated due to the error, the client will be notified and assistance, plus any retroactive payments, will commence immediately.

(4) An underpayment found to have been made within the last 12 calendar months [~~may~~]will be corrected and issued to the client. Errors which resulted in an underpayment which were made more than 12 months prior to the date of the discovery of the error are not subject to a retroactive payment.

(5) Retroactive payment under this section cannot be made for any month prior to the date on which the application for assistance was completed.

(6) The client must not have been at fault in the creation of the error.

R986-100-116. Overpayments.

(1) A client is responsible for repaying any overpayment for any program listed in R986-100-102 regardless of who was at fault in creating the overpayment.

(2) Underpayments may be used to offset[~~-against~~] an overpayment[~~s~~] for the same program.

(3) If a change is not reported as required by R986-100-113 it may result in an overpayment.

(4) The Department will collect overpayments for all programs listed in R986-100-102 as provided by federal regulation for food stamps unless otherwise noted in this rule or inconsistent with federal regulations specific to those other programs.

(5) This rule will apply to overpayments determined under contract with the Department of Health.

(6) If an obligor has more than one overpayment account and does not tell the Department which account to credit, the Department will make that determination.

R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPVs).

(1) Any person who is at fault in obtaining or attempting to obtain, an overpayment of assistance, as defined in Section 35A-3-602 from any of the programs listed in R986-100-102 or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

(a) knowingly making false or misleading statements;

(b) misrepresenting, concealing, or withholding facts or information;

(c) posing as someone else;

(d) not reporting the receipt of a public assistance payment the individual knew or should have known they were not eligible to receive;

(e) not reporting a material change [~~within 10 days after the change occurs~~]as required by and in accordance with these rules; and

(f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).

(3) When the Department determines or receives notice from a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type for the time period as set forth in rule, statute or federal regulation.

(4) Disqualifications run concurrently.

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If an individual has been disqualified in another state, the disqualification period for the IPV in that [~~S~~]state will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other [~~S~~]state count toward determining the length of disqualification in Utah.

(7) The client will be notified that a disqualification period has been determined. The disqualification period shall begin no later than the second month which follows the date the client receives written notice of the disqualification[~~begins the month after the disqualification decision has been issued or as soon thereafter as possible~~] and continues in consecutive months until the disqualification period has expired.

(8) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

R986-100-122. Advance Notice of Department Action.

(1) Except as provided in (2) below, clients will be notified in writing when a decision concerning eligibility, amount of assistance payment or action on the part of the Department which affects the client's eligibility or amount of assistance has been made. Notice will be sent prior to the effective date of any action to reduce or terminate assistance payments. The Department will send advance notice of its intent to collect overpayments or to disqualify a household member.

(2) Except for overpayments, advance notice is not required when:

(a) the client requests in writing that the case be closed;

(b) the client has been admitted to an institution under governmental administrative supervision;

(c) the client has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(d) the client's whereabouts are unknown and mail sent to the client has been returned by the [~~P~~]post [~~O~~]office with no forwarding address;

(e) it has been determined the client is receiving public assistance in another [~~S~~]state;

(f) a child in the household has been removed from the home by court order or by voluntary relinquishment;

(g) a special allowance provided for a specific period is ended and the client was informed in writing at the time the allowance began that it would terminate at the end of the specified period;

(h) a household member has been disqualified for an IPV in accordance with 7 CFR 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member;

(i) the Department has received factual information confirming the death of a client or payee if there is no other relative able to serve as a new payee;

(j) the client's certification period has expired;

(k) the action to terminate assistance is based on the expiration of the time limits imposed by the program;

(l) the client has provided information to the Department, or the Department has information obtained from another reliable source, that the client is not eligible or that payment should be reduced or terminated;[~~ or~~]

(m) the Department determines that the client willfully withheld information[~~-~~] or;

(n) when payment of financial assistance is made after performance under R986-200-215 and R986-400-454 no advance notice is needed when performance requirements are not met.

(3) For food stamp recipients and recipients of assistance under R986-300, no action will be taken until [~~10~~]ten days after notice was sent unless one of the exceptions in (2)(a) through (k) above apply.

(4) Notice is complete if sent to the client's last known address. If notice is sent to the client's last known address and the notice is returned by the [~~P~~]post [~~O~~]office with no forwarding address, the notice will be considered to have been properly served.

R986-100-131. Setting Aside A Default and/or Reopening the Hearing After the Hearing Has Been Concluded.

(1) Any party who fails to participate personally or by authorized representative as defined in R986-100-130 may request that the default order be set aside and a hearing or a new hearing be scheduled. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened.

(2) The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the ALJ or presiding officer who issued the default order within ten days of the issuance of the default. If the request is made after the expiration of the ten-day time limit, the party requesting reopening must show good cause for not making the request within ten days.

(3) The ALJ has the discretion to schedule a hearing to determine if a party requesting that a default order be set aside or a reopening satisfied the requirements of this rule or may grant or deny the request on the basis of the record in the case.

(4) If a presiding officer issued the default, the officer shall forward the request to the Division of Adjudication. The request will be assigned to an ALJ who will then determine if the party requesting that the default be set aside or that the hearing be reopened has satisfied the requirements of this rule[~~issue a decision either granting or denying the request. If the request is granted the obligor will be given 10 days in which to enter into a stipulation and repayment agreement. If the obligor does not sign the stipulation within 10 days, the matter will be set for a hearing on the merits~~].

(5) The ALJ [~~or presiding officer~~]may, on his or her own motion, reschedule, continue or reopen a case if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness. A presiding officer may, on his or her own motion, set aside a default on the same grounds.

(6) If a request to set aside the default or a request for reopening is not granted, the ALJ [~~or presiding officer~~]will issue a decision denying the request to reopen. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A defaulted party may appeal a denial of a request to set aside a default by following the procedure in R986-100-135. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case. If the default is set aside on appeal, the Executive Director or designee [~~will~~]may rule on the merits or remand the case to an ALJ for [~~a hearing~~]a ruling on the merits on an additional hearing if necessary.

KEY: employment support procedures
Date of Enactment or Last Substantive Amendment: [~~April 7, 2005~~]2006
Notice of Continuation: September 13, 2005
Authorizing, and Implemented or Interpreted Law: 35A-3-101 et seq.; 35A-3-301 et seq.; 35A-3-401 et seq.

♦ ♦

Workforce Services, Employment Development
R986-200
Family Employment Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28755
FILED: 05/30/2006, 12:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct inconsistencies, change the work requirement for two parent families, and define when a child can be included in the household when parents share custody.

SUMMARY OF THE RULE OR CHANGE: The Department is in the process of rewriting all its rules. Many of these changes are nonsubstantive. The Department has a difficult time determining which household should include children when the parents share custody. This change will make it specific as to which household can include the children. The definition of full-time work is changed to reflect the work requirements in other sections. The current rule requires one parent to participate 40 hours per week and the other parent to participate 20 hours a week in two parent households. This proposed change would allow those households to divide the time as they see fit as long as the parents participate in work or work activities 60 hours per week. We also cleared up the definition of income in the form of education assistance to make these rules reflect food stamp regulations and allowed for a 40% deduction to gross income from self employment to match food stamps. Finally, the emergency transient assistance is moved from the General Assistance section to this section so it can be used for all eligible transients.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-1-104(4) and 35A-3-302(5)(b)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes. There will be no fiscal impact on any business. Tani Downing, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2006

AUTHORIZED BY: Tani Downing, Executive Director

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court order[~~ed joint~~] regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children [~~circumstances~~]and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, [~~the~~]a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment,

education, or training options do not enable the family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate [~~in full-time work activities. Full time work activities is defined as at least part time education or training and 80 hours or more of work per month with a combined minimum of 30 hours work, education, training, and/or job search of 30 hours per week~~]a minimum of 34 hours per week in eligible activities. Twenty four of those 34 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center.

(5) Graduate work can never be approved or supported as part of an employment plan.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) [~~One~~]Both parents must participate in eligible activities for a combined total of 60[~~40~~] hours per week, as defined in the employment plan. At least 55 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center.[~~That parent is referred to as the primary parent. The primary parent does not need to be the primary wage earner of the household. The primary parent must spend:~~

~~(a) 32 hours a week in paid employment and/or work experience and training. At least 16 hours of those 32 hours must be spent at a community work site or in paid employment. If the primary parent is under age 25 and has not completed high school or an equivalent course of education, time spent in educational activities to obtain a high school degree or its equivalent can count toward the minimum 16-hour work requirement. Training is limited to short term skills training, job search training, or adult education; and~~

~~(b) eight hours a week participating in job search activities. The Department may reduce the number of hours spent in job search activities if it is determined the parent has explored all local employment options. This would not reduce the total requirement of 40 hours of participation.~~]

(4) [~~The other parent is~~]Both parents are required to participate [~~20 hours per~~]every week as defined in the employment plan, unless [~~there is good~~]the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8).[~~Participation consists of a combination of paid employment, community work, job search, adult education, and skills training.~~

~~(5) Participation requirements for refugee parents can include English language instruction (English for Speakers of Other Languages (ESOL aka ESL) or refugee social adjustment services or targeted assistance activities or all three. English language instruction must be provided concurrently with, and not sequential to, employment or employment related services.~~

~~(6) Participation may be excused only for the following reasons:~~

~~(a) Illness. Verification of illness will be required for an illness of more than three days, and may be required for periods of three days or less; or~~

~~(b) good cause as determined by the Department. Good cause may include such things as death or grave illness in the immediate family, unusual child care problems, or transportation problems.~~

~~(7) The parents cannot share the participation requirements, but the Department may agree to change the assignments at the end of a participation period.~~]

([~~8~~]5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by [~~the primary~~]both parents. The [~~base~~]amount of assistance is equal to the FEP payment for the household size[~~. The base FEP payment is then~~] prorated based on the number of hours which the [~~primary~~]parents participated up to a maximum of [~~4~~]60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

([~~9~~]6) If it is determinated by the employment counselor that either one of the parents has failed to participate to the maximum extent possible[~~:~~

~~(a) if it is the primary parent,~~] assistance for the entire household unit will terminate immediately.[~~; or~~

~~(b) if it is the other parent, that parent will be disqualified from the assistance unit. The disqualified parent's income and assets will still be counted for eligibility, but that parent will not be counted for determining the financial assistance payment.~~]

([~~10~~]7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP. However, if the client requests a hearing within [~~10~~]ten days of the termination, payment of financial assistance based on participation of both parents in eligible activities can continue during the hearing process as provided in R986-100-134.

([~~11~~]8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed $30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Income to tribal members derived from privately owned land is not exempt;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of $30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive $40 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 24 hours a week and other eligible activities that together total 34 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 24 hours or more a week and other eligible activities that together total 34 hours per week.

(2) An additional payment of $15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of $300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

KEY: family employment program
Date of Enactment or Last Substantive Amendment: [~~May 1,~~]2006
Notice of Continuation: September 14, 2005
Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.

Workforce Services, Employment Development
R986-300
Refugee Resettlement Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28757
FILED: 05/30/2006, 13:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to reflect changes in federal law and other Department rule changes.

SUMMARY OF THE RULE OR CHANGE: The Department is in the process of rewriting all its rules. Many of these changes are nonsubstantive. This proposed amendment adds victims of trafficking as provided by federal law and changes the conciliation process to mirror the process for Temporary Assistance for Needy Families-funded programs as required by federal regulation. All other changes are for clarification.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104

ANTICIPATED COST OR SAVINGS TO:
- THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
- LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
- OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes. There will be no fiscal impact on any business. Tani Downing, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2006

AUTHORIZED BY: Tani Downing, Executive Director

R986. Workforce Services, Employment Development.
R986-300. Refugee Resettlement Program.
R986-300-302. Refugee Resettlement Program (RRP).

(1) RRP provides resettlement assistance to refugees to help them achieve economic self-sufficiency within the shortest possible time after entry into the [~~S~~]state.

(2) Financial and medical assistance may be provided to eligible refugees who meet the time limit requirements of R986-300-306 as funding permits.[

~~(3) Assistance in finding employment, citizenship and naturalization services, and referral and interpreter services may be provided regardless of the length of time the refugee has been in the United States.~~]

([~~4~~]3) Refugee Social Services as identified in 45 CFR 400.154, and 400.155 may be provided to eligible refugees who meet the eligibility requirements of 45 CFR 400.152.

([~~5~~]4) Refugee child welfare services will be provided to refugee unaccompanied minor children in accordance with 45 CFR 400 Subpart H.

([~~6~~]5) The following definitions apply to RRP:

(a) "Appropriate employment" means employment that pays a wage which meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate.

(b) "Good cause" for quitting or refusing work can be established if the client shows:

(i) the job is vacant due to a strike, lockout, or other genuine labor dispute;[~~ or~~]

(ii) the client is required to work contrary to his membership in the union governing that occupation;[~~ or~~]

(iii) the employment was deemed a risk to the health or safety of the worker;[~~ or~~]

(iv) the employment lacked Worker[~~'~~]s' Compensation Insurance; or

(v) the individual is unable to engage in employment for physical reasons or lack of child care or transportation.

R986-300-303. Eligibility, Income Standards, and Amount of Assistance.

(1) An applicant for RRP must provide proof, in the form of documentation issued by the [~~INS~~]USCIS, of being or having been:

(a) paroled as a refugee or asylee under Section 212(d)(5) of the INA;

(b) admitted as a refugee under Section 207 of the INA;

(c) granted asylum under Section 208 of the INA;

(d) a Cuban or Haitian entrant, in accordance with the requirements of 45 CFR Part 401;

(e) certain Amerasians from Vietnam who are admitted to the United States as immigrants pursuant to Public Law 100-202 and Public Law 100-461;[~~ or~~]

(f) a victim of trafficking; or

([~~f~~]g) admitted for permanent residence, provided the individual previously held one of the statuses listed in (a) through ([~~e~~]f) of this section.

(2) The following aliens are not eligible for assistance:

(a) an applicant for asylum unless otherwise provided by federal law;

(b) humanitarian parolees;

(c) public interest parolees; and

(d) conditional entrants admitted under Section 203(a)(7) of the INA.

(3) Refugees who are parents or specified relatives with dependent children must meet the eligibility and participation requirements, including cooperating with ORS to establish paternity and establish and enforce child support, of FEP or FEPTP and will be paid financial assistance under one of those programs.

(4) An applicant for RRP who voluntarily quit or refused appropriate employment without good cause within 30 calendar days prior to the date of application is ineligible for financial assistance for 30 days from the date of the voluntarily quit or refusal of employment. If the applicant is living with a spouse who is [~~otherwise~~]ineligible, the income and assets of the ineligible refugee will be counted in determining eligibility [~~and~~]but the amount of financial assistance [~~but~~]payment will be made as if the household had one less member[~~for a household of one and not a household of two~~].

(5) Refugees who are 65 years of age or older will be referred to SSA to apply for assistance under the SSI program.

(6) Income and asset eligibility and the amount of financial assistance available is determined under FEP rules, R986-200-230 through R986-200-240.[~~ Income eligibility for RRP is determined under FEP income rules found in R986-200-234 through R986-200-237 and R986-200-243.~~

~~(7) Assets are determined under FEP asset rules at R986-200-230 through 233.~~

~~(8) Payment, need, and calculating amount of assistance is determined under FEP rules R986-200-238 through R986-200-240.~~]

([~~9~~]7) If an otherwise eligible client demonstrates an urgent and immediate need for financial assistance, payment will be made on an expedited basis.

R986-300-304. Participation Requirements.

(1) All refugee applicants must comply with the assessment and employment plan requirements in R986-200-207 and R986-200-209. If the assessment cannot be completed or an employment plan negotiated and signed within the time proscribed because of a lack of staff with language skills, the application shall be approved, the assessment completed, and employment plan negotiated and signed as soon as possible.

(2) The goal of participation is to promote family economic self-sufficiency and social adjustment within the shortest possible time after entrance to the [~~S~~]state to enable the family to become self-supporting through the employment of one or more members of the family.

(3) If a refugee claims an inability to participate due to incapacity, medical proof is required. Acceptable proof is the same as for FEP found in R986-200-202(3).

(4) Refugees 65 years of age or older, blind, or disabled, are exempt from the work participation requirements of FEP or RRP.

(5) In addition to the requirements of an employment plan as found in R986-200-210, a refugee must, as a condition of receipt of financial assistance:

(a) unless already employed full time, register for work with the Department within 30 days of receipt of refugee financial assistance and participate in employment activities as required by the Department and other appropriate agency providing employment services; [~~and~~]

(b) accept any and all offers of appropriate employment as determined by the Department or the local resettlement agency which was responsible for the initial resettlement of the refugee; and

(c) participate in any available social adjustment service or targeted assistance activities determined to be appropriate by the Department or the local resettlement agency which was responsible for the initial resettlement of the refugee.

(6) Education and training cannot be approved for any program which cannot be completed within one year.

(7) English language instruction funded under RRP must be provided concurrently with[~~, and not sequentially to,~~] employment or employment related services.

R986-300-305. Failure to Comply with an Employment Plan.

(1) If a client who is required to participate in an employment plan consistently fails to show good faith in complying with the employment plan, the client is required to participate in the conciliation process in R986-200-212 with the following exceptions:

(a) the client will be disqualified for a period of three months for the first occurrence and six months for the second occurrence. There is no [~~instead of the two month~~]reduction period as provided in R986-200-212(2),[

~~(b) since there is no reduction of benefits, subsections R986-200-212(3) and (4) do not apply to RRP clients,~~]

([e]b) because the disqualification period for RRP is a time certain, there is no trial period as provided in R986-200-212(2), (3), and (5).

(2) If there are other household members included in the financial assistance payment, the other household members will continue to receive assistance provided those household members are eligible and complying with all of the requirements of RRP.

(3) If eligible, food stamps and medical assistance may be continued for the person who is disqualified for failure to comply with the requirements of an employment plan.

R986-300-306. Time Limits.

(1) Except as provided in paragraph (2) below, a refugee is eligible for financial assistance only during the first eight months after entry into the United States, regardless of when the refugee applies for financial assistance. Financial assistance cannot be paid for any months prior to the date of application.

(2) An asylee's entry date is determined to be the date that the individual was granted asylum in the United States.

(3) The date of entry for a victim of trafficking is established by the certification date.

KEY: refugee resettlement program
Date of Enactment or Last Substantive Amendment: [~~March 1,~~]2006
Notice of Continuation: September 14, 2005
Authorizing, and Implemented or Interpreted Law: 35A-3-103

♦ ♦

Workforce Services, Employment Development
R986-400
General Assistance and Working Toward Employment

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28759
FILED: 05/30/2006, 14:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to reflect changes in other Department rules.

SUMMARY OF THE RULE OR CHANGE: The Department is in the process of rewriting all its rules. The work requirements for Working Toward Employment (WTE) referenced back to the Family Employment Program (FEP). The work requirements for FEP have changed but the Department does not intend to change the work requirements for WTE now so the old requirements from the FEP program had to be added to this rule. "Good cause" is changed to "reasonable cause" to match other department rules.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs of savings to the state budget as these proposed changes are nonsubstantive in nature and will not affect current funding levels.

❖ LOCAL GOVERNMENTS: These changes are nonsubstantive in nature and the program is state funded so there will be no costs or savings to local government.

❖ OTHER PERSONS: These proposed changes reflect current rule and Department practice and are nonsubstantive in nature so there will be no costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons as these changes are nonsubstantive in nature and there are no costs for complying.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes. There will be no fiscal impact on any business. Tani Downing, Executive Director

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2006

AUTHORIZED BY: Tani Downing, Executive Director

R986. Workforce Services, Employment Development.
R986-400. General Assistance and Working Toward Employment.
R986-400-453. Participation Requirements.

(1) All applicants and spouses must participate in an assessment and an employment plan as found in R986-200. In addition to the requirements of an employment plan as found in R986-200-210, a client must, as a condition of receipt of financial assistance, register for work and accept any and all offers of appropriate employment, as determined by the Department. Appropriate employment is defined in R986-400-404.

(2) The employment plan of each recipient of WTE financial assistance must contain the requirement that the client participate 40 hours per week [~~The client must spend those hours in the same activities described for a primary parent under FEPTP as found in R986-200-215(3).~~] in eligible activities. A list of approved eligible activities is available at each employment center. Married couples cannot share the performance requirements and each client must participate a minimum of 40 hours per week. The 40 hours must be spent in the following activities:

(a) 32 hours a week in paid employment and/or work experience and training. At least 16 hours of those 32 hours must be spent at a community work site or in paid employment. If the client is under age 25 and has not completed high school or an equivalent course of education, time spent in educational activities to obtain a high school degree or its equivalent can count toward the minimum 16-hour work requirement. Training is limited to short term skills training, job search training, or adult education; and

(b) eight hours a week participating in job search activities. The Department may reduce the number of hours spent in job search activities if it is determined the client has explored all local employment options. A reduction in the number of hours of job search will not reduce the total requirement of 40 hours of participation.

(3) Participation may be excused only if the client can show reasonable cause as defined in R986-400-406(1).

R986-400-454. Failure to Comply with the Requirements of an Employment Plan.

(1) If a client fails to comply with the requirements of the employment plan without reasonable cause as defined in R986-400-406(a), financial assistance will be terminated immediately.

(2) Advanced notice of termination is not required.

(3) If there are two clients in the household and only one client fails to comply, financial assistance for both will be terminated.

(4) Once a client or household's financial assistance has been terminated for failure to comply with the employment plan, the client is not eligible for further assistance as follows:

(a) the first time financial assistance is terminated, the client or couple must reapply and actively participate in all of the required activities of the employment plan;

(b) the second time financial assistance is terminated, the client or couple will be ineligible for financial assistance for a minimum of one month and can only become eligible again upon completing a new application and actively participating in the required employment activity;

(c) the third time financial assistance is terminated, the client will be ineligible for a minimum of six months and can only become eligible again upon completing a new application and actively participating in the required employment activity.

KEY: general assistance, working toward employment
Date of Enactment or Last Substantive Amendment: [~~January 1, 2004~~]2006
Notice of Continuation: September 14, 2005
Authorizing, and Implemented or Interpreted Law: 35A-3-401; 35A-3-402

Workforce Services, Employment Development
R986-600
Workforce Investment Act

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28760
FILED: 05/30/2006, 16:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify provider requirements and otherwise bring our rule into compliance with federal regulations.

SUMMARY OF THE RULE OR CHANGE: The Department is in the process of rewriting all its rules. Many of these changes are nonsubstantive. This proposed amendment takes out "determining appropriateness and need" as a separate requirement because those issues are already taken into consideration in the priority levels. The provision that 5% of youth recipients do not need to meet the income levels as required by federal law is added. There is no longer a two-tier system for youth. All youth are treated the same although some activities might be more appropriate depending on age. This change adds the requirement that if the training is for an occupation which requires a license, the provider must prove its students will be eligible for that license and the requirement that providers register with the Division of Consumer Protection to ensure those providers meet the requirements of that Division. Rather than having "subsequent eligibility" as a separate rule, these changes require providers to undergo a periodic review to remain eligible as a provider. Also, providers who have provided false information or committed fraud may not be eligible for continued approval. In some cases this may be for a time certain, in the case of fraud, the provider will never be eligible for approved provider status again.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes. There will be no fiscal impact on any business. Tani Downing, Executive Director

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EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2006

AUTHORIZED BY: Tani Downing, Executive Director

R986. Workforce Services, Employment Development.
R986-600. Workforce Investment Act.
R986-600-601. Authority for Workforce Investment Act (WIA) and Other Applicable Rules.

(1) The Department provides services to eligible clients under the authority granted in the Workforce Investment Act, (WIA) 29 USC 2801 et seq. Funding is provided by the federal government through the WIA. Utah is required to file a State Plan to obtain the funding. A copy of the State Plan is available at Department administrative offices and on the Internet. The regulations contained in 20 CFR 652, 20 CFR 660 through 20 CFR 671 and 29 CFR 37 (2000) are also applicable.

(2) The provisions of Rule R986-100 apply to WIA unless expressly noted otherwise in these rules even though R986-100 refers to public assistance and WIA funding does not meet the technical definition of public assistance. The residency requirements of R986-100-106 and the additional penalty under R986-100-118 do not apply. Although a WIA applicant must complete an application as provided in R986-100-111, not all of the information requested in that rule is necessary for WIA applicants.[~~the application for assistance requirement of R986-100-111 do not apply to WIA.~~]

R986-600-602. Workforce Investment Act (WIA).

(1) The goal of WIA is to increase a customer's occupational skills, employment, retention and earnings; to decrease welfare dependency; and to improve the quality of the workforce and national productivity.

(2) WIA is for individuals who need assistance finding employment to achieve self-sufficiency.

(3) Services are available for the following groups: adult, dislocated workers, and youth[~~-services~~].

R986-600-603. Youth Services.

(1) The goals of WIA youth services are to provide options for improving educational and skill competencies; to provide effective connections to employers; to ensure access to mentoring, training opportunities and support services; to provide incentives for achievement; and to provide opportunities for leadership, citizenship and community service.

(2) WIA youth services are available to low-income youth who are between the ages of 14 and 21 years old and who have barriers which interfere with the ability to complete an educational program or to secure and hold employment.

(a) Services to youths include eligibility determination, assessment, employment planning and referral to community resources delivering youth services. The Department may provide youth services or the services may be provided under contract as determined by competitive bid.

(b) Youth may be referred to appropriate community resources based on need. Services include educational achievement services, employment services,[~~- summer employment opportunities,~~] supportive services,[~~- leadership development, mentoring,~~] and follow-up services.

(c) A bonus/incentive/stipend may be paid to provide recognition of achievement to eligible youth.

R986-600-606. Intensive Services.

(1) Intensive services are available to adults and dislocated workers:

(a) who are unemployed, registered [~~at an Employment Center~~]for services with the Department, and who desire employment; or

(b) who are employed, registered for services with the Department[~~at an Employment Center~~], meet the self-sufficiency definition, and need to improve or change their current employment status. Self-sufficiency for WIA is defined as:

(i) declared income from the customer's primary job is less than the WIA income eligibility standards as found in R986-600-617(4) for a family of eight; or

(ii) the customer is at risk of losing his or her current level of income as evidenced by;

(A) a notice of lay-off or closure,

(B) the inability to retain his or her current job due to changes such as the requirement for increased skills,

(C) technological or industry changes, or

(D) the potential future income from the customer's primary job will be less than the WIA income eligibility standards for a family of eight.

(2) Intensive services are available to youth who:[
~~(a) establish appropriateness and need, and~~]

([~~b~~]a) require additional assistance to complete an educational program or to secure and hold employment, and

([~~c~~]b) meet the regional service priority level.

(3) [~~i~~]Intensive services for adults, dislocated workers and youth consist of:

(a) an assessment as provided in R986-600-620,

(b) development of an employment plan as provided in R986-600-621.

(c) [~~S~~]short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training,

(d) case management, counseling and career planning, and

(e) supportive services.

(4) Additional intensive services available to youth include:

(a) leadership development,

(b) mentoring,

(c) comprehensive guidance and counseling, and

(d) follow-up services.

R986-600-607. Training Services.

(1) If the client establishes appropriateness[~~and need~~], training services are available to adults and dislocated workers:

(a) who are [~~unemployed and are~~]unable to achieve self-sufficiency through intensive services.

(2) Training services include employment related education and work site learning.

(3) Training services are available to youth who:[
~~(a) establish appropriateness and need, and~~]

([~~b~~]a) require additional assistance to complete an educational program or to secure and hold employment, and

([~~c~~]b) meet the regional service priority level.

(4) Training services for youth consist of;

(a) tutoring,

(b) alternative school,

(c) occupational skills training,

(d) paid and unpaid internships, and/or

(e) summer youth employment opportunities.

R986-600-611. Income Eligibility Requirements.

(1) Applicants for all youth and adult programs must meet the income eligibility requirements in this rule.

(2) Dislocated workers do not need to meet income eligibility requirements.

(3) Up to 5% of the youth clients served do not need to meet the income eligibility requirements but must have barriers as determined by the Department. A list of current, eligible barriers is available at the Department.

R986-600-612. Prioritization Factors Used for Determining Eligibility[~~ for Adult and Dislocated Workers~~].

(1) For adults and dislocated workers, in addition to meeting the eligibility requirements found in rules R996-600-608 through R996-600-611, the Department will prioritize clients' eligibility based on prioritization factors developed by the Department. Current prioritization factors are available at the Department.

(2) When a client is approved for intensive or training services, the Department will estimate the anticipated cost to the Department associated with that services and "obligate" and reserve that amount for accounting purposes. The total amount of money obligated and reserved will determine which prioritization factors are operational at any given time.

([~~2~~]3) WIA Youth Councils set regional priority levels for services for youth based on the needs of youth in specific regions or sub-region areas.

([~~3~~]4) Because the funding is separate and distinct for each program, the prioritization factors operate independently for each of the two affected programs (adult and youth).

(5) Veterans will receive priority over non-veterans.

R986-600-613. Categorical Income Eligibility.

(1) A client is deemed to have met the income eligibility requirements for youth services, and adult services, if the client is receiving or is a member of a household that has been determined to be eligible for food stamps within the last six months or is currently receiving financial assistance from the Department or is homeless. Categorical income eligibility does not apply to expedited food stamps.

(2) In addition, a client is deemed to have met the income eligibility requirements for youth services if the youth is a runaway or a foster child.

(3) If a client is not eligible under paragraphs (1) and (2) above, the client must meet the low income eligibility guidelines in this rule except as provided in rule R986-600-611(3).

R986-600-614. How to Determine Who Is Included in the Family.

Family size must be determined to establish income eligibility for adult and youth services. Family size is determined by counting the maximum number of family members in the residence during the previous six months, not including the current month. Family size must be verified only if the Department is using family income to determine low-income eligibility for adult or youth services.

(1) A customer can be considered a "family" of one, if the customer is:

(a) age 18 or older and has been living on his or her own for the last six months, not including the current month;

(b) emancipated by marriage or court order;

(c) an adult child, age 22 or older, living with his or her parents and applying on his or her own behalf;[~~ or~~]

(d) in the custody of the state at the time eligibility is determined, or

([~~d~~]e) living alone or with a family and has a verifiable disability that is a substantial barrier to employment.

(2) A 'family' is generally described as two or more persons related by blood, marriage, or decree of court, living in a single residence. A dependent child is a child the parent or guardian claimed as a dependent of the parent or guardian's tax return.

(a) Family members included in the income determination:

(i) A husband and wife and dependent children age 21 and under;

(ii) A parent or legal guardian and dependent children age 21 and under; or

(iii) A husband and wife, if there are no dependent children.

(b) "Living in a single residence" includes family members residing elsewhere on a voluntary, temporary basis, such as attending school or visiting relatives. It does not include involuntary temporary residence elsewhere, such as incarceration, or court-ordered placement outside the home.

(c) Two people living in a single residence but who are not married are not members of the same 'family'. If they have children together, for WIA reporting purposes, each is considered a single parent and the children are considered part of each persons family.

R986-600-616. Countable Income.

(1) Countable income is total annual cash receipts before taxes are deducted, from all sources with the exceptions listed below under "Excludable Income". If income is not specifically excluded, it is counted. Countable income, for WIA purposes includes:

(a) money, wages, and salaries before any deductions,

(b) net receipts from self-employment, including farming,

(c) Job Corps payments to participants,

(d) railroad retirement,

(e) strike benefits from union funds,

(f) workers' compensation benefits,

(g) veterans' payments, except disability payments,

(h) training stipends,

(i) alimony,

(j) military family allotments or other regular support from an absent family member or someone not living in the household,

(k) private pensions or government employee pensions, including military retirement pay, except Social Security payments are excluded,

(l) any insurance, annuity, regular disability, and social security payments, other than social security disability (SSI or SSDI) or veterans disability.

(m) college or university scholarships, grants, fellowships, and assistantship (excluding Pell Grants),

(n) dividends,

(o) interest,

(p) net rental income,

(q) net royalties, including tribal payments from casino royalties,

(r) periodic receipts from estates or trusts, and

(s) net gambling or lottery winnings.

(2) Excludable income, which is income that is not counted, is:

(a) cash [~~welfare~~]payments under a Federal, state or local [~~welfare~~]public assistance program, including [~~public assistance under~~]FEP, FEPTP, GA, WTE, SSI, RRP, or Emergency Assistance,

(b) payments received from any governmental unit for adoption assistance,

([~~b~~]c) child support,

([~~c~~]d) unemployment compensation,

([~~d~~]e) capital gains and assets drawn down as withdrawals from a bank, the sale of property, a house or car,

([~~e~~]f) [~~SSI, ~~]SSDI, and veterans disability payments,

([~~f~~]g) educational financial assistance received under title IV of the Higher Education Act as amended by section 479(B) 1992 and other needs-based scholarship assistance and Pell grants. This includes some [~~W~~]work-[~~S~~]study programs,

([~~g~~]h) foster [~~child ~~]care payments,

([~~h~~]i) tax refunds,

([~~i~~]j) gifts,

([~~j~~]k) loans,

([~~k~~]l) lump-sum inheritances,

([~~l~~]m) one-time insurance payments or compensation for injury,

([~~m~~]n) Earned Income Credit from the IRS,

([~~n~~]o) income received by a veteran while on active military duty in the Armed Forces if the veteran applies for WIA services within six months of discharge,

([~~o~~]p) benefit payments to veterans under 38 U.S.C 4212, part 3,

([~~p~~]q) non-cash benefits such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the value of rent from owner-occupied non farm or farm housing, federal noncash benefits programs such as Medicare, Medicaid, food stamps, school lunches and housing assistance, and

([~~q~~]r) other amounts specifically excluded by [~~F~~]federal statute.

R986-600-617. How to Calculate Income.

(1) To determine if a client meets the income eligibility standards, all income from all sources of all family members during the previous six months is counted. That amount is multiplied by two to arrive at an annual income and compared to the income guidelines, which are updated annually. If necessary, the Department can make a best estimate or year-to-date estimate based on available records.

(2) Income averaging can be used if complete income records are not available for the six month period.

(3) Allowable business expenses are deducted from self-employment but no other deductions from income are allowed.

(4) The client family is income eligible if the annual income meets the higher of:

(a) the poverty line as determined by the Department of Human Services, or

(b) 70% of the LLSIL (lower living standard income level) as determined by Department of Labor and available at the Department of Workforce Services.

R986-600-618. Dislocated Worker.

(1) A dislocated worker is an individual who meets, or has met within the past 24 months, one of the following criteria:

(a)(i) has been terminated or laid off, or has received a notice of termination or layoff from employment, including military service, and

(ii)(1) is eligible for or has exhausted unemployment compensation entitlement, or

(ii)(2) has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under unemployment compensation law, and

(iii) is unlikely to return to the individual's previous industry or occupation. 'Unlikely to return' means that labor market information shows a lack of jobs in either that industry OR occupation, or the customer lacks the skills to re-enter the industry or occupation, or the client declares that they will not return to that industry or occupation.

(b)(i) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any [~~substantial~~]major layoff at, a plant, facility, or enterprise, or

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive [~~rapid response services,~~]available services other than training, intensive, or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close. Rapid response services are defined by WIA.

(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

(d) Is a displaced homemaker. A WIA displaced homemaker is an individual who has been providing unpaid services to family members in the home and who:

(i) has been dependent on the income of another family member but is no longer supported by that income; and

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(2) The dislocation must have occurred within the prior two years.

(3) There are no income or asset guidelines for dislocated worker eligibility. Training appropriateness must still be determined before training services can be provided.

(4) The following documentation is acceptable to confirm dislocated worker status:

a. Unemployment Insurance records;

b. An individual layoff letter;

c. Rapid Response Unit analysis or review;

d. Public announcements of layoff;

e. If no other means of verification are available, the employer can provide verification; or

f. Worker self certification, although this is a last resort and requires documentation that other attempts to verify were unsuccessful.

(5) If the Department is providing services under a National Reserve Discretionary Grant, additional documentation may be needed.

R986-600-621. Requirements of an Employment Plan.

(1) A client is required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan. The client will be provided with a copy of the employment plan.

(2) The goal of the employment plan is obtaining marketable skills and employment and the plan must contain the soonest possible target date for entry into employment consistent with the needs of the client.

(3) An employment plan consists of activities designed to help an individual become employed.

(4) Each activity must be directed toward the goal of employment.

(5) The employment plan may require that the client:

(a) search for[~~, suitable, immediate~~] employment.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(g) participate in rehabilitative services as prescribed by the [~~S~~]state Office of Rehabilitation.

(6) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for intensive or training services.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which may include providing ongoing information and or documentation relative to their progress and providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available and appropriate, supportive services may be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

R986-600-622. Requirements of an Employment Plan for Youth.

(1) The focus of services for youth [~~are separated by age into two categories; Younger Youth, 14-18 years old; and 19-21 years old~~]is for youth aged 14 to 21 years old.

(2) Employment plans for all youth must reflect intentions to assist with preparing for post-secondary education and/or employment; finding effective connections to the job market and employers, and understanding the links between academic and occupational learning.

(3) The goal of employment for youth is:

(a) placement in employment or postsecondary education;

(b) attainment of a degree or certificate; or

(c) literacy and numeracy gains for out-of-school youth who are basic skill deficient.[~~primary goal of the employment plan for Younger Youth is setting and achieving goals. Secondary goals may include graduating from high school, and/or being placed in post-secondary education, other advanced training, or employment.~~

~~(4) The goal of the employment plan for older youth is the same as in R986-600-621.~~]

R986-600-623. Education and Training and Support Services as Part of an Employment Plan.

(1) A client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited per exposure to the lesser of:

(a) 24 months which need not be continuous and which can be waived by a Department supervisor based on individual circumstances, or

(b) the completion of the education and training goals of the employment plan.

(2) Education and training will only be supported where:

(a) the client is unable to achieve self-sufficiency;[

~~(b) the education or training will substantially increase the income level the client would be able to attain without the education or training;~~]

([~~c~~]b) the plan must show that the client has the ability to be successful in the education or training and in the market thereafter;[

~~(d) the education or training is required for the occupation;~~]

([~~e~~]c) the client is willing to complete the education or training as quickly as is reasonable;

([~~f~~]d) the mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed; and

([~~g~~]e) the specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(3) Additional payments and/or services are allowable under certain circumstances based on individual need provided they are necessary and appropriate to enable the client to participate in activities authorized under this title (WIA).

R986-600-652. Determining [~~Initial~~]Eligibility for Training Providers.

(1) Training providers are automatically eligible [~~if they~~]if they complete an application and are either:

(a) a postsecondary educational institution that:

(i) is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), and

(ii) provides a program that leads to an associate degree, baccalaureate degree, or certificate; or

(b) an entity that provides programs under the "National Apprenticeship Act", 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.

(2) All other training providers must submit the following information:

(a) [~~the name~~]all names under which the provider operates or is known, the mailing address, physical address, telephone number, and email address (if available) of the training facility and the number of years the provider has been in business;

(b) a copy of the provider's student grievance procedure[~~documentation of financial stability of the applicant, which may include audits or financial statements or evidence of compliance with the Utah Board of Regents' bonding requirements~~];

(c) the name of each program for which approval is requested;

(d) the percentage of all participants who complete each program;

(e) the percentage of all participants in each program who obtained unsubsidized employment;

(f) average placement wage of all participants in each program;

(g) if the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the provider must provide to the Department:

(i) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;

(ii) the name of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(iii) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity identified in subparagraph (2)(g)(ii) of this section; and

(iv) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency identified in subparagraph (2)(g)(ii) of this section, or have earned the accreditation and/or certification from the appropriate entity from subparagraph (2)(g)(ii) of this section to teach and/or practice in the field for which the students are being prepared;[~~applicable, the rate of Utah state recognized or industry recognized licensure, certification, degrees, or equivalent attained by all program graduates. For example, CDL, Certified Nurse Aid, Licensed Practical Nurse, Novell Network Engineer;~~]

(h) program costs including tuition and fees; and

(i) documentation showing the provider has registered with the Utah Division of Consumer Protection, if required by UCA Title 13 Chapter 24. Governmental agencies are exempt and do not need to provide additional documentation but all other providers which are exempt from registration with the Utah Division of Consumer Protection must also submit the following;

(i) documentation of exempt status with the Utah Division of Consumer Protection;

(ii) the self-administered Department facilities accessibility checklist; and

(iii) documentation of financial stability prepared by a Certified Public Accountant.

(j) any other information, documentation or verification requested by the Department.[~~a copy of the provider's student grievance procedure;~~

~~(j) the self-administered Department training provider accessibility checklist; and~~

~~(k) the number of years in business using the current name, and a list of other names under which the provider operated.~~]

(3) Applications from providers covered under[~~in paragraph~~] subsection 2 [~~above~~]of this section [~~will~~]must be sent to the Department. The Department will forward the application to the Regional Council [~~staff~~]in the region in which the provider does business[~~ or wishes to apply~~]. The Regional Council[~~s~~] recommendation to the State Council that the application be approved or denied. The State Council takes the final action on each application.[~~recommend approval or disapproval for each provider and these results are sent to the State Council for final action.~~

~~(4) Performance information must meet standards established by the Department or the state council may grant an exception.~~]

([~~5~~]4) All [~~schools~~]providers must be in business for a minimum of one year before applying to become a training provider[~~approval will be granted~~].

([~~6~~]5) The Department will notify a provider in writing when a final decision has been made concerning the provider's eligibility.

([~~7~~]6) A list of [~~Initially E~~]eligible providers, including the provider's program performance, if available, and cost information will be published on the Department's Internet site.

(7) Once a provider has been approved, the Department may establish a review date for that provider and notify the provider of the review date. The Department will determine at the time of the review, if the provider is still eligible for approved provider status and notify the provider of that determination. At the time of review, the provider is required to provide any and all information requested by the Department which the Department has determined is necessary to allow the provider to continue to be an approved provider. This may include completing necessary forms, providing documentation and verification, and returning the Department's telephone calls. The requests for information must be completed within the time frame specified by the Department. If the Department determines as a result of the review that the provider is no longer eligible for approved provider status, the provider will be removed from the approved provider list.

(8) Providers must retain participant program records for three years from the date the participant completes the program.

(9) A provider who is not on the Department's approved provider list is not eligible for receipt of WIA funds. A provider will be removed from the eligible provider list if the provider:

(a) does not meet the performance levels established by the Department;

(b) has committed fraud or violated applicable state or federal law;

(c) intentionally supplies inaccurate student or program performance information; or

(d) fails to complete the review process.

(10) Some providers who have been removed from the eligible provider list may be eligible to be placed back on the list as follows:

(a) a provider who was removed for failure to meet performance levels may reapply for approval if the provider can prove it can meet performance levels;

(b) there is a lifetime ban for a provider who has committed fraud as a provider;

(c) providers removed for other violations of state or federal law will be suspended:

(i) until the provider can prove it is no longer in violation of the law for minor violations;

(ii) for a period of two years for serious violations;

(iii) for the lifetime of the provider for egregious violations. The seriousness of the violation will be determined by the Department; or

(iv) a provider removed for supplying inaccurate student or program performance information will be suspended for two years.

[~~R986-600-654. Determining Subsequent Eligibility for Training Providers.~~

~~(1) Eligible providers shall apply annually to continue to receive WIA funds.~~

~~(2) Eligible providers shall submit student and program information as required, and in a format determined by the Department.~~

~~(3) The Department shall establish annual minimum performance requirements for continuing eligibility, and will consider the following as it establishes those requirements:~~

~~(a) the economic, geographic, and demographic factors in the state; and~~

~~(b) the characteristics of the populations served by providers, including the difficulties in serving such populations, where applicable.~~

~~(4) The Department shall establish annual minimum requirements for the following performance measures:~~

~~(a) program completion rates for all participants;~~

~~(b) the percentage of all participants who obtain employment;~~

~~(c) the average quarterly earnings of participants;~~

~~(5) Providers shall give the Department an annual list of social security numbers of all participants, by program; each participant's exit date from the program and a list of the completion rate and cost for each program for which approval is sought. The time and format for submitting this information will be determined by the Department.~~

~~(6) The Department may require providers to submit additional information to the Department.~~

~~(7) Training provider program employment and earnings performance information will be computed by the Department using the Social Security numbers provided by the training providers.~~

~~(8) The Department will notify a provider in writing when a decision has been made concerning the provider's subsequent eligibility.~~

~~(9) Providers must retain participant program records for three years from the date the participant completes the program.~~

~~(10) The Department may remove a provider from the list if the provider does not meet the performance levels established by the Department.~~

~~(11) The Department will remove a provider from the list if the provider has committed fraud or violated applicable state or federal law.~~

~~(12) The Department will remove a provider from the list for at least two years if the provider intentionally supplies inaccurate student or program performance information.~~

~~(13) The Department shall publish the program, performance, and cost information of each subsequently eligible provider on the list.~~

~~(14) Only providers on the list are eligible to receive funding or reimbursements from WIA funding.~~

]**R986-600-655. The Right to a Hearing and How to Request a Hearing.**

(1) A provider may request a hearing to appeal a decision to deny eligibility or to remove the provider from the eligible provider list.

(2) If the Council made the decision being appealed, the h[~~H~~]earing request[~~s~~] [~~will~~]must be made in writing to the Council, which will conduct the hearing at the next regularly scheduled meeting. The Council's decision on the provider's eligibility will be final.

(3) If the Department made the determination to deny eligibility or to remove the provider, the written hearing request must be made to the Department and a hearing will be held in accordance with rule R986-100-124 through R986-100-132. Any appeal of the decision of the ALJ must be made to the Council. The Council's decision will be final.

KEY: Workforce Investment Act
Date of Enactment or Last Substantive Amendment: [~~August 16, 2005~~]2006
Notice of Continuation: September 14, 2005
Authorizing, and Implemented or Interpreted Law: 35A-5

♦ ♦

Workforce Services, Employment Development
R986-700
Child Care Assistance

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28758
FILED: 05/30/2006, 13:53

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify language and align with other Department rules.

SUMMARY OF THE RULE OR CHANGE: The Department is in the process of rewriting all its rules. Many of these changes are nonsubstantive. This change will require subsidized child care providers to keep time and attendance records for one year. We have also attempted to more clearly define transitional child care. All other changes are nonsubstantive.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-1-104(4) and 35A-3-310(3)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes. There will be no fiscal impact on any business. Tani Downing, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2006

AUTHORIZED BY: Tani Downing, Executive Director

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-702. General Provisions.

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717[~~means a child identified by the Department of Human Services, Division of Services to People with Disabilities or other entity as determined by the Department, as having a physical or mental disability requiring special child care services~~].

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) Neither the Department nor the state of Utah are liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(10) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(11) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the [~~re-certification forms are~~]the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) licensed and accredited providers:

(i) licensed homes;

(ii) licensed family group homes; and

(iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers; or

(ii) related to the client and/or the child. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand, great, great-great, or great-great-great or persons who meet any of the above relationships even if the marriage has been terminated.

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) If a new client has a provider who is providing child care at the time the client applies for [~~child care assistance~~]CC or has provided child care in the past and has an established relationship with the child(ren), but the provider is not currently eligible, the client may receive [~~child care assistance~~]CC for a period not to exceed three months if the provider is willing to become an eligible provider and actively pursues eligibility.

(3) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides; or

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care; or

(d) if the provider lives in an area where the Department of Health lacks jurisdiction, which includes tribal lands, to provide licensing or certification; or

(4) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(5) If an exception is granted under paragraph ([~~4~~]3) or ([~~5~~]4) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(6) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and physically and mentally capable of providing care to children;

(b) the provider's home is equipped with hot and cold running water, toilet facilities, and is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors and fire extinguishers on all floors of the house where children are provided care;

(d) there are no individuals residing in the home who have a conviction for a misdemeanor which is an offense against a person, or any felony conviction, or have been subject to a supported finding of child abuse or neglect by the Utah Department of Human Services, Division of Child and Family Services or a court;

(e) there is a telephone in operating condition with a list of emergency numbers located next to the phone which includes the phone numbers for poison control and for the parents of each child in care;

(f) food will be provided to the child in care of sufficient amount and nutritional value to provide the average daily nutrient intake required. Food supplies will be maintained to prevent spoilage or contamination. Any allergies will be noted and care given to ensure that the child in care is protected from exposure to those items; and

(g) the child in care will be immunized as required for children in licensed day care and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(7) The following providers are not eligible for receipt of a CC payment:

(a) a member of a household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state; and

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the [~~S~~]state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.[

~~(4) The provider is entitled to know the date on which payment for CC was made to the parent and the amount of the payment.~~]

([~~5~~]4) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider. A provider cannot require that a client give the provider the client's Horizon card and/or the client's PIN or otherwise obtain the card and/or PIN.

([~~6~~]5) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

([~~7~~]6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.[~~ Provider case records will be maintained according to Office of Licensing standards.~~]

R986-700-707. Subsidy Deduction and Transitional Child Care.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent [~~must pay~~]is responsible for paying the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

(5) There is no subsidy deduction during:

(a) the months covered by a FEP diversion payment;

(b) transitional child care. Transitional child care is available, subject to subsection (6) of this section, during;

(i) the three months immediately following the period covered by the diversion payment if the client is working a minimum of 15 hours per week and is otherwise eligible for ESCC. The subsidy deduction will resume in the fourth month after the period covered by the diversion payment; or

(ii) the three months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The subsidy deduction will resume in the fourth month after the termination of FEP or FEPTP.

(6) The subsidy deduction will only be waived for transitional child care if the client received ESCC during the calendar month following the termination of FEP or FEPTP or the expiration of the time covered by the diversion agreement. For instance, if a client's FEP was terminated due to increased income on May 18, and the client fails to request or is not eligible for ESCC during June, the client is not eligible for the subsidy deduction waiver. If the same client reapplies and receives ESCC for July, the client is not eligible for the subsidy deduction waiver even though July is one of the three months immediately following the termination of FEP. Likewise, if the client received a diversion payment on March 1 which covered the months of March, April and May, the client must receive ESCC anytime during the month of June. If the client does not request, receive, or is not eligible for ESCC during June but becomes eligible during August, the ESCC is subject to the subsidy deduction even though August is one of the three months immediately following the period covered by diversion.

R986-700-708. FEP, and Diversion CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

(3) Diversion CC is available for clients who have received a diversion payment from FEP. There is no subsidy deduction for the months covered by the FEP diversion payment.[

~~(4) If the client is working a minimum of 15 hours per week and meets all employment support criteria in the three months immediately following the period covered by the diversion payment or if the client's FEP or FEPTP assistance was terminated as "transitional", the client is not subject to a subsidy deduction until the fourth month after the period covered by the diversion payment. A new application is not required during this transitional period.~~]

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100 [~~percent~~]% disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is supported even though the program does not meet the minimum wage requirements. The activities of Americorps*Vista volunteers are considered to be work and not training. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.[

~~(6) If a parent was receiving FEP or FEPTP, and their financial assistance was terminated due to increased income, and the parent is otherwise eligible for ES CC, the subsidy deduction will not be taken for the two months immediately following the termination of FEP or FEPTP, provided the client works a minimum of 15 hours per week. The third month following termination of FEP or FEPTP CC is subject to the subsidy deduction.~~]

([~~7~~]6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a [~~Social Security Number~~]SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.[

~~(9) In a two-parent family receiving CC for education or training activities, the monthly CC subsidy cannot exceed the established monthly local market rates.~~]

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship[~~,~~] and income[~~, and asset~~] eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

(5) When a homeless family presents a referral from a recognized agency, the Department will, if possible, schedule the application interview within three working days of the date of the application.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be responsible for repayment of the resulting overpayment and will be disqualified from further receipt of CC:

(a) for a period of one year for the first occurrence of fraud;

(b) for a period of two years for the second occurrence of fraud; and

(c) for life for the third occurrence of fraud.

(3) If the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) All [~~child care~~]CC overpayments must be repaid to the Department.

Overpayments may be deducted from ongoing [~~child care~~]CC payments for clients who are receiving [~~child care~~]CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's [~~child care~~]CC payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for [~~10~~]ten hours of classes each week may not receive more than [~~10~~]ten hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the [~~following~~]professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies documenting the child's disability or special child care needs;[

~~(a) medical doctor, doctor of osteopathy, licensed or certified psychologist, or mental health professional,~~]

([~~b~~]a) Social Security Administration showing that the child is a SSI recipient,

([~~c~~]b) Division of Services for People with Disabilities,

([~~d~~]c) Division of Mental Health,

([~~e~~]d) State Office of Education, or

([~~f~~]e) Baby Watch, Early Intervention Program.

(3) Verification to support that the child is disabled or has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

KEY: child care
Date of Enactment or Last Substantive Amendment: [~~April 12,~~]2006
Notice of Continuation: September 14, 2005
Authorizing, and Implemented or Interpreted Law: 35A-3-310

♦ ♦

Workforce Services, Employment Development

R986-800-803

Available Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28762
FILED: 05/30/2006, 17:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change the rule to reflect practice.

SUMMARY OF THE RULE OR CHANGE: The current rule says "most" of the listed services are available through workshops. Only some of the services are available through workshops, other services are provided, as funding allows, through core and other services.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs of savings to the state budget as services are not being expanded the changes merely reflect current practice which are being accomplished at current funding levels.

❖ LOCAL GOVERNMENTS: This is a state-funded program and will have no impact on local governments.

❖ OTHER PERSONS: There are no anticipated costs or savings to other persons as this change merely reflects current Department practice in providing these services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for this program so no persons will be affected by this proposed change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes. There will be no fiscal impact on any business. Tani Downing, Executive Director

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2006

AUTHORIZED BY: Tani Downing, Executive Director

R986. Workforce Services, Employment Development.
R986-800. Displaced Homemaker Program.
R986-800-803. Available Services.

(1) The Department provides the following services to displaced homemakers either directly or through referral:

(a) employment and skills training, career counseling, and placement services specifically designed to address the needs of displaced homemakers;

(b) assistance in obtaining access to existing public and private employment training programs;

(c) educational services, including information on high school or college programs, or assistance in gaining access to existing educational programs;

(d) health education and counseling, or assistance in gaining access to existing health education and counseling services;

(e) financial management services which provide information on insurance, taxes, estate and probate matters, mortgages, loans, and other financial issues;

(f) prevocational self-esteem and assertiveness training; and

(g) encouragement of placement in any displaced homemaker program established or offered by any local, state or federal agency.

(2) [~~Most~~]Some of these services are available through workshops conducted by the Department.

KEY: displaced homemakers
Date of Enactment or Last Substantive Amendment: [~~October 2, 2000~~]2006
Notice of Continuation: September 14, 2005
Authorizing, and Implemented or Interpreted Law: 35A-3-114

♦ ♦

Workforce Services, Employment Development
R986-900
Food Stamps

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28761
FILED: 05/30/2006, 17:00

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to reflect current waivers and options.

SUMMARY OF THE RULE OR CHANGE: The Department has elected to take the following options: allowing a client to take a 40% deduction from gross self employment income; aligning with Temporary Assistance for Needy Families-funded programs for determining how to count education income; and simplified reporting. Simplified reporting was contemplated with changes made in H.B. 37 during the 2006 General Session. Not all material changes will need to be reported within ten days. The Department will now wait 30 days if verification is not received to deny benefits. (DAR NOTE: H.B. 37 (2006) is found at Chapter 89, Laws of Utah 2006, and was effective 05/01/2006.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. Tani Downing, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2006

AUTHORIZED BY: Tani Downing, Executive Director

R986. Workforce Services, Employment Development.
R986-900. Food Stamps.
R986-900-901. Authority for Food Stamps and Applicable Rules.

(1) Food stamps provide assistance to eligible individuals in accordance with the requirements found in: The Food Stamp Act of 1977 as amended (7 USC 2011 et seq); 7 CFR 271 through 7 CFR 283; and PRWORA and its amendments. The complete text of all applicable federal laws and regulations can be found at the United States Department of Agriculture web site at: http://www.fns.usda.gov/fsp/. Federal regulations are also available at most public libraries, on the Internet at: http://access.gpo.gov/nara/cfr/waisidx_00/7cfrv4_00.html, at the Department of Workforce Services, Division of Employment Development, Appeals Division 2nd Floor, 140 E 300 S, Salt Lake City UT, 84145; or at the Division of Administrative Rules, 4120 State Office Building, Salt Lake City UT, 84114. The state maintains a policy manual describing the benefits and eligibility requirements for receipt of food stamps. The policy manual is available [~~at all Department offices~~]on the Department's Internet web site. The provisions of 7 CFR 271 through 7 CFR 283 (2000) are incorporated herein by reference.

(2) The provisions of R986-100 apply to food stamps except where specifically noted [~~in that rule~~]otherwise.

R986-900-902. Options and Waivers.

The Department administers the [~~f~~]Food [~~s~~]Stamp [~~p~~]Program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply at the local office which serves the area in which they reside.

(d) The Department has opted to use the Simplified Standard Utility Allowance found in 7 USC 2014(e)(7)(C)(iii) as amended by 2002 H.R. 2646 known as Section 4104 of the Farm Bill. The Department has a mandatory standard utility allowance. This means the customer is eligible for an appropriate utility allowance at the time of application and eligibility for the appropriate allowance is re-determined at recertification or if the household moves to a different place of residence. The customer does not have the choice of using "actual" utility expenses. The Department has three utility standards that are updated annually and are available upon request. This Farm Bill option allows households in subsidized housing and households in shared living arrangements to receive the full appropriate utility allowance.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system known as the Horizon Card.

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to exempt individuals from mandatory participation in Food Stamp Employment and Training activities in counties that have been designated as Labor Surplus Areas by the Department of Labor. These counties change each year based on Department of Labor statistics and a list of counties is available from the Department. They are the same counties as referenced in subsection (2)(a) below.

(i) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(j) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(c)(3)(ii)(A).

(k) A client may waive his or her right to an administrative disqualification hearing.

(l) A client may deduct actual, allowable expenses from self employment, or may opt to deduct 40% of the gross income from self employment to determine net income.

(m) The Department has opted to allign food stamps with FEP in determining how to count educational assistance income. That income is counted for food stamps as provided in R986-200-235(3)(q).

(n) The Department has opted to do simplified reporting as provided in 7 CFR 273.12(a)(1)(vii).

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.[

~~(b) If a client does not provide initial verification as requested within ten days of the interview, the Department can deny the household's application at the expiration of the ten days and is not required to wait until the 30th day following the date of application.~~]

([~~c~~]b) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over $25 or a change in the source of unearned income.

([~~d~~]c) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

([~~e~~]d) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.[

~~(f) FEP and FEPTP clients may opt to have their food stamp benefits paid as cash. This waiver will expire on December 31, 2000.~~]

([~~g~~]e) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

([~~h~~]f) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

([~~i~~]g) A household which had its food stamps terminated can be reinstated during the calendar month following the month assistance was terminated without completing a new application if the reason for the termination is fully resolved. The reason for the termination does not matter. Assistance will be prorated to the date on which the client reported that the disqualifying condition was resolved if verification is received within [~~10~~]ten days of the report. Assistance is reinstated for the remaining months of the certification period and the certification period must not be changed.

([~~j~~]h) If the Department is unable to obtain proper documentary evidence from an employer, the Department may use Utah quarterly wage data [~~from the State Income Eligibility Verification System (IEVS)~~]as the primary verification of income when calculating[~~collecting~~] overpayments.

([~~k~~]i) The Department will hold disqualification hearings by telephone.

([~~l~~]j) All households certified for 12 months or less would have their recertification interviews conducted by telephone, rather than in person, unless the household requests an in-person interview or the Department determines that an in-person interview is necessary to resolve issues that would be better facilitated face-to-face.

KEY: food stamps, public assistance
Date of Enactment or Last Substantive Amendment: [~~September 12, 2003~~]2006
Notice of Continuation: September 14, 2005
Authorizing, and Implemented or Interpreted Law: 35A-3-103

♦ ♦

Workforce Services, Unemployment Insurance
R994-401-203
Retirement or Disability Retirement Income

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28763
FILED: 05/30/2006, 17:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to make the rule consistent with the Employment Security Act.

SUMMARY OF THE RULE OR CHANGE: H.B. 18 passed in the 2006 General Session extended the Social Security offset reduction. This rule change is to reflect that statutory change. (DAR NOTE: H.B. 18 (2006) is found at Chapter 74, Laws of Utah 2006, and was effective 05/01/2006.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. Any cost to employers will be paid out of social costs and were contemplated by the statutory change. This rule merely reflects that statutory change. There will be no fiscal impact on businesses as a result of this rule change. Tani Downing, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton 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 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2006

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.
R994-401. Payment of Benefits.
R994-401-203. Retirement or Disability Retirement Income.

(1) A claimant's WBA is reduced by 100% of any retirement benefits, social security, pension, or disability retirement pay (referred to collectively in this section as "retirement benefits" or "retirement pay") received by the claimant. Except, for claims with an effective date on or after July 4, 2004, and on or before [~~July 2, 2006~~]June 27, 2010 the reduction for social security retirement benefits will only be 50%. The payments must be:

(a) from a plan contributed to by a base-period employer. Payments made by the employer for whom the claimant did not work during the benefit year are not counted. Social security payments are counted if a base period employer contributed to social security even if the social security payment is not based on employment during the base period;

(b) based on prior employment and the claimant qualifies because of age, length of service, disability, or any combination of these criteria. Disability payments must be based, at least in part, by length of service. Savings plans such as a 401(k) or IRA should not be used to reduce the WBA Payments from workers' compensation for temporary disability, black lung disability income, and benefits from the Department of Veterans Affairs are not counted because the amount of the payment is based on disability and not on length of service. Payments received as a spouse or beneficiary are not counted. That portion of retirement benefits payable to a claimant's former spouse is not counted if the paying entity pays the former spouse directly and it is pursuant to court order or a signed, stipulated agreement in accordance with the law;

(c) periodic and not made in a lump sum. Lump sum payments, even if drawn from the employer's contributions to a fund established for the purpose of retirement, are not treated as severance pay under Subsection 35A-4-405(7); and

(d) payable during the benefit year. A claimant's WBA is not reduced if the claimant is eligible for, but not receiving, retirement income. However, if the claimant subsequently receives a retroactive payment of retirement benefits which, if received during the time unemployment insurance claims were filed, would have resulted in a reduced payment, an overpayment will be established. The period of time the payment represents, not the time of the receipt, is the determining factor. An assumption that a claimant is entitled to receive a pension, even if correct, is not sufficient basis to recompute the WBA. However, if a claimant has applied for a pension and expects to be determined eligible for a specific amount attributable to weeks when Unemployment Insurance benefits are payable, and the claimant is only awaiting receipt of those payments, a reduction of the claimant's WBA will be made.

(2) A claimant who could be eligible for a retirement income, but does not apply until after the Unemployment Insurance benefits have been paid, will be at fault for any overpayment resulting from a retroactive payment of retirement benefits.

(3) The formula for recomputation of the MBA in the event a claimant begins receiving retirement income after the beginning of the benefit year is found in Subsection 35A-4-401(2)(d). The recomputation is effective with the first full calendar week in which the claimant is eligible to receive applicable retirement benefits or adjustments to those benefits.

KEY: unemployment compensation, benefits
Date of Enactment or Last Substantive Amendment: [~~September 29, 2005~~]2006
Notice of Continuation: May 23, 2002
Authorizing, and Implemented or Interpreted Law: 35A-4-401(1); 35A-4-401(2); 35A-4-401(3); 35A-4-401(6)

♦ ♦

Workforce Services, Unemployment Insurance

R994-406

Fraud, Fault and Nonfault Overpayments

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 28764
FILED: 05/30/2006, 17:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct a numbering error and provide more specific language regarding the Department's debit card.

SUMMARY OF THE RULE OR CHANGE: A numbering error was made during the last rule change which is corrected. The Department now issues benefits on a debit-type card and the Department is experiencing possible fraud with the card. This change will prohibit claimants from keeping their PIN number with their card and require that the loss of the card be reported immediately.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-1-104(4) and 35A-4-502(1)(b), and Section 35A-1-303

ANTICIPATED COST OR SAVINGS TO:
- ❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
- ❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes. There will be no fiscal impact on any business. Tani Downing, Executive Director

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton 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 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2006

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.
R994-406. Fraud, Fault and Nonfault Overpayments.
R994-406-301. Claimant Fault.

(1) Elements of Fault.

Fault is established if all three of the following elements are present, or as provided in subsection (3) and (4) of this section. If one or more elements cannot be established, the overpayment does not fall under the provisions of Subsection 35A-4-405(5).

(a) Materiality.

Benefits were paid to which the claimant was not entitled.

(b) Control.

Benefits were paid based on incorrect information or an absence of information which the claimant reasonably could have provided.

(c) Knowledge.

The claimant had sufficient notice that the information might be reportable.

(2) Claimant Responsibility.

The claimant is responsible for providing all of the information requested by the Department regarding his or her Unemployment Insurance claim. If the claimant has any questions about his or her eligibility for unemployment benefits, or the Department's instructions, the claimant must ask the Department for clarification before certifying to eligibility. If the claimant fails to obtain clarification, he or she will be at fault in any resulting overpayment.

(3) Receipt of Settlement or Back-Pay.

(a) A claimant is "at fault" for the resulting overpayment if he or she fails to advise the Department that grievance procedures are being pursued which may result in payment of wages for weeks during which he or she claims benefits.

(b) If the claimant advises the Department prior to receiving a settlement that he or she has filed a grievance with the employer and makes an assignment directing the employer to pay to the Department that portion of the settlement equivalent to the amount of unemployment compensation received, the claimant will not be "at fault" if an overpayment is created due to payment of wages attributable to weeks for which the claimant received benefits. If the grievance is resolved in favor of the claimant and the employer was properly notified of the wage assignment, the employer is liable to immediately reimburse the Department upon settlement of the grievance. If reimbursement is not made to the Department consistent with the provisions of the assignment, collection procedures will be initiated against the employer.

(c) If the claimant refuses to make an assignment of the wages claimed in a grievance proceeding, benefits will be withheld on the basis that the claimant is not unemployed because of anticipated receipt of wages. In this case, the claimant should file weekly claims and if back wages are not received when the grievance is resolved, benefits will be paid for weeks properly claimed provided the claimant is otherwise eligible.

(4) Receipt of Retirement Income.

Notwithstanding any other provision of this section, a claimant who could be eligible for retirement income but does not apply until after unemployment benefits have been paid, is "at fault" for any overpayment resulting from a retroactive payment of retirement benefits. See R994-401-203(1)(d) and (2)

R994-406-401. Claimant Fraud.

(1) All three elements of fraud must be proved to establish an intentional misrepresentation sufficient to constitute fraud. See section 35A-4-405(5). The three elements are:

(a) Materiality.

(i) Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining;

(A) any benefit payment to which the claimant is not entitled, or

(B) waiting week credit which results in a benefit payment to which the claimant is not entitled.

(ii) A benefit payment received by fraud may include an amount as small as one dollar over the amount a claimant was entitled to receive.

(b) Knowledge.

A claimant must have known or should have known the information submitted to the Department was incorrect or that he or she failed to provide information required by the Department. The claimant does NOT have to know that the information will result in a denial of benefits or a reduction of the benefit amount. Knowledge can also be established when a claimant recklessly makes representations knowing he or she has insufficient information upon which to base such representations. A claimant has an obligation to read material provided by the Department [~~or~~]and to ask a Department representative [~~when~~]if he or she has a question about what information to report.

(c) Willfulness.

Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions. If a claimant delegates the responsibility to personally provide information or allows access to his or her Personal Identification Number (PIN) so that someone else may file a claim, the claimant is responsible for the information provided or omitted by the other person, even if the claimant had no advance knowledge that the information provided was false or important information was omitted. The claimant is responsible for securing the debit card issued by the Department (EPPICard or card). Securing the card means that the card and the PIN are never been kept together, the card is kept in a secure location, and the PIN is a not known by anyone but the claimant. If a claimant loses his or her card, the claimant must report the loss of the card to the Department and change his or her PIN immediately even if the claimant is not currently filing weekly claims for benefits. If the claimant fails to report the loss of the card and change the PIN immediately, or fails to secure the card, the claimant will be liable for claims made and money removed from the card.

(2) The Department relies primarily on information provided by the claimant when paying unemployment insurance benefits. Fraud penalties do not apply if the overpayment was the result of an

inadvertent error. Fraud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits.

(3) The absence of an admission or direct proof of intent to defraud does not prevent a finding of fraud.

KEY: overpayments, unemployment compensation
Date of Enactment or Last Substantive Amendment: [~~December 31, 2005~~]2006
Notice of Continuation: May 23, 2002
Authorizing, and Implemented or Interpreted Law: 35A-4-406(2); 35A-4-406(3); 35A-4-406(4); 35A-4-406(5)

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End of the Notices of Proposed Rules Section

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 July 17, 2006. At its option, the agency may hold public hearings.

From the end of the waiting period through October 13, 2006, 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.

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-3A-6
Services

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 28535
Filed: 05/31/2006, 15:14

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is in response to public comment to assure quality service in sleep studies.

SUMMARY OF THE RULE OR CHANGE: This change adopts the requirement that sleep studies must be performed in a center accredited by the American Academy of Sleep Medicine. This allows for a "diplomate" to provide service in an accredited sleep center. The inclusion of diplomates allows several hospitals to comply with sleep study program criteria, and increases statewide access to services. (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, 2006, 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 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: Sections 26-1-5 and 26-18-3, and 42 CFR 440.20

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no impact to the state budget associated with this rulemaking because it only amends and clarifies criteria for sleep studies in the Medicaid program.

❖ LOCAL GOVERNMENTS: There is no budget impact to local governments as a result of this rulemaking because it only amends and clarifies criteria for sleep studies in the Medicaid program.

❖ OTHER PERSONS: There is no budget impact to other persons as a result of this rulemaking because it only amends and clarifies criteria for sleep studies in the Medicaid program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this rulemaking only amends and clarifies criteria for sleep studies in the Medicaid program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is in response to public comments and should increase statewide access to this service. David N. Sundwall, MD, Executive Director

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 07/17/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/25/2006

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-3A. Outpatient Hospital Services.
R414-3A-6. Services.

(1) Services appropriate in the outpatient hospital setting for adequate diagnosis and treatment of a client's illness are limited to less than 24 hours and encompass medically necessary diagnostic, therapeutic, rehabilitative, or palliative medical services and supplies ordered by a physician or other practitioner of the healing arts.

(2) Outpatient hospital services include:

(a) the service of nurses or other personnel necessary to complete the service and provide patient care during the provision of service;

(b) the use of hospital facilities, equipment, and supplies; and

(c) the technical portion of clinical laboratory and radiology services.

(3) Laboratory services are limited to tests identified by the Centers for Medicare and Medicaid Services (CMS) where the individual laboratory is CLIA certified to provide, bill and receive Medicaid payment.

(4) Cosmetic, reconstructive, or plastic surgery is limited to:

(a) correction of a congenital anomaly;

(b) restoration of body form following an injury; or

(c) revision of severe disfiguring and extensive scars resulting from neoplastic surgery.

(5) Abortion procedures are limited to procedures certified as medically necessary, cleared by review of the medical record, approved by division consultants, and determined to meet the requirements of Utah Code 26-18-4 and 42 CFR 441.203.

(6) Sterilization procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F.

(7) Nonphysician psychosocial counseling services are limited to evaluations and may be provided only through a prepaid mental health plan by a licensed clinical psychologist for:

(a) mentally retarded persons;

(b) cases identified through a CHEC/EPSDT screening; or

(c) victims of sexual abuse.

(8) Outpatient individualized observation of a mental health patient to prevent the patient from harming himself or others is not covered.

(9) Sleep studies are [~~only~~]available only in a sleep disorder center accredited by the American Academy of Sleep Medicine[~~sleep laboratory staffed with at least one sleep medicine physician and one registered polysomnography technologist. The physician must be certified by the American Academy of Sleep Medicine . The polysomnography technologist must be registered through the Board of Polysomnography Technologists~~].

(10) Hyperbaric Oxygen Therapy is limited to service in a hospital facility in which the hyberbaric unit has been accredited or approved by the Undersea and Hyperbaric Medical Society.

(11) Lithotripsy is covered by an all-inclusive fixed fee. This payment covers all hospital and ambulatory surgery-related services for lithotripsy on the same kidney for 90 days, including repeat treatments. Lithotripsy for treatment of the other kidney is a separate service.

(12) Reimbursement for services in the emergency department is limited to codes and diagnoses that are medically necessary emergency services as described in the provider manual. The diagnosis reflecting the primary reason for emergency services must be used and must be one of the first five diagnoses listed on the claim form.

(13) Take home supplies and durable medical equipment are not reimbursable.

(14) Prescriptions are not a covered Medicaid service for a client with the designation "Emergency Services Only Program" printed on the Medicaid Identification Card.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: 2006
Notice of Continuation: November 26, 2002
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-2.3; 26-18-3(2); 26-18-4

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End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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).

Human Services, Substance Abuse and Mental Health, State Hospital

R525-8

Forensic Mental Health Facility

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 28738

FILED: 05/16/2006, 08:12

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: Subsection 62A-15-902(2)(c) grants authority to the Department of Substance Abuse and Mental Health to make rules and provide for the allocation of beds in the forensic mental health facility located at the Utah State Hospital in Provo, Utah County.

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 public comments have been received since the last time this rule was reviewed, but there has been concern expressed by the Department of Corrections. This conflict has been resolved through a Memorandum of Understanding between the Department of Human Services and the Department of Corrections, which assigns the Utah State Prison a certain number of beds. This agreement is negotiable and will more than likely be revisited in the near future.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The forensic mental health facility rule has been established to provide guidance in who is eligible for services on the forensic unit, and how the open beds in the forensic unit are allocated. This rule is being continued because of the 5-year review deadline, but anticipated changes are forthcoming in the near future to update compliance with changes in statute.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH,
STATE HOSPITAL
UTAH STATE HOSPITAL
PROVO UT 84603-0270, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Thom Dunford at the above address, by phone at 801-538-4519, by FAX at 801-538-9892, or by Internet E-mail at TDUNFORD@utah.gov

AUTHORIZED BY: Mark I Payne, Director

EFFECTIVE: 05/16/2006

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Human Services, Recovery Services

R527-800

Acquisition of Real Property, and Medical Support Cooperation Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 28752

FILED: 05/24/2006, 14:03

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: Section 62A-11-104 charges the Office of Recovery Services with the duty to collect money due the department. This rule provides details for enforcement actions against real property to satisfy financial obligations when other methods have failed or are unavailable in a case. This rule describes the requirements of a recipient of medical assistance to cooperate with the Office of Recovery

Services in offsetting Medicaid expenditures in accordance with 42 CFR 433.147-148.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statutes under which this rule is enacted are still in effect. This rule describes necessary details of enforcement actions against real property taken by the Office of Recovery Services. This rule is necessary to explain the requirement of a recipient of medical assistance to cooperate with Medicaid cost recovery efforts of the Office of Recovery Services, and therefore, this rule should be continued.

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

AUTHORIZED BY: Mark Brasher, Director

EFFECTIVE: 05/24/2006

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Human Services, Recovery Services
R527-936
Third Party Liability, Medicaid

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 28739
FILED: 05/16/2006, 11:08

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 26-19-1 through 26-19-19 and 26-18-8; and Subsection 26-18-10(4) require the Agency to promulgate rules to administer the Third Party Liability Program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to continue the Third party Liability program required by the Medical Benfits Recovery Act, Title 26, Chapter 19.

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:
Gary Howarth at the above address, by phone at 801-536-8695, by FAX at 801-536-8509, or by Internet E-mail at ghowarth@utah.gov

AUTHORIZED BY: Mark Brasher, Director

EFFECTIVE: 05/16/2006

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Natural Resources; Oil, Gas and Mining; Coal
R645-106
Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 28742
FILED: 05/17/2006, 16:23

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 40-10-3(20)(a) is the "Definition" of the Utah Coal Mining and Reclamation Act. It defines: 1) what falls under the jurisdiction of the Coal Act; and 2) what is exempt from regulation. The key item is defining exemption for the extraction of coal when it is being mined as the nonprimary commodity. An example would be the mining of decorative sandstone block where there is a small "rider" seam of coal overlying the sandstone. If the coal that is mined incidental to the extraction of the sandstone does not exceed 16-2/3 percent of the total product mined, the mine operation would be exempt from the regulation under the Coal Act. However, the mine would be regulated under the Mined Land Reclamation Act, Sections 40-8-1 to 40-8-23.

Without this rule, there is no clear definition of how the extracted minerals would be regulated.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: One written comment from the Office of Surface Mining noting that the citation should be Subsection 40-10-3(20)(a) not 40-10-3(18).

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rules in the Utah Coal Program must be as effective as the federal rules (30 CFR) in order for Utah to have primacy in regulating the environmental effects of coal mining.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Michael Hebertson at the above address, by phone at 801-538-5333, by FAX at 801-538-3940, or by Internet E-mail at michaelhebertson@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 05/17/2006

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Natural Resources, Wildlife Resources

R657-48

Implementation of the Wildlife Species of Concern and Habitat Designation Advisory Committee

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 28751
FILED: 05/24/2006, 12:31

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Section 23-14-19 the Wildlife Board is authorized and required to provide rules to regulate and prescribe the means by which protected wildlife and their habitat may be managed. The designation of a species of concern which Rule R657-48 does, requires approval from the Wildlife Board.

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 supporting or opposing Rule R657-48 were received since 06/13/2001 when the rule was first enacted.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Division of Wildlife Resources thinks Rule R657-48 should be continued. This rule: 1) establishes the Wildlife Species of Concern and Habitat Designation Advisory Committee; 2) defines the procedure for designating wildlife species of concern as part of a process to preclude listing under the federal Endangered Species Act; and 3) defines the procedure for review and identification of wildlife habitat and management recommendations relating to significant land use development projects.

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:
Robin Thomas at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at robinthomas@utah.gov

AUTHORIZED BY: James F Karpowitz, Director

EFFECTIVE: 05/24/2006

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NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Administrative Services
Facilities Construction and Management
No. 28609 (AMD): R23-1. Procurement of Construction.
Published: May 1, 2006
Effective: June 1, 2006

No. 28608 (AMD): R23-1. Procurement of Construction.
Published: May 1, 2006
Effective: June 1, 2006

No. 28607 (AMD): R23-2. Procurement of Architect-Engineer Services.
Published: May 1, 2006
Effective: June 1, 2006

Commerce
Consumer Protection
No. 28574 (AMD): R152-1. Utah Division of Consumer Protection: "Buyer Beware List".
Published: April 15, 2006
Effective: May 16, 2006

No. 28573 (AMD): R152-22-3. Application for Charitable Organization Permit.
Published: April 15, 2006
Effective: May 16, 2006

Occupational and Professional Licensing
No. 28611 (AMD): R156-55b. Electricians Licensing Rules.
Published: May 1, 2006
Effective: June 1, 2006

No. 28603 (AMD): R156-60c-502. Unprofessional Conduct.
Published: May 1, 2006
Effective: June 1, 2006

Education
Administration
No. 28590 (AMD): R277-503. Licensing Routes.
Published: April 15, 2006
Effective: May 16, 2006

No. 28591 (AMD): R277-709. Education Programs Serving Youth in Custody.
Published: April 15, 2006
Effective: May 16, 2006

Environmental Quality
Water Quality
No. 28596 (AMD): R317-4. Onsite Wastewater Systems.
Published: April 15, 2006
Effective: May 19, 2006

Health
Health Care Financing, Coverage and Reimbursement Policy
No. 28575 (AMD): R414-1-5. State Plan.
Published: April 15, 2006
Effective: May 16, 2006

Health Systems Improvement, Child Care Licensing
No. 28593 (AMD): R430-2. General Licensing Provisions, Child Care Facilities.
Published: April 15, 2006
Effective: May 25, 2006

No. 28594 (AMD): R430-4. General Certificate Provisions.
Published: April 15, 2006
Effective: May 25, 2006

Human Services
Child and Family Services
No. 28612 (NEW): R512-11. Accommodation of Moral and Religious Beliefs and Culture.
Published: May 1, 2006
Effective: June 1, 2006

No. 28613 (NEW): R512-203. Child Protective Services, Significant Risk Assessments.
Published: May 1, 2006
Effective: June 1, 2006

No. 28614 (AMD): R512-300-4. Division Responsibility to a Child Receiving Out of Home Services.
Published: May 1, 2006
Effective: June 1, 2006

Labor Commission
Safety
No. 28564 (AMD): R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.
Published: April 15, 2006
Effective: May 17, 2006

Public Safety
Fire Marshal
No. 28578 (AMD): R710-3-3. Amendments and Additions.
Published: April 15, 2006
Effective: May 16, 2006

No. 28579 (AMD): R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.
Published: April 15, 2006
Effective: May 16, 2006

School and Institutional Trust Lands
Administration
No. 28562 (AMD): R850-4-300. Fee Waivers.
Published: April 15, 2006
Effective: May 16, 2006

No. 28563 (AMD): R850-5-200. Payments.
Published: April 15, 2006
Effective: May 16, 2006

Transportation
No. 28617 (AMD): R907-68. Prioritization of New Transportation Capacity Projects.
Published: May 1, 2006
Effective: June 1, 2006

No. 28532 (AMD): R907-68. Prioritization of New Transportation Capacity Projects.
Published: March 15, 2006
Effective: June 1, 2006

Motor Carrier, Ports of Entry
No. 28616 (AMD): R912-9. Pilot/Escort Requirements and Certification Program.
Published: May 1, 2006
Effective: June 1, 2006

Operations, Construction
No. 28559 (AMD): R916-1-7. Execution of Contracts.
Published: April 15, 2006
Effective: May 16, 2006

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, 2006, including notices of effective date received through June 1, 2006, the effective dates of which are no later than June 15, 2006. 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					
Administrative Rules					
R15-4	Administrative Rulemaking Procedures	28586	EMR	04/15/2006	2006-8/57
Facilities Construction and Management					
R23-1	Procurement of Construction	28608	AMD	06/01/2006	2006-9/10
R23-1	Procurement of Construction	28609	AMD	06/01/2006	2006-9/3
R23-2	Procurement of Architect-Engineer Services	28607	AMD	06/01/2006	2006-9/12
Finance					
R25-5	Payment of Per Diem to Boards	28384	AMD	01/25/2006	2005-24/2
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R27-1	Definitions (5YR EXTENSION)	28279	NSC	01/30/2006	Not Printed
R27-1	Definitions	28474	5YR	01/30/2006	2006-4/33
R27-1-2	Definitions	28368	NSC	01/01/2006	Not Printed

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R27-2	Fleet Operations Adjudicative Proceedings	28475	5YR	01/30/2006	2006-4/33
R27-3	Vehicle Use Standards (5YR EXTENSION)	28280	NSC	01/30/2006	Not Printed
R27-3	Vehicle Use Standards	28477	5YR	01/30/2006	2006-4/34
R27-7	Safety and Loss Prevention of State Vehicles	28469	5YR	01/20/2006	2006-4/34
Fleet Operations, Surplus Property					
R28-2	Surplus Firearms	28496	5YR	02/07/2006	2006-5/47
Information Technology Services					
R29-1	Division of Information Technology Services Adjudicative Proceedings	28788	5YR	06/08/2006	Not Printed
Purchasing and General Services					
R33-1	Utah State Procurement Rules Definitions	28436	NSC	02/22/2006	Not Printed
R33-1-1	Definitions	28445	AMD	02/21/2006	2006-2/3
R33-2-101	Delegation of Authority of the Chief Procurement Officer	28437	NSC	02/22/2006	Not Printed
R33-3	Source Selection and Contract Formation	28447	AMD	02/21/2006	2006-2/5
R33-4	Specifications	28438	NSC	02/22/2006	Not Printed
R33-5	Construction and Architect-Engineer Selection	28448	NSC	02/22/2006	Not Printed
R33-7	Cost Principles	28439	NSC	02/22/2006	Not Printed
R33-8	Property Management	28440	NSC	02/22/2006	Not Printed
Records Committee					
R35-1	State Records Committee Appeal Hearing Procedures	28462	AMD	03/14/2006	2006-3/3
Risk Management					
R37-1	Risk Management General Rules	28413	AMD	03/31/2006	2006-1/4
Agriculture and Food					
Administration					
R51-3	Government Records Access and Management Act	28552	5YR	03/16/2006	2006-8/69
R51-4	ADA Complaint Procedure	28553	5YR	03/16/2006	2006-8/69
Animal Industry					
R58-10	Meat and Poultry Inspection	28506	AMD	04/03/2006	2006-5/2
Marketing and Development					
R65-8	Management of the Junior Livestock Show Appropriation	28558	5YR	03/16/2006	2006-8/70
Plant Industry					
R68-4	Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products	28504	5YR	02/10/2006	2006-5/47
R68-7	Utah Pesticide Control Act	28554	5YR	03/16/2006	2006-8/70
R68-8	Utah Seed Law	28452	5YR	01/09/2006	2006-3/38
R68-18	Quarantine Pertaining to Karnal Bunt	28505	5YR	02/10/2006	2006-5/48
Regulatory Services					
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	28503	AMD	04/03/2006	2006-5/3
R70-330	Raw Milk for Retail	28555	5YR	03/16/2006	2006-8/71
R70-370	Butter	28556	5YR	03/16/2006	2006-8/71
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	28557	5YR	03/16/2006	2006-8/72
R70-410	Grading and Inspection of Shell Eggs With Standard Grade and Weight Classes	28471	5YR	01/24/2006	2006-4/35

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R70-410-1	Authority	28485	AMD	03/20/2006	2006-4/4
Alcoholic Beverage Control					
Administration					
R81-10A-7	Draft Beer Sales/Minors on Premises	28431	NSC	01/01/2006	Not Printed
Capitol Preservation Board (State)					
Administration					
R131-4	Procurement of Construction	28727	5YR	05/12/2006	2006-11/92
Commerce					
Administration					
R151-14	New Automobile Franchise Act Rule	28542	AMD	05/02/2006	2006-7/2
R151-35	Powersport Vehicle Franchise Act Rule	28543	AMD	05/02/2006	2006-7/3
R151-46b	Department of Commerce Administrative Procedures Act Rules	28709	5YR	05/03/2006	2006-11/92
Consumer Protection					
R152-1	Utah Division of Consumer Protection: "Buyer Beware List"	28574	AMD	05/16/2006	2006-8/7
R152-22-3	Application for Charitable Organization Permit	28573	AMD	05/16/2006	2006-8/9
Occupational and Professional Licensing					
R156-3a	Architect Licensing Act Rules	28429	AMD	04/03/2006	2006-2/15
R156-3a	Architect Licensing Act Rules	28429	CPR	04/03/2006	2006-5/44
R156-3a	Architect Licensing Act Rules	28604	5YR	04/10/2006	2006-9/39
R156-3a-501	Administrative Penalties - Unlawful Conduct	28671	NSC	05/10/2006	Not Printed
R156-17b	Pharmacy Practice Act Rules	28530	AMD	04/17/2006	2006-6/2
R156-17b	Pharmacy Practice Act Rules	28620	NSC	05/15/2006	Not Printed
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	28444	AMD	04/03/2006	2006-2/17
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	28444	CPR	04/03/2006	2006-5/45
R156-31b	Nurse Practice Act Rules	28365	AMD	01/23/2006	2005-24/3
R156-37	Utah Controlled Substances Act Rules	28310	AMD	02/16/2006	2005-22/8
R156-37	Utah Controlled Substances Act Rules	28310	CPR	02/16/2006	2006-2/35
R156-44a	Nurse Midwife Practice Act Rules	28352	AMD	01/05/2006	2005-23/4
R156-46b	Division Utah Administrative Procedures Act Rules	28673	5YR	04/25/2006	2006-10/86
R156-47b	Massage Therapy Practice Act Rules	28478	5YR	01/31/2006	2006-4/35
R156-50	Private Probation Provider Licensing Act Rules	28550	5YR	03/13/2006	2006-7/33
R156-55b	Electricians Licensing Rules	28611	AMD	06/01/2006	2006-9/15
R156-56	Utah Uniform Building Standard Act Rules	28286	AMD	01/01/2006	2005-21/6
R156-56-707	Statewide Amendments to the IPC	28285	AMD	01/01/2006	2005-21/25
R156-56-711	Statewide Amendments to the IRC	28427	NSC	02/23/2006	Not Printed
R156-60c-502	Unprofessional Conduct	28603	AMD	06/01/2006	2006-9/17
R156-60d	Substance Abuse Counselor Act Rules	28605	5YR	04/10/2006	2006-9/39
R156-63-503	Administrative Penalties	28345	AMD	01/10/2006	2005-23/5
R156-74	Certified Shorthand Reporters Licensing Act Rules	28428	AMD	02/16/2006	2006-2/24
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R162-10-1	Formal Adjudicative Proceedings	28494	AMD	04/19/2006	2006-5/7

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R162-202-10	Principal Lending Manager Experience Requirement	28499	AMD	04/05/2006	2006-5/7
R162-203	Status Changes	28450	AMD	03/09/2006	2006-3/4
R162-204	Residential Mortgage Record Keeping Requirements	28497	AMD	04/05/2006	2006-5/8
R162-205	Residential Mortgage Unprofessional Conduct	28498	AMD	04/05/2006	2006-5/9
R162-207-3	Renewal Process	28451	AMD	03/09/2006	2006-3/5
R162-209	Administrative Proceedings	28476	5YR	01/30/2006	2006-4/36
Community and Culture					
Housing and Community Development					
R199-11	Community Development Block Grants (CDBG)	28647	5YR	04/19/2006	2006-10/86
Indian Affairs					
R230-1	Native American Grave Protection and Repatriation	28479	5YR	01/31/2006	2006-4/37
Olene Walker Housing Trust Fund					
R235-1	Olene Walker Housing Loan Fund (OWHLF)	28492	NSC	03/01/2006	Not Printed
R235-1	Olene Walker Housing Loan Fund (OWHLF)	28402	NEW	03/01/2006	2006-1/9
Community and Economic Development					
Administration					
R182-1	Government Records Access and Management Act Rules	28442	NSC	01/01/2006	Not Printed
Community Development					
R199-8	Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance	28347	NSC	01/01/2006	Not Printed
R199-9	Policy Concerning Enforceability and Taxability of Bonds Purchased	28348	NSC	01/01/2006	Not Printed
R199-10	Procedures in Case of Inability to Formulate Contract for Alleviation of Impact	28349	NSC	01/01/2006	Not Printed
R199-11	Community Development Block Grants (CDBG)	28350	NSC	01/01/2006	Not Printed
Community Development, Community Services					
R202-100	Community Services Block Grant Rules	28353	NSC	01/01/2006	Not Printed
R202-201	Energy Assistance: General Provisions	28359	NSC	01/01/2006	Not Printed
R202-202	Energy Assistance Programs Standards	28385	NSC	01/01/2006	Not Printed
R202-203	Energy Assistance Income Standards, Income Eligibility, and Payment Determination	28386	NSC	01/01/2006	Not Printed
R202-204	Energy Assistance: Asset Standards	28387	NSC	01/01/2006	Not Printed
R202-205	Energy Assistance: Program Benefits	28388	NSC	01/01/2006	Not Printed
R202-206	Energy Assistance: Eligibility Determination	28389	NSC	01/01/2006	Not Printed
R202-207	Energy Assistance: Records and Benefit Management	28390	NSC	01/01/2006	Not Printed
R202-208	Energy Assistance: Special State Programs	28391	NSC	01/01/2006	Not Printed
Community Development, Energy Services					
R203-4	Utah Public Building Energy Loan and Grant Programs	28433	NSC	01/01/2006	Not Printed
R203-5	Utah Energy Technology Demonstration Program	28434	NSC	01/01/2006	Not Printed
Community Development, Fine Arts					
R207-1	Utah Arts Council General Program Rules	28361	NSC	01/01/2006	Not Printed
R207-2	Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections	28362	NSC	01/01/2006	Not Printed

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R212-3	Memberships, Sales, Gifts, Bequests, Endowments	28406	NSC	01/01/2006	Not Printed
R212-4	Archaeological Permits	28407	NSC	01/01/2006	Not Printed
R212-6	State Register for Historic Resources and Archaeological Sites	28405	NSC	01/01/2006	Not Printed
R212-7	Cultural Resource Management	28403	NSC	01/01/2006	Not Printed
R212-8	Preservation Easements	28408	NSC	01/01/2006	Not Printed
R212-9	Board of State History as the Cultural Sites Review Committee Review Board	28409	NSC	01/01/2006	Not Printed
R212-11	Historic Preservation Tax Credits	28410	NSC	01/01/2006	Not Printed
R212-12	Computerized Record of Cemeteries, Burial Locations and Plots, and Granting Matching Funds	28411	NSC	01/01/2006	Not Printed
Community Development, Library					
R223-1	Adjudicative Procedures	28343	NSC	01/01/2006	Not Printed
R223-2	Public Library Online Access for Eligibility to Receive Public Funds	28344	NSC	01/01/2006	Not Printed
Indian Affairs					
R230-1	Native American Grave Protection Repatriation Act	28441	NSC	01/01/2006	Not Printed
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Administration					
R251-104	Declaratory Orders	28576	5YR	03/28/2006	2006-8/72
R251-111	Government Records Access and Management	28713	5YR	05/04/2006	2006-11/93
R251-702	Inmate Communication: Telephones	28705	5YR	05/03/2006	2006-11/93
R251-708	Perimeter Patrol	28706	5YR	05/03/2006	2006-11/94
R251-711	Admission and Intake	28707	5YR	05/03/2006	2006-11/94
R251-712	Release	28577	5YR	03/28/2006	2006-8/72
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Administration					
R270-1	Award and Reparations Standards	28355	AMD	01/04/2006	2005-23/6
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Education					
Administration					
R277-410	Accreditation of Schools	28463	AMD	03/06/2006	2006-3/7
R277-477	Distribution of Funds from the School Trust Lands Account and Implementation of the School LAND Trust Program	28464	AMD	03/06/2006	2006-3/8
R277-501	Educator Licensing Renewal, Highly Qualified and Timelines	28465	AMD	03/06/2006	2006-3/10
R277-503	Licensing Routes	28590	AMD	05/16/2006	2006-8/10
R277-510	Educator Licensing - Highly Qualified Teachers	28466	NEW	03/06/2006	2006-3/15
R277-510	Educator Licensing - Highly Qualified Teachers	28592	NSC	04/12/2006	Not Printed
R277-513	Dual Certification	28700	5YR	05/01/2006	2006-10/87
R277-517	Athletic Coaching Certification	28701	5YR	05/01/2006	2006-10/87
R277-602	Special Needs Scholarships - Funding and Procedures	28446	AMD	02/15/2006	2006-2/25
R277-705	Secondary School Completion and Diplomas	28467	AMD	03/06/2006	2006-3/18

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R277-709	Education Programs Serving Youth in Custody	28591	AMD	05/16/2006	2006-8/12
R277-716	Alternative Language Services for Utah Students	28522	NEW	04/03/2006	2006-5/10
R277-717	Mathematics, Engineering, Science Achievement (MESA)	28523	AMD	04/03/2006	2006-5/13
Rehabilitation					
R280-204	Utah State Office of Rehabilitation Employee Background Check Requirement	28521	NEW	04/03/2006	2006-5/16
Environmental Quality					
Air Quality					
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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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Administrative Services, Fleet Operations	28469	R27-7	5YR	01/20/2006	2006-4/34
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Money Management Council, Administration	28533	R628-4-2	NSC	03/07/2006	Not Printed
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Community and Economic Development, Community Development, Library	28343	R223-1	NSC	01/01/2006	Not Printed
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Commerce, Administration	28709	R151-46b	5YR	05/03/2006	2006-11/92
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Administrative Services, Administrative Rules	28586	R15-4	EMR	04/15/2006	2006-8/57
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Commerce, Administration	28709	R151-46b	5YR	05/03/2006	2006-11/92
Commerce, Occupational and Professional Licensing	28673	R156-46b	5YR	04/25/2006	2006-10/86
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	28563	R850-5-200	AMD	05/16/2006	2006-8/49
	28482	R850-21-900	AMD	03/20/2006	2006-4/14
	28483	R850-22-900	AMD	03/20/2006	2006-4/15
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Human Services, Juvenile Justice Services	28378	R547-13	AMD	01/18/2006	2005-24/8
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	28402	R235-1	NEW	03/01/2006	2006-1/9
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Human Services, Aging and Adult Services	28778	R510-1	5YR	06/02/2006	Not Printed
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Environmental Quality, Air Quality	28226	R307-170	AMD	01/05/2006	2005-19/6
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	28468	R307-801-5	NSC	02/22/2006	Not Printed
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Environmental Quality, Air Quality	28501	R307-204	AMD	04/07/2006	2006-5/18
	28602	R307-204	5YR	04/07/2006	2006-9/40
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Public Safety, Highway Patrol	28342	R714-500	AMD	01/05/2006	2005-23/59
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Alcoholic Beverage Control, Administration	28431	R81-10A-7	NSC	01/01/2006	Not Printed
alternative language services					
Education, Administration	28522	R277-716	NEW	04/03/2006	2006-5/10
alternative licensing					
Education, Administration	28590	R277-503	AMD	05/16/2006	2006-8/10
alternative onsite wastewater systems					
Environmental Quality, Water Quality	28596	R317-4	AMD	05/19/2006	2006-8/14
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Public Safety, Driver License	28566	R708-38	5YR	03/20/2006	2006-8/77
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Insurance, Administration	28527	R590-93-6	NSC	03/06/2006	Not Printed
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Community and Economic Development, Community Development, Community Services	28353	R202-100	NSC	01/01/2006	Not Printed

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Administrative Services, Facilities Construction and Management	28607	R23-2	AMD	06/01/2006	2006-9/12
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Community and Economic Development, Community Development, Fine Arts	28361	R207-1	NSC	01/01/2006	Not Printed
art work					
Community and Economic Development, Community Development, Fine Arts	28362	R207-2	NSC	01/01/2006	Not Printed
asbestos					
Environmental Quality, Air Quality	28468	R307-801-5	NSC	02/22/2006	Not Printed
asbestos hazard emergency response					
Environmental Quality, Air Quality	28468	R307-801-5	NSC	02/22/2006	Not Printed
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	28600	R628-12	NSC	05/10/2006	Not Printed
bear					
Natural Resources, Wildlife Resources	28457	R657-33	AMD	03/06/2006	2006-3/25
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Community and Economic Development, Community Development, Community Services	28388	R202-205	NSC	01/01/2006	Not Printed
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Transportation, Operations, Construction	28559	R916-1-7	AMD	05/16/2006	2006-8/51
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Natural Resources, Wildlife Resources	28379	R657-5	AMD	01/18/2006	2005-24/11
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School and Institutional Trust Lands, Administration	28483	R850-22-900	AMD	03/20/2006	2006-4/15
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	28509	R651-206	5YR	02/13/2006	2006-5/48
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	28628	R651-208	5YR	04/18/2006	2006-10/92
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	28635	R651-217	5YR	04/18/2006	2006-10/95
	28654	R651-218	NSC	05/10/2006	Not Printed
	28636	R651-218	5YR	04/18/2006	2006-10/96
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	28655	R651-220	NSC	05/10/2006	Not Printed
	28638	R651-220	5YR	04/18/2006	2006-10/97
	28639	R651-221	5YR	04/18/2006	2006-10/97
	28656	R651-221	NSC	05/10/2006	Not Printed
	28511	R651-222	5YR	02/13/2006	2006-5/49
	28512	R651-224	5YR	02/13/2006	2006-5/50
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	28640	R651-226	5YR	04/18/2006	2006-10/98
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Labor Commission, Safety	28515	R616-2	NSC	02/27/2006	Not Printed
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bonding requirements					
Money Management Council, Administration	28533	R628-4-2	NSC	03/07/2006	Not Printed
Transportation, Operations, Construction	28559	R916-1-7	AMD	05/16/2006	2006-8/51
Workforce Services, Unemployment Insurance	28722	R994-308	5YR	05/09/2006	2006-11/98
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Environmental Quality, Radiation Control	28541	R313-32	AMD	05/10/2006	2006-7/13
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Human Services, Services for People with Disabilities	28716	R539-1-8	EMR	05/05/2006	2006-11/88
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Public Safety, Highway Patrol	28342	R714-500	AMD	01/05/2006	2005-23/59
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building inspection					
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	28358	R907-68	NEW	01/04/2006	2005-23/61
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Human Services, Aging and Adult Services	28190	R510-401	AMD	02/23/2006	2005-18/37
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certified court reporter					
Commerce, Occupational and Professional Licensing	28428	R156-74	AMD	02/16/2006	2006-2/24
certified nurse midwife					
Commerce, Occupational and Professional Licensing	28352	R156-44a	AMD	01/05/2006	2005-23/4
charity					
Commerce, Consumer Protection	28573	R152-22-3	AMD	05/16/2006	2006-8/9
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Human Services, Child and Family Services	28613	R512-203	NEW	06/01/2006	2006-9/24
	28614	R512-300-4	AMD	06/01/2006	2006-9/26
child care					
Workforce Services, Employment Development	28561	R986-700-705	NSC	04/17/2006	Not Printed
	28481	R986-700-709	AMD	04/12/2006	2006-4/31
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Health, Health Systems Improvement, Child Care Licensing	28245	R430-2	AMD	02/06/2006	2005-20/14
	28245	R430-2	CPR	02/06/2006	2005-24/33
	28593	R430-2	AMD	05/25/2006	2006-8/33
	28246	R430-3	AMD	02/06/2006	2005-20/18
	28246	R430-3	CPR	02/06/2006	2005-24/35
	28248	R430-4	AMD	02/06/2006	2005-20/23
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	28249	R430-6	CPR	02/06/2006	2005-24/41
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Human Services, Recovery Services	28412	R527-35	AMD	02/22/2006	2006-1/27
	28670	R527-200	5YR	04/24/2006	2006-10/88
child welfare					
Human Services, Child and Family Services	28612	R512-11	NEW	06/01/2006	2006-9/23
	28613	R512-203	NEW	06/01/2006	2006-9/24
	28614	R512-300-4	AMD	06/01/2006	2006-9/26
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Human Services, Recovery Services	28752	R527-800	5YR	05/24/2006	2006-12/86
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Community and Economic Development, Community Development, Community Services	28359	R202-201	NSC	01/01/2006	Not Printed
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Natural Resources, Oil, Gas and Mining; Coal	28742	R645-106	5YR	05/17/2006	2006-12/87
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Human Services, Administration	28598	R495-862	5YR	04/04/2006	2006-9/41
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Community and Economic Development, Community Development, Community Services	28353	R202-100	NSC	01/01/2006	Not Printed
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Community and Economic Development, Community Development	28350	R199-11	NSC	01/01/2006	Not Printed
Community and Culture, Housing and Community Development	28647	R199-11	5YR	04/19/2006	2006-10/86
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Human Services, Child Protection Ombudsman (Office of)	28401	R515-1	NEW	02/01/2006	2006-1/26
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Public Safety, Criminal Investigations and Technical Services, Criminal Identification	28250	R722-300	AMD	01/09/2006	2005-20/48
	28296	R722-300-13	NSC	01/09/2006	Not Printed
concern					
Natural Resources, Wildlife Resources	28751	R657-48	5YR	05/24/2006	2006-12/88
confidentiality of information					
Community and Economic Development, Community Development, Community Services	28359	R202-201	NSC	01/01/2006	Not Printed
connections					
Environmental Quality, Drinking Water	28422	R309-550-5	AMD	03/08/2006	2006-1/20

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Environmental Quality, Air Quality	28226	R307-170	AMD	01/05/2006	2005-19/6
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Commerce, Occupational and Professional Licensing	28611	R156-55b	AMD	06/01/2006	2006-9/15
	28286	R156-56	AMD	01/01/2006	2005-21/6
	28285	R156-56-707	AMD	01/01/2006	2005-21/25
	28427	R156-56-711	NSC	02/23/2006	Not Printed
contracts					
Administrative Services, Facilities Construction and Management	28608	R23-1	AMD	06/01/2006	2006-9/10
	28609	R23-1	AMD	06/01/2006	2006-9/3
Capitol Preservation Board (State), Administration	28727	R131-4	5YR	05/12/2006	2006-11/92
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Commerce, Occupational and Professional Licensing	28310	R156-37	AMD	02/16/2006	2005-22/8
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Natural Resources, Forestry, Fire and State Lands	28525	R652-122	NSC	03/07/2006	Not Printed
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Corrections, Administration	28576	R251-104	5YR	03/28/2006	2006-8/72
	28705	R251-702	5YR	05/03/2006	2006-11/93
	28706	R251-708	5YR	05/03/2006	2006-11/94
	28707	R251-711	5YR	05/03/2006	2006-11/94
	28577	R251-712	5YR	03/28/2006	2006-8/72
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Commerce, Occupational and Professional Licensing	28603	R156-60c-502	AMD	06/01/2006	2006-9/17
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Commerce, Occupational and Professional Licensing	28428	R156-74	AMD	02/16/2006	2006-2/24
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Education, Rehabilitation	28521	R280-204	NEW	04/03/2006	2006-5/16
criminal records					
Corrections, Administration	28713	R251-111	5YR	05/04/2006	2006-11/93
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Natural Resources, Water Rights	28710	R655-10	5YR	05/03/2006	2006-11/96
	28712	R655-12	5YR	05/03/2006	2006-11/97
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Natural Resources, Wildlife Resources	28455	R657-24	AMD	03/06/2006	2006-3/24
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Natural Resources, Water Rights	28710	R655-10	5YR	05/03/2006	2006-11/96
	28711	R655-11	5YR	05/03/2006	2006-11/97
	28712	R655-12	5YR	05/03/2006	2006-11/97
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Human Services, Child Protection Ombudsman (Office of)	28401	R515-1	NEW	02/01/2006	2006-1/26
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Human Services, Recovery Services	28739	R527-936	5YR	05/16/2006	2006-12/87
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Money Management Council, Administration	28606	R628-10	5YR	04/11/2006	2006-9/42
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developmentally disabled					
Agriculture and Food, Administration	28553	R51-4	5YR	03/16/2006	2006-8/69
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Human Services, Services for People with Disabilities	28716	R539-1-8	EMR	05/05/2006	2006-11/88
	28715	R539-9	EMR	05/05/2006	2006-11/90
disclosure requirements					
Tax Commission, Administration	28430	R861-1A-37	AMD	03/06/2006	2006-2/29
discrimination					
Agriculture and Food, Administration	28553	R51-4	5YR	03/16/2006	2006-8/69
domestic violence					
Human Services, Child and Family Services	28614	R512-300-4	AMD	06/01/2006	2006-9/26
drinking water					
Environmental Quality, Drinking Water	28416	R309-105-9	AMD	03/08/2006	2006-1/11
	28417	R309-150-6	AMD	03/08/2006	2006-1/12
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	28592	R277-510	NSC	04/12/2006	Not Printed
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	28190	R510-401	CPR	02/23/2006	2005-22/46
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elevators Labor Commission, Safety	28256	R616-3-3	AMD	02/08/2006	2005-20/44
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	28472	R426-8	5YR	01/24/2006	2006-4/38
emission fee Environmental Quality, Air Quality	28549	R307-415-7d	NSC	03/28/2006	Not Printed
employer liability Workforce Services, Unemployment Insurance	28721	R994-302	5YR	05/09/2006	2006-11/98

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	28386	R202-203	NSC	01/01/2006	Not Printed
	28387	R202-204	NSC	01/01/2006	Not Printed
	28388	R202-205	NSC	01/01/2006	Not Printed
	28389	R202-206	NSC	01/01/2006	Not Printed
	28390	R202-207	NSC	01/01/2006	Not Printed
	28391	R202-208	NSC	01/01/2006	Not Printed
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Community and Economic Development, Community Development, Community Services	28391	R202-208	NSC	01/01/2006	Not Printed
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	28434	R203-5	NSC	01/01/2006	Not Printed
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Human Services, Recovery Services	28752	R527-800	5YR	05/24/2006	2006-12/86
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Education, Administration	28523	R277-717	AMD	04/03/2006	2006-5/13
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Administrative Services, Facilities Construction and Management	28607	R23-2	AMD	06/01/2006	2006-9/12
Commerce, Occupational and Professional Licensing	28444	R156-22	AMD	04/03/2006	2006-2/17
	28444	R156-22	CPR	04/03/2006	2006-5/45
environmental health					
Environmental Quality, Drinking Water	28392	R309-600	NSC	01/01/2006	Not Printed
	28380	R309-605	NSC	01/01/2006	Not Printed
environmental protection					
Environmental Quality, Air Quality	28549	R307-415-7d	NSC	03/28/2006	Not Printed
Environmental Quality, Drinking Water	28417	R309-150-6	AMD	03/08/2006	2006-1/12
	28418	R309-405-4	AMD	03/08/2006	2006-1/14
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Natural Resources, Oil, Gas and Mining; Coal	28742	R645-106	5YR	05/17/2006	2006-12/87
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Agriculture and Food, Marketing and Development	28558	R65-8	5YR	03/16/2006	2006-8/70
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	28169	R651-611	AMD	01/01/2006	2005-18/46
Public Safety, Driver License	28565	R708-18	5YR	03/20/2006	2006-8/75
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School and Institutional Trust Lands, Administration	28562	R850-4-300	AMD	05/16/2006	2006-8/48
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Money Management Council, Administration	28600	R628-12	NSC	05/10/2006	Not Printed
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Environmental Quality, Environmental Response and Remediation	28518	R311-207-5	AMD	05/15/2006	2006-5/31
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Environmental Quality, Air Quality	28602	R307-204	5YR	04/07/2006	2006-9/40
fire prevention					
Public Safety, Fire Marshal	28579	R710-4	AMD	05/16/2006	2006-8/45
	28461	R710-9	AMD	03/06/2006	2006-3/27
	28292	R710-9	AMD	01/10/2006	2005-21/38
fire training					
Public Safety, Fire Marshal	28460	R710-10	NEW	03/06/2006	2006-3/33
	28581	R710-10-7	NSC	04/12/2006	Not Printed
firearms					
Administrative Services, Fleet Operations, Surplus Property	28496	R28-2	5YR	02/07/2006	2006-5/47
fires					
Environmental Quality, Air Quality	28459	R307-204	NSC	04/07/2006	Not Printed
fish					
Natural Resources, Wildlife Resources	28303	R657-13	AMD	01/18/2006	2005-22/41
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Natural Resources, Wildlife Resources	28303	R657-13	AMD	01/18/2006	2005-22/41
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Natural Resources, Water Rights	28711	R655-11	5YR	05/03/2006	2006-11/97
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Agriculture and Food, Animal Industry	28506	R58-10	AMD	04/03/2006	2006-5/2
Agriculture and Food, Plant Industry	28504	R68-4	5YR	02/10/2006	2006-5/47
Agriculture and Food, Regulatory Services	28555	R70-330	5YR	03/16/2006	2006-8/71

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	28471	R70-410	5YR	01/24/2006	2006-4/35
	28485	R70-410-1	AMD	03/20/2006	2006-4/4
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Community and Economic Development, Community Development, Community Services	28353	R202-100	NSC	01/01/2006	Not Printed
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Human Services, Substance Abuse and Mental Health, State Hospital	28738	R525-8	5YR	05/16/2006	2006-12/86
franchises					
Commerce, Administration	28542	R151-14	AMD	05/02/2006	2006-7/2
	28543	R151-35	AMD	05/02/2006	2006-7/3
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Agriculture and Food, Administration	28552	R51-3	5YR	03/16/2006	2006-8/69
	28442	R182-1	NSC	01/01/2006	Not Printed
game laws					
Natural Resources, Wildlife Resources	28379	R657-5	AMD	01/18/2006	2005-24/11
	28382	R657-17	AMD	01/18/2006	2005-24/17
	28454	R657-19	AMD	03/06/2006	2006-3/22
	28377	R657-23	AMD	01/18/2006	2005-24/19
	28457	R657-33	AMD	03/06/2006	2006-3/25
generator radioactive waste permit					
Environmental Quality, Radiation Control	28720	R313-26	5YR	05/09/2006	2006-11/95
government documents					
Administrative Services, Records Committee	28462	R35-1	AMD	03/14/2006	2006-3/3
Agriculture and Food, Administration	28552	R51-3	5YR	03/16/2006	2006-8/69
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Community and Economic Development, Community Development, Community Services	28390	R202-207	NSC	01/01/2006	Not Printed
government hearings					
Commerce, Administration	28709	R151-46b	5YR	05/03/2006	2006-11/92
Commerce, Occupational and Professional Licensing	28673	R156-46b	5YR	04/25/2006	2006-10/86
government purchasing					
Administrative Services, Purchasing and General Services	28436	R33-1	NSC	02/22/2006	Not Printed
	28445	R33-1-1	AMD	02/21/2006	2006-2/3
	28437	R33-2-101	NSC	02/22/2006	Not Printed
	28447	R33-3	AMD	02/21/2006	2006-2/5
	28438	R33-4	NSC	02/22/2006	Not Printed
	28448	R33-5	NSC	02/22/2006	Not Printed

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Community and Economic Development, Community Development, Energy Services	28433	R203-4	NSC	01/01/2006	Not Printed
	28434	R203-5	NSC	01/01/2006	Not Printed
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	28348	R199-9	NSC	01/01/2006	Not Printed
	28350	R199-11	NSC	01/01/2006	Not Printed
Community and Culture, Housing and Community Development	28647	R199-11	5YR	04/19/2006	2006-10/86
Community and Economic Development, Community Development, Community Services	28353	R202-100	NSC	01/01/2006	Not Printed
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Natural Resources, Wildlife Resources	28751	R657-48	5YR	05/24/2006	2006-12/88
hazardous waste					
Environmental Quality, Solid and Hazardous Waste	28346	R315-102	AMD	01/20/2006	2005-23/38
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Health, Health Systems Improvement, Licensing	28500	R432-31	AMD	04/13/2006	2006-5/35
	28312	R432-100-24	AMD	01/05/2006	2005-22/34
	28313	R432-100-33	AMD	01/05/2006	2005-22/35
	28311	R432-100-38	AMD	01/05/2006	2005-22/38
	28301	R432-106	AMD	01/05/2006	2005-22/39
	28449	R432-106	5YR	01/06/2006	2006-3/38
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Labor Commission, Adjudication	28547	R602-2-1	AMD	05/05/2006	2006-7/14
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Community and Economic Development, Community Development, Community Services	28385	R202-202	NSC	01/01/2006	Not Printed
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highways					
Transportation, Program Development	28538	R926-9	NEW	04/20/2006	2006-6/17
historic preservation					
Community and Economic Development, Community Development, History	28403	R212-7	NSC	01/01/2006	Not Printed
	28408	R212-8	NSC	01/01/2006	Not Printed
	28409	R212-9	NSC	01/01/2006	Not Printed
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Community and Economic Development, Community Development, History	28405	R212-6	NSC	01/01/2006	Not Printed
	28408	R212-8	NSC	01/01/2006	Not Printed
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Community and Economic Development, Community Development, History	28410	R212-11	NSC	01/01/2006	Not Printed
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	28402	R235-1	NEW	03/01/2006	2006-1/9
hunter education					
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Natural Resources, Wildlife Resources	28371	R657-38	AMD	01/18/2006	2005-24/22
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Natural Resources, Wildlife Resources	28382	R657-17	AMD	01/18/2006	2005-24/17
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Environmental Quality, Drinking Water	28420	R309-540-6	AMD	03/08/2006	2006-1/18
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Community and Economic Development, Community Development	28349	R199-10	NSC	01/01/2006	Not Printed
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Natural Resources, Oil, Gas and Mining; Coal	28742	R645-106	5YR	05/17/2006	2006-12/87
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Administrative Services, Fleet Operations	28469	R27-7	5YR	01/20/2006	2006-4/34

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	28479	R230-1	5YR	01/31/2006	2006-4/37
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Environmental Quality, Drinking Water	28420	R309-540-6	AMD	03/08/2006	2006-1/18
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Community and Economic Development, Community Development, Library	28343	R223-1	NSC	01/01/2006	Not Printed
information technology					
Administrative Services, Information Technology Services	28788	R29-1	5YR	06/08/2006	Not Printed
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Governor, Planning and Budget, Chief Information Officer	28704	R365-7	NSC	05/30/2006	Not Printed
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Corrections, Administration	28705	R251-702	5YR	05/03/2006	2006-11/93
inspections					
Agriculture and Food, Plant Industry	28554	R68-7	5YR	03/16/2006	2006-8/70
	28452	R68-8	5YR	01/09/2006	2006-3/38
insurance					
Insurance, Administration	28551	R590-144	5YR	03/14/2006	2006-7/34
	28269	R590-166-4	AMD	01/24/2006	2005-20/40
	28588	R590-177	NSC	04/12/2006	Not Printed
	28587	R590-177	5YR	03/31/2006	2006-8/73
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Insurance, Administration	28726	R590-208	5YR	05/12/2006	2006-11/95
insurance law					
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	28117	R590-85	CPR	01/31/2006	2005-24/44
	28117	R590-85	CPR	01/31/2006	2005-20/61
	28267	R590-98	CPR	01/31/2006	2005-24/46
	28267	R590-98	AMD	01/31/2006	2005-20/39
	28528	R590-99	NSC	03/06/2006	Not Printed
	28495	R590-131-4	NSC	02/24/2006	Not Printed
	28589	R590-200	5YR	03/31/2006	2006-8/73
Internet access					
Community and Economic Development, Community Development, Library	28344	R223-2	NSC	01/01/2006	Not Printed
intoxilyzer					
Public Safety, Highway Patrol	28342	R714-500	AMD	01/05/2006	2005-23/59

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Judicial Conduct Commission, Administration	28351	R595-4-1	AMD	02/10/2006	2005-23/45
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Human Services, Juvenile Justice Services	28378	R547-13	AMD	01/18/2006	2005-24/8
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Education, Administration	28591	R277-709	AMD	05/16/2006	2006-8/12
juvenile detention					
Human Services, Juvenile Justice Services	28378	R547-13	AMD	01/18/2006	2005-24/8
land manager					
Environmental Quality, Air Quality	28501	R307-204	AMD	04/07/2006	2006-5/18
	28602	R307-204	5YR	04/07/2006	2006-9/40
land managers					
Environmental Quality, Air Quality	28459	R307-204	NSC	04/07/2006	Not Printed
law					
Public Safety, Fire Marshal	28461	R710-9	AMD	03/06/2006	2006-3/27
	28292	R710-9	AMD	01/10/2006	2005-21/38
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School and Institutional Trust Lands, Administration	28484	R850-24-300	AMD	03/20/2006	2006-4/16
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School and Institutional Trust Lands, Administration	28482	R850-21-900	AMD	03/20/2006	2006-4/14
	28483	R850-22-900	AMD	03/20/2006	2006-4/15
leave benefits					
Human Resource Management, Administration	28571	R477-7	EMR	04/01/2006	2006-8/64
	28443	R477-7	EMR	01/01/2006	2006-2/40
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Community and Economic Development, Community Development, Library	28344	R223-2	NSC	01/01/2006	Not Printed
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Commerce, Occupational and Professional Licensing	28429	R156-3a	CPR	04/03/2006	2006-5/44
	28429	R156-3a	AMD	04/03/2006	2006-2/15
	28604	R156-3a	5YR	04/10/2006	2006-9/39
	28671	R156-3a-501	NSC	05/10/2006	Not Printed
	28620	R156-17b	NSC	05/15/2006	Not Printed
	28530	R156-17b	AMD	04/17/2006	2006-6/2
	28365	R156-31b	AMD	01/23/2006	2005-24/3
	28310	R156-37	AMD	02/16/2006	2005-22/8
	28310	R156-37	CPR	02/16/2006	2006-2/35

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	28478	R156-47b	5YR	01/31/2006	2006-4/35
	28550	R156-50	5YR	03/13/2006	2006-7/33
	28611	R156-55b	AMD	06/01/2006	2006-9/15
	28286	R156-56	AMD	01/01/2006	2005-21/6
	28285	R156-56-707	AMD	01/01/2006	2005-21/25
	28427	R156-56-711	NSC	02/23/2006	Not Printed
	28603	R156-60c-502	AMD	06/01/2006	2006-9/17
	28605	R156-60d	5YR	04/10/2006	2006-9/39
	28345	R156-63-503	AMD	01/10/2006	2005-23/5
	28428	R156-74	AMD	02/16/2006	2006-2/24
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Insurance, Administration	28527	R590-93-6	NSC	03/06/2006	Not Printed
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Public Safety, Fire Marshal	28584	R710-6	5YR	03/30/2006	2006-8/77
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Agriculture and Food, Marketing and Development	28558	R65-8	5YR	03/16/2006	2006-8/70
Natural Resources, Wildlife Resources	28455	R657-24	AMD	03/06/2006	2006-3/24
management					
Community and Economic Development, Community Development, History	28403	R212-7	NSC	01/01/2006	Not Printed
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Commerce, Occupational and Professional Licensing	28478	R156-47b	5YR	01/31/2006	2006-4/35
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School and Institutional Trust Lands, Administration	28484	R850-24-300	AMD	03/20/2006	2006-4/16
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Education, Administration	28523	R277-717	AMD	04/03/2006	2006-5/13
Medicaid					
Health, Health Care Financing, Coverage and Reimbursement Policy	28575	R414-1-5	AMD	05/16/2006	2006-8/29
	28258	R414-2A	R&R	03/03/2006	2005-20/11
	28258	R414-2A	CPR	03/03/2006	2006-2/36
	28414	R414-3A	R&R	02/01/2006	2006-1/22
	28357	R414-60	R&R	01/04/2006	2005-23/42
	28356	R414-63	REP	01/04/2006	2005-23/44
	28595	R414-305	EMR	04/01/2006	2006-8/58
Human Services, Recovery Services	28752	R527-800	5YR	05/24/2006	2006-12/86
	28739	R527-936	5YR	05/16/2006	2006-12/87
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Health, Health Systems Improvement, Primary Care and Rural Health	28644	R434-30	5YR	04/18/2006	2006-10/88

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Human Services, Substance Abuse and Mental Health	28599	R523-21	5YR	04/06/2006	2006-9/41
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Commerce, Occupational and Professional Licensing	28352	R156-44a	AMD	01/05/2006	2005-23/4
mineral leases					
School and Institutional Trust Lands, Administration	28484	R850-24-300	AMD	03/20/2006	2006-4/16
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School and Institutional Trust Lands, Administration	28484	R850-24-300	AMD	03/20/2006	2006-4/16
minerals reclamation					
Natural Resources, Oil, Gas and Mining; Non-Coal	28337	R647-1-106	AMD	02/23/2006	2005-23/46
	28338	R647-2	AMD	02/23/2006	2005-23/48
	28339	R647-3	AMD	02/23/2006	2005-23/51
	28340	R647-4	AMD	02/23/2006	2005-23/55
	28341	R647-5-101	AMD	02/23/2006	2005-23/58
minimum sizing					
Environmental Quality, Drinking Water	28419	R309-510-9	AMD	03/08/2006	2006-1/16
minimum standards					
Natural Resources, Forestry, Fire and State Lands	28525	R652-122	NSC	03/07/2006	Not Printed
minority education					
Education, Administration	28523	R277-717	AMD	04/03/2006	2006-5/13
monitoring					
Environmental Quality, Air Quality	28226	R307-170	AMD	01/05/2006	2005-19/6
motor vehicle safety					
Transportation, Motor Carrier, Ports of Entry	28695	R912-8	NSC	04/28/2006	Not Printed
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Commerce, Administration	28542	R151-14	AMD	05/02/2006	2006-7/2
Public Safety, Driver License	28567	R708-20	5YR	03/21/2006	2006-8/76
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Natural Resources, Parks and Recreation	28511	R651-222	5YR	02/13/2006	2006-5/49
motorcycles					
Commerce, Administration	28543	R151-35	AMD	05/02/2006	2006-7/3
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Community and Economic Development, Community Development, History	28405	R212-6	NSC	01/01/2006	Not Printed

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Governor, Planning and Budget	28295	R361-1	REP	01/03/2006	2005-22/36
nonpublic schools					
Education, Administration	28463	R277-410	AMD	03/06/2006	2006-3/7
nuclear medicine					
Environmental Quality, Radiation Control	28541	R313-32	AMD	05/10/2006	2006-7/13
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Commerce, Occupational and Professional Licensing	28365	R156-31b	AMD	01/23/2006	2005-24/3
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Commerce, Occupational and Professional Licensing	28673	R156-46b	5YR	04/25/2006	2006-10/86
	28611	R156-55b	AMD	06/01/2006	2006-9/15
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Commerce, Administration	28543	R151-35	AMD	05/02/2006	2006-7/3
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Natural Resources, Parks and Recreation	28642	R651-401	5YR	04/18/2006	2006-10/98
	28641	R651-405	5YR	04/18/2006	2006-10/99
	28658	R651-405	NSC	05/10/2006	Not Printed
	28659	R651-406	NSC	05/10/2006	Not Printed
	28643	R651-406	5YR	04/18/2006	2006-10/99
oil and gas law					
Natural Resources, Oil, Gas and Mining; Oil and Gas	28724	R649-10	5YR	05/11/2006	2006-11/96
oil gas and hydrocarbons					
School and Institutional Trust Lands, Administration	28482	R850-21-900	AMD	03/20/2006	2006-4/14
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School and Institutional Trust Lands, Administration	28483	R850-22-900	AMD	03/20/2006	2006-4/15
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Community and Culture, Olene Walker Housing Trust Fund	28492	R235-1	NSC	03/01/2006	Not Printed
	28402	R235-1	NEW	03/01/2006	2006-1/9
ombudsman					
Human Services, Child Protection Ombudsman (Office of)	28401	R515-1	NEW	02/01/2006	2006-1/26
onsite wastewater systems					
Environmental Quality, Water Quality	28596	R317-4	AMD	05/19/2006	2006-8/14
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Community and Economic Development, Community Development, Community Services	28385	R202-202	NSC	01/01/2006	Not Printed

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School and Institutional Trust Lands, Administration	28482	R850-21-900	AMD	03/20/2006	2006-4/14
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Public Safety, Highway Patrol	28342	R714-500	AMD	01/05/2006	2005-23/59
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Environmental Quality, Drinking Water	28421	R309-545-7	AMD	03/08/2006	2006-1/19
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Workforce Services, Unemployment Insurance	28480	R994-406-302	NSC	02/22/2006	Not Printed
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Natural Resources, Parks and Recreation	28513	R651-611	5YR	02/13/2006	2006-5/50
	28169	R651-611	AMD	01/01/2006	2005-18/46
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	28518	R311-207-5	AMD	05/15/2006	2006-5/31
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Commerce, Occupational and Professional Licensing	28620	R156-17b	NSC	05/15/2006	Not Printed
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	28706	R251-708	5YR	05/03/2006	2006-11/94
	28707	R251-711	5YR	05/03/2006	2006-11/94
	28577	R251-712	5YR	03/28/2006	2006-8/72
private probation provider Commerce, Occupational and Professional Licensing	28550	R156-50	5YR	03/13/2006	2006-7/33
private security officers Commerce, Occupational and Professional Licensing	28345	R156-63-503	AMD	01/10/2006	2005-23/5
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Commerce, Occupational and Professional Licensing	28603	R156-60c-502	AMD	06/01/2006	2006-9/17
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Workforce Services, Employment Development	28425	R986-300-305	AMD	03/01/2006	2006-1/31
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	28617	R907-68	AMD	06/01/2006	2006-9/30
	28358	R907-68	NEW	01/04/2006	2005-23/61
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Labor Commission, Occupational Safety and Health	28548	R614-1-4	AMD	05/02/2006	2006-7/18
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Education, Administration	28523	R277-717	AMD	04/03/2006	2006-5/13
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Commerce, Occupational and Professional Licensing	28345	R156-63-503	AMD	01/10/2006	2005-23/5
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Tax Commission, Collections	28539	R867-2B	5YR	03/07/2006	2006-7/35
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Commerce, Occupational and Professional Licensing	28428	R156-74	AMD	02/16/2006	2006-2/24
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Environmental Quality, Air Quality	28459	R307-204	NSC	04/07/2006	Not Printed
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Education, Administration	28446	R277-602	AMD	02/15/2006	2006-2/25
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	28479	R230-1	5YR	01/31/2006	2006-4/37
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Environmental Quality, Drinking Water	28421	R309-545-7	AMD	03/08/2006	2006-1/19
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Community and Economic Development, Community Development, History	28410	R212-11	NSC	01/01/2006	Not Printed
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	28617	R907-68	AMD	06/01/2006	2006-9/30
	28358	R907-68	NEW	01/04/2006	2005-23/61
Transportation, Program Development	28538	R926-9	NEW	04/20/2006	2006-6/17
Transportation, Preconstruction	28489	R930-5	R&R	04/25/2006	2006-4/18
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Transportation, Administration	28358	R907-68	NEW	01/04/2006	2005-23/61
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Transportation, Operations, Traffic and Safety	28524	R920-50-1	AMD	04/04/2006	2006-5/40
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Transportation, Motor Carrier, Ports of Entry	28616	R912-9	AMD	06/01/2006	2006-9/31
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Education, Administration	28464	R277-477	AMD	03/06/2006	2006-3/8
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waste water Environmental Quality, Water Quality	28596	R317-4	AMD	05/19/2006	2006-8/14
water conservation Environmental Quality, Drinking Water	28419	R309-510-9	AMD	03/08/2006	2006-1/16
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	28645	R651-801	5YR	04/18/2006	2006-10/100
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	28661	R651-802	NSC	05/10/2006	Not Printed
water skiing Natural Resources, Parks and Recreation	28512	R651-224	5YR	02/13/2006	2006-5/50
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Natural Resources, Wildlife Resources	28303	R657-13	AMD	01/18/2006	2005-22/41
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Labor Commission, Adjudication	28547	R602-2-1	AMD	05/05/2006	2006-7/14
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